



CITY of NOVI CITY COUNCIL

Agenda Item H
March 24, 2014

SUBJECT: Approval of a contract for electronic payment processing with Point & Pay, for a three year period ending on March 31, 2017 with two one-year renewal options, at an estimated annual cost of \$3,000.

SUBMITTING DEPARTMENT: Treasury

CITY MANAGER APPROVAL: 

| | |
|-------------------------------|---------------------------|
| EXPENDITURE REQUIRED | \$3,000 |
| AMOUNT BUDGETED | \$33,800 |
| APPROPRIATION REQUIRED | None |
| LINE ITEM NUMBER | 101-253.00-802.100 |

BACKGROUND INFORMATION:

Since 2001, the City of Novi has allowed residents and customers to make electronic payments (credit card or electronic check) for tax and utility payments, either through the City website or via telephone using an interactive voice response (IVR) system.

In 2003, this service was expanded to allow online payments for Parks Recreation & Cultural Service (PR&CS) program fees. Shortly thereafter, credit card payments began to be accepted at the PR&CS counter, as well at the Library for various fines and fees.

In July 2011, the Treasury Department began to accept credit card payments at its counter for payment of taxes and utilities. In 2013, the ability to pay for miscellaneous receivable transactions at the Treasury counter was added.

Currently, the City utilizes the services of multiple electronic payment processors.

In mid-2013, a sub-committee, made up of staff from various departments, including Treasury, Information Technology, Clerks, Police, and PR&CS, was formed to identify other remote payment collection locations where the ability to accept credit card payments would be beneficial to our citizens.

It was determined that the greatest immediate benefit would come from adding credit card payment options to the counters at Clerks, Police Department, and DPS. It was also determined that very limited capital outlay would be required to add these locations, since existing computer stations can be used.

The Sub-committee then determined it would be appropriate, based on the expanded scope of services, to issue a Request for Proposal (RFP) for Electronic Payment Processing, which included web-based/online, IVR, and counter/point-of-sale payment services. On September 23, 2013, the RFP was posted on the Michigan Inter-Governmental Trade Network

(MITN). In response to the posting, five merchants submitted proposals. A team of five City staff members evaluated the proposals based on many factors including ability to integrate data with our existing accounting software (BS&A), customer service, security protocols, ability to provide requested services and fee structure.

The Quality Based Selection (QBS) tool was used to evaluate all five submitted proposals. QBS is a method of evaluating proposals for professional services where the qualifications of the firm are of the utmost importance and the award is not automatically made to the firm with the lowest price. With QBS, the fee proposal, including any hourly rates or other fee detail, is to be submitted in a separate sealed envelope. The fee proposals are opened after the technical proposals are evaluated and only for the short list of firms determined to be most qualified. Based on the results of those quality evaluations, the top three ranking banking services proposals were selected for fee comparison and their fee proposals were opened and reviewed.

The following is a summary of the Quality Based Selection results for those three selected firms:

| Institution | Evaluation Score |
|----------------------|------------------|
| GovPayNet | 1700 |
| JP Morgan Chase Bank | 1755 |
| Point & Pay | 1695 |

The fee structure for electronic payment processing is multi-tiered and quotes were requested to provide pricing under both convenience fee (fees paid by the customer) and absorbed (fees paid by the City) pricing models. All fees were competitive and comparable, although Point & Pay offers slightly lower fees for its absorbed pricing model for electronic checks, which are widely used by our customers. In addition, Point & Pay is the only vendor who works directly with our accounting software provider, BS&A, for the most direct linking of data.

Point & Pay is the current provider of electronic payment processing for the Treasury Department. Treasury department staff members have been pleased with the performance and service levels from Point & Pay to date.

If approved, the necessary software and equipment updates will be added to the Clerks, Police Department and DPS counters and electronic payments will be accepted at those locations.

