



# **RESOLUTION No. 17-155**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **AUTHORIZING THE CHAIR OF THE BOARD TO EXECUTE A PERSONAL SERVICES CONTRACT WITH LEXISNEXIS VITALCHEK FOR ELECTRONIC PAYMENT SERVICES**

WHEREAS, on January 11, 2000, the Board of Supervisors adopted Ordinance 2012, thereby authorizing the acceptance of credit cards for payment of services rendered in accordance with the applicable provisions of the California Government Code Section 6159 and California Revenue and Taxation Code Section 2511.1; and

WHEREAS, in response to changing technology and the need for additional County departments expressing a desire to accept credit and debit cards for payment of services, the County issued a Request for Proposal for credit card payment processing services, and LexisNexis VitalChek was the successful applicant; and

WHEREAS, the Personal Services Agreement ("Agreement") between the County of Nevada and LexisNexis VitalChek establishes the terms and conditions by which the participating County departments will accept credit, debit card and electronic check payments, including, but not limited to, (1) the respective rights and duties of the County and the electronic payment users regarding presentation, acceptability and payment of credit and debit card drafts, (2) the establishment of the means by which to facilitate payment settlement, and (3) the payment to the card issuer of a fee or discount; and

WHEREAS, the Agreement provides that LexisNexis VitalChek may charge users who voluntarily opt to use these payment types, a fee for processing electronic payments of up to those amounts set forth in the Agreement; and

WHEREAS, the processing fees charged by LexisNexis VitalChek for use of credit and debit cards and electronic check shall be charged to and paid by the card user.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of the County of Nevada, State of California, that the Personal Services Contract, by and between the County of Nevada and LexisNexis VitalChek pertaining to credit, debit and electronic check payment processing services for the term of April 11, 2017 through June 30, 2020 be and hereby is approved, and that the Chair of the Board of Supervisors be and is hereby authorized to execute the Contract on behalf of the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 11th day of April, 2017, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Hank Weston, Chair

4/11/2017 cc: T&TC\*  
AC\* (Hold)

4/13/2017 cc: T&TC\*  
AC\* (Release)  
LNVC

# PERSONAL SERVICES CONTRACT

County of Nevada, California

This Personal Services Contract is made between the COUNTY OF NEVADA (herein "County"), and

**Contractor's Name** Lexis Nexis Vitalchek

(herein "Contractor"), wherein County desires to retain a person or entity to provide the following services, materials and products generally described as follows:

(§1) **Description of Services** Electronic Payment Services

## SUMMARY OF MATERIAL TERMS

(§2) **Maximum Contract Price:** NA  
(§3) **Contract Beginning Date:** 4/11/2017 **Contract Termination Date:** 6/30/2020  
(§4) **Liquidated Damages:** NA

## INSURANCE POLICIES

Designate all required policies:

|      |  | Req'd     | Not Req'd |
|------|--|-----------|-----------|
| (§6) | <b>Commercial General Liability</b> (\$1,000,000)      | <u>X</u>  | <u>  </u> |
| (§7) | <b>Automobile Liability</b> (\$ 300,000) Personal Auto | <u>  </u> | <u>X</u>  |
|      | (\$1,000,000) Business Rated                           | <u>  </u> | <u>X</u>  |
|      | (\$1,000,000) Commercial Policy                        | <u>X</u>  | <u>  </u> |
| (§8) | <b>Worker's Compensation</b>                           | <u>  </u> | <u>X</u>  |
| (§9) | <b>Errors and Omissions</b> (\$1,000,000)              | <u>X</u>  | <u>  </u> |

## LICENSES AND PREVAILING WAGES

(§14) Designate all required licenses:

## NOTICE & IDENTIFICATION

(§26) **Contractor:** LexisNexis VitalChek  
P.O. Box 1703  
Brentwood, TN 37024  
Contact Person: (866) 559-3279  
e-mail: paymentsolutions@lexisnexis.com

**County of Nevada:**  
950 Maidu Ave  
Nevada City, CA 95959  
Contact Person: (530) 265-1285  
e-mail: ttc@co.nevada.ca.us