RECOMMENDED ACTION: Approval of a contract for electronic payment processing with Point & Pay, for a three year period ending on March 31, 2017 with two one-year renewal options, at an estimated annual cost of \$3,000.

| | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Mayor Gatt | | | | |
| Mayor Pro Tem Staudt | | | | |
| Council Member Casey | | | | |
| Council Member Fischer | | | | |

| | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Council Member Markham | | | | |
| Council Member Mutch | | | | |
| Council Member Wrobel | | | | |



JOHNSON ROSATI SCHULTZ JOPPICH PC

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March 19, 2014

Debra Peck
Assistant City Treasurer
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

RE: Point & Pay E-Payment Services Agreement

Dear Ms. Peck:

We have received and reviewed the revised Point & Pay E-Payment Services Agreement. Items 1 through 4, 7 and 8 of our March 10, 2014 review report have been satisfactorily addressed.

As we previously noted in Item 5 of our review report, Section 4 of the Agreement provides disclaimers and limits warranties. PNP will not modify its standard disclaimers and warranty limitations. However, it is unlikely that PNP would leave the City with a service issue or non-functional service since it would limit the fees that PNP is able to collect. In all events, if the City experiences issues regarding the functionality of the service that cannot be modified or restored, an alternative option to a warranty claim may be to seek a termination of the contract pursuant to provisions requiring "cure" of a breach or discontinuation of service as set forth in Section 8 of the Agreement.

The Agreement also includes a provision limiting damages and liability of both parties that PNP is not willing to modify. The City should be aware that the damage limitation may expose the City to the payment of damages in an action by a third party against the City and PNP, or an action by the City against PNP for losses resulting from use of the services. Though the City may have some coverage for actions of City employees resulting in damages through its own insurer, the City should be aware of the risk that PNP actions probably would not be covered and would be limited to six-months of fees collected by PNP.

With respect to the "exclusivity" provision in Section 7 of the contract, though PNP would not modify the provision, PNP has included "Exhibit D" to the Agreement excluding other existing City contracts from this section. Currently, the Parks & Recreation Department operates with

Debra Peck, Assistant City Treasurer

March 19, 2014

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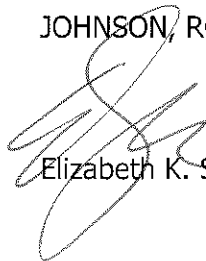
different software not compatible with PNP but the City would be permitted to include Parks and Recreation in the Agreement if the software is appropriately modified in the future.

Subject to the comments above regarding limitations of liability, we see no legal impediment to entering into the proposed Service Agreement.

Should you have any questions or concerns relating to the issues set forth above, please feel free to contact me

Sincerely,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth K. Saarela

EKS

C: Maryanne Cornelius, Clerk
Victor Cardenas, Interim City Manager
Thomas R. Schultz, Esquire

POINT & PAY, LLC
E-PAYMENT SERVICES AGREEMENT

Parties:

Point & Pay, LLC ("PNP")
A subsidiary of NAB, doing business in Delaware

City of Novi, MI ("Client")

Terms

SECTION 1 E-PAYMENT SERVICES

1.1 Access to Payment Modules

1.1.1 Pursuant to this E-Payment Services Agreement (this "Agreement"), PNP grants Client a limited, non-exclusive, non-transferable and terminable license for the duration of the Term to use the electronic payment services (the "Services") and payment modules (each, a "Module") chosen in the attached client application ("Client Application") to enable Client's customers ("Customers") to make payments to Client using a Payment Device. "Payment Device" means the payment type(s) chosen by Client on the Client Application. A description of all Modules, Services, training and support offered by PNP is attached as Exhibit A (the "Services Description").

1.1.2 At the time of Client's execution of this Agreement, Client shall also return the completed Client Application to PNP. Subject to the terms and conditions of this Agreement, the Services may be also be used by the affiliated offices, bureaus, agencies or departments of Client ("Affiliates"). Each Affiliate shall complete a Client Application prior to commencement of the Services.