**Contractor is a:** (check all that apply)

|              |                   |                  |                 |                      |
|--------------|-------------------|------------------|-----------------|----------------------|
| Corporation: | <u>  </u> Calif., | <u>X</u> Other,  | <u>  </u> LLC,  | <u>  </u> Non-profit |
| Partnership: | <u>  </u> Calif., | <u>  </u> Other, | <u>  </u> LLP,  | <u>  </u> Limited    |
| Person:      | <u>  </u> Indiv., | <u>  </u> Dba,   | <u>  </u> Ass'n | <u>  </u> Other      |

**EDD:** Independent Contractor Worksheet Required:    Yes X No

**HIPAA:** Schedule of Required Provisions (Exhibit D):    Yes X No

## ATTACHMENTS

Designate all required attachments:

|   | Req'd     | Not Req'd |
|---|-----------|-----------|
| <b>Exhibit A: Schedule of Services</b> (Provided by Contractor)               | <u>X</u>  | <u>  </u> |
| <b>Exhibit B: Schedule of Charges and Payments</b> (Paid by County)           | <u>X</u>  | <u>  </u> |
| <b>Exhibit C: Schedule of Changes</b> (Additions, Deletions & Amendments)     | <u>X</u>  | <u>  </u> |
| <b>Exhibit D: Schedule of HIPAA Provisions</b> (Protected Health Information) | <u>  </u> | <u>X</u>  |

### Terms

Each term of this Contract below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

### Services

**1. Scope of Services:**

Contractor shall provide all of the services, materials and products (herein "Services") generally described in **Exhibit "A"**, according to a performance schedule, if applicable, as set forth in said exhibit (herein "Performance Schedule"). If requested, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Contract.

### Payment

**2. Charges and Payments:**

The charges (herein "Charges") for furnishing the aforesaid Services under this Contract are set forth in **Exhibit "B"**, including, if applicable, hourly rates, unit pricing, and expense, mileage and cost limits. Said Charges shall be presented monthly by invoice, and shall be due within thirty (30) days of receipt unless payment is otherwise set forth in said **Exhibit "B"**, and shall remain in effect for the entire term of this Contract, and any extension hereof. In no event will the cost to County for Services to be provided under this Contract, including direct non-salary expenses, exceed the **Maximum Contract Price** set forth at §2, page one (1), above.

### Time for Performance

**3. Contract Term:**

This Contract shall commence on the **Contract Beginning Date** set forth at §3, page one (1), above. All Services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** set forth at §3, page one (1), above.

**4. Liquidated Damages:**

County and Contractor agree that damages to County due to delays in timely providing Services in accordance with the aforesaid Performance Schedule and Contract Termination Date are impractical and difficult to ascertain. Therefore, if §4 at page one (1) hereof shall indicate a daily amount as **Liquidated Damages**, County shall have the right to assess said daily sum, not as a penalty, but as and for damages to County due to delays in providing Services not in accordance with the said Performance Schedule, or later than the Contract Termination Date (herein "Delay"). Liquidated Damages shall be offset against amounts owing to Contractor, including retention sums.

To the extent that any Delay is a result of matters or circumstances wholly beyond the control of Contractor, County may excuse said Liquidated Damages; provided however, that County may condition such excuse upon Contractor having given prompt notice to County of such delay immediately by telephone and thereafter by written explanation within a reasonable time. The time for Contractor's performance shall be extended by the period of delay, or such other period as County may elect.

**5. Time of the Essence:**

Time is of the essence with respect to Contractor's performance under this Contract. Delay in meeting the time commitments contemplated herein will result in the assessment of liquidated damages, if indicated at §4 at page one (1), hereof. If Liquidated Damages are not so indicated, damages shall be as otherwise provided by law.

### Insurance

**6. Commercial General Liability Insurance:** (County Resolution No. 90674)

If §6 at page one (1) hereof shall indicate a **Commercial General Liability** insurance policy is required, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount indicated at said §6;

- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

**7. Automobile Liability Insurance:** (County Resolution No. 90676)

If §7 at page one (1) hereof shall require either a Business Rated or a Commercial Automobile Liability insurance policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount indicated at said §7;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

If §7 at page one (1) hereof shall require a Personal Auto policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance for a minimum of three hundred thousand dollars, (\$300,000), in combined single limits, and naming the County as additionally insured.

**8. Worker's Compensation:** (County Resolution No. 90674)

If §8 at page one (1) hereof shall indicate a **Worker's Compensation** insurance policy is required, Contractor shall maintain said policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

Before commencing to utilize employees in providing Services under this Contract, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

**9. Errors and Omissions:**

If §9 at page one (1) hereof shall indicate **Errors and Omissions** insurance is required, Contractor shall maintain either a professional liability or errors & omissions policy in the minimum amount indicated, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

**10. Miscellaneous Insurance Provisions:** (County Resolution No. 90675)

All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Contract or any extensions hereof, then Contractor shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this agreement.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Contract.

Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Contract shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both. (See §13, ¶12, below, as these provisions additionally apply to subcontractors.)

**11. Indemnity:**

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify, defend and hold harmless the County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Contractor, except such loss or damage which was caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents and volunteers.

**Personal Services**

**12. Contractor as Independent:**

In providing services herein, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

**13. Assignment and Subcontracting:**

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Contractor and may not be transferred, subcontracted, or assigned without the prior written consent of County. Contractor shall not substitute nor replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at §§6, 7, 8, 9 and 10, to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**14. Licensing and Permits:**

Contractor warrants (i) Contractor is qualified and competent to provide all Services under this contract; (ii) Contractor and all employees of Contractor hold all necessary and appropriate licenses therefor, including those licenses set forth at §14, page one (1) hereof; and, (iii) Contractor shall obtain, and remain in compliance with, all permits necessary and appropriate to provide said Services. Contractor shall cause said licenses and permits to be maintained throughout the life of this Contract. Failure to do so shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**Public Contracts**

**15. Prevailing Wage and Apprentices:**

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code §§1720, et seq.; and shall be in conformity with Title 8 of the California Code of Regulations §§200 et seq., relating to apprenticeship. Where applicable:

(i) Contractor shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.

(ii) Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those Sections must be maintained throughout the performance of the Contract.

(iii) Contracts to which these prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

(iv) The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

**16. Accessibility (County Resolution No. 00190):**

It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall be in compliance with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Contractor to provide County contracted services directly to the public, Contractor shall certify that said direct Services are and shall be accessible to all persons.

**17. Nondiscriminatory Employment:**

In providing Services hereunder, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

**18. Prior Nevada County Employment (County Resolution No. 03-353):**

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not apply when the Board of Supervisors did not approve a contract with or grant to said legal entity during the last twelve (12) months of said Board member's service.

A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this contract by County, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

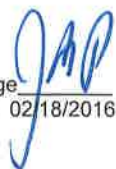
**19. Cost Disclosure:**

In accordance with Government Code Section 7550, should a written report be prepared under or required by the provisions of this Contract, Contractor agrees to state in a separate section of said report the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of said report

**Default and Termination**

**20. Termination:**

A Material Breach of this Contract pursuant to the terms hereof or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this contract, or both, **without notice**.



If Contractor fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) days written notice** to Contractor.

Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Contractor shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

County, upon giving **sixty (60) calendar days written notice** to Contractor, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

#### **Miscellaneous**

**21. Books of Record and Audit Provision:**

Contractor shall maintain complete records relating to this Contract for a period of five (5) years from the completion of Services hereunder. Said records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits

Contractor shall permit County to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by County, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charged of five percent (5%) or more of the Maximum Contract Price.

**22. Intellectual Property:**

All original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Contractor, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception. Provided however, for personal purposes only and not for commercial, economic or any other purpose, Contractor may retain a copy of Contractor's work product hereunder.