1.2 Client Representatives

PNP will provide Client's authorized representatives with a logon and password to access the Counter Module. Client shall be solely responsible for maintaining the confidentiality and security of the logons and passwords provided by PNP. Client will cause each of its representatives to change the initial password, keep the passwords confidential, refrain from sharing passwords and/or logon information with any unauthorized user, and use no other password to access the Counter Module. PNP shall be entitled to rely on any communications it receives under Client's passwords, logon information, and/or account number as having been sent by Client, without conducting any further checks as to the identity of the user of such information. PNP will not be responsible for the operability or functionality of any of Client's computer equipment, system, browser or Internet connectivity.

1.3 Payment Device Transactions

All Payment Device transactions using the Services will be processed through a secured link. The parties to each Payment Device transaction will be the Customer cardholder, the Client and PNP.

1.4 Service Promotion

Client will, in its discretion, use reasonable efforts to promote the Services and build awareness of the Services with its customers through various media including, but not limited to:

- Print: Bill inserts, counter displays, and announcements in Client's newsletter
- Online: Home page announcements with an easily accessible, one-click link to payments page.
- Phone/IVR: Pre-recorded message with the ability to transfer to payments IVR (e.g., "Press 2 to make a payment") or provide the IVR phone number to call.
- Joint Press Releases: The parties shall mutually agree upon press releases announcing the availability of electronic payment services and the partnering of Client and PNP.

1.5 Trademark License

PNP grants Client a limited, non-exclusive, non-transferable license to use the PNP trademarks, service marks and logos provided by PNP to Client (the "Trademarks") solely in connection with Client's promotion of the Services to Customers. Client shall not alter the Trademarks nor use the Trademarks in any way which is disparaging, dilutive or otherwise adversely affects the reputation of PNP.

1.6 Client Logo License

Client grants PNP a limited, non-exclusive, non-transferable license to use its applicable logos, copyrighted works and trademarks ("Client Marks") solely in connection with the Services provided to Client, as outlined in Exhibit A – Services Description. Client shall provide the Client Marks to PNP for use with the Services. Client represents that it has all intellectual property rights required for Client's and PNP's use of Client Marks, and shall indemnify PNP against any third party claims that the Client Marks infringe the intellectual property rights of a third party.

SECTION 2 COMPENSATION

2.1 Services Transaction Fee

PNP will charge the transaction fee to use the Services set forth on the Client Application. If Services fees are charged directly to Customers by PNP, Customers will receive a notice each time they use the Services stating that the Services are provided by PNP and that a convenience fee is charged for use of the Services. PNP may change the amount of such fee by notifying Client of such new amount at least thirty (30) days prior to such change. If PNP does change fees during the course of this agreement, Client may terminate the agreement at their discretion.

2.2 Activation Fee

If applicable, Client shall pay the one-time Activation Fee set forth on the Client Application. If the Activation Fee or any portion of the Activation Fee is waived by PNP and the Client does not implement the Service under this Agreement within six months after the Effective Date, other than due to a material breach by PNP, the waived portion of the Activation Fee shall become immediately due and payable.

2.3 Charge-backs and Returns

Unless otherwise specified in the Client Application, PNP will set off (a) the amount of any charge-backs, refusals to pay and returns from any amounts otherwise owing by PNP to Client and (b) a transaction handling fee for charge-backs and non-sufficient funds (NSF) as specified in the Client Application

2.4 ACH Debit of Fees

Client hereby authorizes PNP, and any subsidiary or successor thereof, solely with respect to amounts due pursuant to this Agreement and any subsequent agreements between Client and PNP, including but not limited to service fees, transaction fees, charge-backs and returns as set forth in Sections 2.1 and 2.3 of this Agreement, to initiate Automated Clearing House ("ACH") Authorizations to credit and debit Client's bank account as set forth on the Banking Authorization Form attached hereto as Exhibit B or otherwise provided by Client. Client acknowledges that it will be subject to a \$25 reject fee if items are returned for insufficient funds.