**23. Entire Agreement:**

This Contract represents the entire agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by written, fully executed agreement of the parties.

**24. Jurisdiction and Venue:**

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

**25. Compliance with Applicable Laws:**

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

**26. Notices:**

This Contract shall be managed and administered on County's behalf by the department and the person set forth at §26, page one (1) of this Contract, and all invoices shall be submitted to and approved by this Department. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed as set forth at said §26 Said notices shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

**27. Authority:**

All individuals executing this Contract on behalf of Contractor represent and warrant that they are authorized to execute and deliver this Contract on behalf of Contractor.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.

CONTRACTOR:

Name:

Title: VICE PRESIDENT & GENERAL MANAGER

Dated: 3-30-2017

COUNTY OF NEVADA:

Hank Weston

Honorable Hank Weston

Chair, Board of Supervisors

Dated: 4/11/2017

Reviewed by  
LNRS  
Legal  
Chris  
Buyting  
2017.03.30  
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-04'00'

Attest:

Julie Patterson Hunter  
Julie Patterson Hunter  
Clerk of the Board

gbb

## EXHIBIT "A"

### SCHEDULE OF SERVICES AND EQUIPMENT

(Provided By Contractor)

Contractor shall provide, at his expense, all the hardware and/or software required for electronic payment processing services to provide consumers who desire to pay for services rendered by County, the option of paying for such services using certain credit or debit cards. If requested, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Contract.

The services provided by Contractor are described in accordance with this Service Schedule and are subject to and governed by the terms and conditions of the Agreement. In the case of conflict between the Contract ("Contract" or "Agreement") and **Exhibit A, B or C**, the provisions of the applicable Exhibit shall govern. Attached to this Schedule of Services and incorporated by reference into the Agreement at **Exhibit B** is the **Schedule of Charges and Payments**, which lists the fees to be paid to Contractor by the Customer and/or County for the Services.

The services to be provided by Contractor

1. **Electronic Payment Services:** Contractor agrees to accept electronic payments from customers using a major credit card or debit card, including VISA®, MasterCard®, American Express® and Discover®. Contractor will provide payments to be made through Point-of-sale(POS), a secure centralized web hosted payment system (described as VPS back office system) designed to allow County departments to accept payments via phone, access various reporting, and provide meta-data information as well as facilitate manual settlement (if not automatic), a secure branded website payment pages (either integrated and/or non-integrated) to allow County departments to offer constituents to pay online via check, or credit / debit cards. A Call Center provides a toll-free phone number for County constituents to call and make specific validated or non-validated payments to the County, while speaking to a live operator.
2. **Business Continuity and Disaster Recovery:** Documented incident response procedures are in place to guide activities in the event of a failure, security threat, or related operational event at the primary data center. In the event of system failure, the disaster recovery plan is executed by the network operations personnel. The plan includes switching the hosting to the backup site through rerouting domain addresses as well as switching the database clusters at the destination site from passive to active. Disaster recovery will be covered in our training program.

LexisNexis has a consistent record of providing greater than 99.9% service availability for payment processing to our customers. Our solutions availability is achieved through a multifaceted approach which includes multiple layers of redundancy, 24/7/365 monitoring/alerting, and response policies to quickly coordinate issue escalation and response. The primary data center has complete redundancy of its operations including all logical and physical aspects of the solution. In addition, LexisNexis maintains a failover disaster recovery site which mirrors data in real time from our primary data center. LexisNexis has specialized network routing equipment which allows us to failover quickly in the event of a catastrophic event.

3. **Equipment to be provided:** Point-of-Sale Equipment (VX520 and VX810 pin pads) to be provided by the Contractor to include power cords, and peripherals as needed for internet connection and for the acceptance of credit and debit cards;

Contractor shall, at its expense and in its sole discretion, train appropriate personnel designated by County in the use and operation of the Equipment associated with the Service, at no additional cost to County.



In the event of equipment failure, replacement (POS) payment terminal will be provided and shipped to the County at no cost within 24 hours.

4. In conformity with industry security requirements, and in order to maintain the highest level of cardholder data security, Contractor has instituted, among other policies, Paper and Electronic Media Policies, which are designed to meet or exceed industry security standards (the "Contractor Policies"). An undated copy of the Contractor Policies has been provided to County with this Contract, and County agrees to comply with VitalChek Network, Inc "Paper and Electronic Media Policies" as set forth below as well as with appropriate industry accepted security practices for handling non-public personal information. Contractor agrees that the County is not required to comply with any amended policies adopted by Contractor from time to time unless Contractor provides such policies to the County. County acknowledges and agrees that (i) Cardholder data may only be used for assisting in completing a card transaction or as required by applicable law; (ii) In the event of a breach or intrusion of or otherwise unauthorized access to cardholder data stored within County's systems, County will immediately notify Contractor, and provide Contractor and/or its processor or the relevant card company access to County's facilities and all pertinent records to conduct a review of County's compliance with the security requirements, as well as fully cooperate with any reviews of facilities and records provided for in this paragraph.

**VITALCHEK NETWORK, INC.  
Paper and Electronic Media Policies**

**1.1 Policy Applicability**

All employees handling hardcopy or electronic media must follow this policy. Departures from this policy will be permitted only if approved in advance and in writing by VitalChek.

**1.2 Storage**

**1.2.1 Hardcopy Media**

Hard copy material containing sensitive or confidential information (i.e.: paper receipts, paper reports, faxes, etc.) is subject to the following storage guidelines:

- At no time are printed reports containing sensitive information to be removed from any VitalChek or Agency secure office environment
- At no time is printed material containing sensitive information to be removed from any VitalChek data center or computer room without prior authorization from the General Manager.
- Printed reports containing consumer sensitive data are to be physically retained, stored or archived only within secure VitalChek or Agency office environments, and only for the minimum time deemed necessary for their use.
- All hardcopy material containing confidential or sensitive information should be clearly labeled as such.
- All sensitive hardcopy media must be stored securely in a safe or locking file cabinet
- Sensitive hardcopy material is never to be stored in employee desks or open workspaces

**1.2.2 Electronic Media**

Electronic media containing sensitive or confidential information (i.e.: CD, DVD, floppy disk, hard disk, tape, etc.) is subject to the following storage guidelines:

- Confidential and sensitive information should never be copied onto removable media without authorization from VitalChek's Information Technology Department.
- At no time is electronic media containing sensitive information to be removed from any VitalChek or Agency secure office environment, with the exception of computer system backups.
- At no time is electronic media containing sensitive information to be removed from any VitalChek data center or computer room without prior authorization from the Information Technology Department
- Electronic media containing consumer sensitive data are to be physically retained, stored or archived only within secure VitalChek or Agency office environments, and only for the minimum time deemed necessary for their use.
- All electronic media containing confidential or sensitive information should be clearly labeled as such.
- All removable, sensitive electronic media must be stored securely in a safe or approved locking file cabinet.
- All hardware (i.e. servers, workstations, modems, etc.) on which sensitive electronic media is stored shall be placed in a secure area and not be removed from a secure agency environment.

## EXHIBIT "B"

### SCHEDULE OF CHARGES AND PAYMENTS

Payment schedules relate to the schedule of services as set forth in **Exhibit "A"**, above.

Contractor will charge the consumer certain service fees for the use of the Service ("Fees"), and will accept payment of such fees through the use of a valid payment method then accepted by Contractor, which may include, without limitation, Visa, MasterCard, Discover Card or American Express credit card, as well as most major debit cards in Contractor's reasonable discretion.

#### A. Credit Card Fee Schedule

The Contractor may charge fees to the Customer for electronic payment processing services up to:

\$2.00 per payment transaction or 2.4% whichever is greater, when credit cards are used.

#### B. Pin Based Debit Card Fee Schedule

The Contractor may charge fees to the Customer for electronic payments services up to:

\$2.00 per payment transaction whenever pin-based debit cards are used.