SECTION 3 INTELLECTUAL PROPERTY; CONFIDENTIALITY

3.1 No Transfer or License

Except for the rights expressly granted to Client in this Agreement, no PNP Intellectual Property Right is transferred or licensed to Client pursuant to this Agreement, by implication or otherwise. PNP reserves and retains all rights, title and interests in and to the PNP Intellectual Property Rights, and all copies, revisions, modifications, updates, and upgrades thereof. Client agrees not to remove, alter or destroy any copyright, patent notice, trademark or other proprietary markings or confidential legends placed on or within any portion of the PNP

Intellectual Property Rights. For purposes of this Agreement, "Intellectual Property Rights" means all the intellectual property, industrial and other proprietary rights, protected or protectable, under the laws of the United States, any foreign country, or any political subdivision thereof, including (a) all trade names, trade dress, trademarks, service marks, logos, brand names and other identifiers, (b) copyrights, moral rights (including rights of attribution and rights of integrity), (c) all trade secrets, inventions, discoveries, devices, processes, designs, techniques, ideas, know-how and other confidential or proprietary information, whether or not reduced to practice, (d) all domestic and foreign patents and the registrations, applications, renewals, extensions and continuations (in whole or in part) thereof, and (e) all goodwill associated with any of the foregoing and (f) all rights and causes of action for infringement, misappropriation, misuse, dilution or unfair trade practices associated with (a) through (d) above.

3.2 Ownership and Use of PNP Materials

Any software developed by or on behalf of PNP for use in connection with the Services remains the exclusive property of PNP. Client will not sell, transfer, barter, trade, license, modify or copy any such software. Web pages accessible through use of the Services are the copyrighted intellectual property of PNP and may not be copied in whole or part by anyone. Any training materials (including, but not limited to, webinars and manuals) provided to Client by PNP shall remain the exclusive property of PNP. PNP grants Client and Client's personnel a limited, non-exclusive, non-transferrable license to use and to make copies of the training materials with its personnel solely in connection with the Services. Training materials may not be modified by Client or its personnel or disclosed to any third party, including Client's end-user customers. Client shall ensure all personnel shall complete and review all training materials prior to using the Services.

3.3 Reverse Engineering

Client will not reverse engineer, reverse assemble, decompile or disassemble any of PNP's intellectual property, nor will Client attempt to do so or enable any third party to do so or otherwise attempt to discover any source code, modify the Service in any manner or form, or use unauthorized modified versions of the Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Service. Client is expressly prohibited from sublicensing use of the Service to any third parties. If Client becomes aware that any person has engaged or is likely to have engaged in any of the activities described in this Section 3.3, Client will promptly notify PNP.

3.4 Confidential Information

3.4.1 Any Confidential Information provided by PNP to Client pursuant to this Agreement will remain the exclusive property of PNP. Client will disclose such Confidential Information only to those of its representatives and employees who need to know such Confidential Information for purposes of performing this Agreement, who are informed of the confidential nature of the Confidential Information and who agree, for the benefit of PNP, to be bound by the terms of confidentiality in this Agreement. Client will, and will cause each of its representatives and employees, to keep confidential and not to disclose in any manner whatsoever any Confidential Information provided by PNP pursuant to this Agreement, and not to use such Confidential Information, in whole or in part, directly or indirectly, for any purpose at any time other than for the purposes contemplated by this Agreement. Notwithstanding the foregoing, if Client is a city, county, township or similar entity, or government agency or department thereof, Client may disclose Confidential Information as necessary to comply with applicable public records laws.