#### C. Electronic Check (e-check) Fee Schedule

The Contractor may charge fees to the Customer for electronic payment services up to:

\$.50 per transaction (non-guaranteed funds)

The above pricing represents service fees to constituents paying for County services, fines, or taxes owed, and the e-check pricing above represents the direct per transaction fee County departments accepting e-checks (non-guaranteed) will pay for constituents paying online by either using a personal or business check.

All payment transactions will be compliant with card association and/or NACHA (National Automated Clearing House) rules and regulations.

Contractor will make payment to County in an amount equal to County's charges for all properly authorized requests in connection with services rendered by County and which are correctly processed through the Service. Such payments shall be made in a manner acceptable to both County and Contractor.



## EXHIBIT "C"

### SCHEDULE OF CHANGES

(Amendments and Additions to Contract)

#### Section 6 (Commercial General Liability Insurance)

Change subsection (ii) to read as follows:

- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract; such additional insured status can be provided under a blanket endorsement;

Change subsection (iv) to read as follows:

- (iv) A provision that said insurance shall provide for thirty (30) days written notice of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

#### Add Section 6 (a) (Cyber Liability Insurance)

- (i) Without limiting any of the obligations or liabilities of Contractor, Contractor shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statute(s) of limitation or repose are in effect relating to the specific purposes of this Agreement, insurance policies of not less than \$2,000,000 for each occurrence and an annual aggregate of \$4,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

#### Section 7 (Automobile Liability Insurance)

Change subsection (ii) to read as follows:

- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract; such additional insured status can be provided under a blanket endorsement;

Change subsection (iv) to read as follows:

- (iv) A provision that said insurance shall provide for thirty (30) days written notice of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

#### Section 22 (Intellectual Property)

Remove the language in this section and replace it with the following:

It is agreed that under this Contract, Contractor does not transfer, and County does not obtain, any patent rights, copyright interest or other right, claim or interest in the computer programs, systems, forms, formats, schedules, manuals or other proprietary items utilized by the Service or provided by Contractor.



EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER CONTRACTOR NOR ANY SUPPLIER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH, OR ANY OF THE SERVICES FURNISHED HEREUNDER.

**Section 25 (Compliance with Applicable Laws)**

25.1 Each party will comply with all applicable federal and state laws, the rules and regulations of federal, state and local governmental authorities and governing industry associations, including without limitation, Federal Reserve Regulation E (12 C.F.R. Part 205), the rules of NACHA, the credit card association rules and regulations, Payment Card Industry Standards ("PCI") , and all applicable privacy laws and regulations, all of which are incorporated herein by reference and made a part of this Agreement as if set forth in full herein. VitalChek and its Suppliers may from time to time establish reasonable rules, regulations and operational guidelines with respect to use of the Services by County, and County agrees to be bound by and comply with such rules, regulations and guidelines thirty (30) days after delivery thereof to County, unless earlier or immediate compliance is (i) required by law or regulation, (ii) determined by Contractor, in its reasonable discretion, to be necessary, or (iii) otherwise agreed upon on writing by the parties.

25.2 PCI: PCI provides a set of requirements established by the Payment Card Industry to enhance cardholder data security and facilitate the adoption of consistent data security measures to protect cardholder and transaction data. These requirements apply to all entities involved in payment card processing and transactions including Payment Card Industry members, merchants, processors, acquirers, issuers, vendors and service providers as well as other entities that store, process, or transmit cardholder data. The PCI Security Standards Council (<https://www.pcisecuritystandards.org>) is responsible for the development, management, education, and awareness of the PCI Standard, including the:

- Data Security Standard (PCI DSS)
- Payment Application Data Security Standard (PA-DSS)
- PIN Transaction Security (PTS) requirements

PCI requirements apply to all systems that store, process or transmit cardholder data as defined by PCI Security Standards.

25.3 County compliance with PCI: County and their vendors are responsible for compliance with all PCI requirements as defined by PCI Security Standards. County shall ensure that all systems that store, process or transmit cardholder data managed internally or by a vendor meet the PCI requirements.

  
Approved by County Counsel