3.4.2 For purposes of this Agreement, "**Confidential Information**" means all nonpublic or proprietary information of PNP, including proprietary, technical, development, marketing, sales, operating, performances, cost, know-how, business and process information, computer programs and programming techniques, security features (including, without limitation, multi-level access and log-in features, audit trail setup, interfaces between the Counter Module and the Internet or IVR Modules), all record bearing media containing or disclosing such information and techniques, and anything marked confidential, that is disclosed by PNP to Client pursuant to this Agreement. Confidential Information also includes the terms and conditions of this Agreement.

3.5 Exclusions

The term Confidential Information will not apply to information that: (a) is or becomes generally available to the public other than as a result of a disclosure by Client in breach of this Agreement; (b) was within Client's possession prior to its disclosure by or on behalf of PNP, provided that the discloser of such information was not known by Client to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, PNP with respect to such information; (c) becomes available to Client on a non-confidential basis from a source other than PNP, provided that such source is not known by Client to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, PNP with respect to such information; or (d) is developed independently by Client, as demonstrated by the written records of Client, without use of such information. The confidentiality obligations of Client pursuant to this Agreement will not apply to any Confidential Information of PNP that Client is legally compelled to disclose. In the event Client becomes legally compelled to disclose any Confidential Information provided pursuant to this Agreement,

Client will provide PNP with prompt written notice so that PNP may seek a protective order or other appropriate remedy or waive compliance with the confidentiality provisions of this Agreement.

3.6 Failure to Comply

If Client fails to comply with any of its obligations pursuant to this Section 3, PNP will have the right to immediately terminate this Agreement by providing written notice of such termination to Client.

3.7 Survival

The rights and obligations of the parties provided for in this Section 3 will survive any expiration or termination of this Agreement or its term.

SECTION 4 WARRANTIES; DISCLAIMER

4.1 Warranties

4.1.1 Each party represents and warrants that it has the full legal right, authority and power to enter into this Agreement and perform its obligations hereunder.

4.1.2 PNP represents and warrants that the Services will be provided in a professional, workman-like manner consistent with industry standards.

4.2 Disclaimers

4.2.1 PNP does not represent that Client's or its Customers use of the Services will be uninterrupted or error-free, or that the system that makes the Services available will be free of viruses or other harmful components resulting from the Internet or any third party providers or products outside the control of PNP.

4.2.2 EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 4, PNP DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE SERVICE IS PROVIDED TO CLIENT ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY.

SECTION 5 LIMITATIONS OF LIABILITY AND OBLIGATION

5.1 Damages and Liability Limit

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY RELEASES THE OTHER PARTY AND ALL OF THE OTHER PARTY'S AFFILIATES, EMPLOYEES, AND AGENTS FROM ANY SUCH DAMAGES. IN NO EVENT WILL PNP HAVE OR INCUR ANY LIABILITY TO CLIENT OR ANY THIRD PARTY IN EXCESS OF THE AGGREGATE COMPENSATION RECEIVED BY PNP FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM FOR SUCH LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

5.2 Refusals of Payment

PNP will not be liable for charge-backs or other refusals of payment initiated by any Customer. All such charge-backs and other refusals of payment will be refunded by PNP to the Customer and Client will mark and otherwise treat the related Customer account as "unpaid."

5.3 Errors and Omissions

PNP will not be liable for any errors or omissions in data provided by Client or Customers. Client will be responsible for the accuracy of data provided to PNP for use in providing the Services.

5.4 Bank Actions

PNP will not be liable for any errors, omissions or delays attributable to the acts or omissions of any bank or other third party involved in the processing of any Payment Device payment.

SECTION 6 CARDHOLDER DATA SECURITY

To the extent applicable, each of the parties shall be required to comply at all times with the Payment Card Industry Data Security Standard Program ("PCI-DSS") in effect and as may be amended from time to time during the term of the Agreement. The current PCI-DSS specifications are available on the PCI Security Standards Council website at <https://www.pcisecuritystandards.org>.

SECTION 7 EXCLUSIVITY

Client agrees that PNP will be the exclusive provider of fee-based electronic payment services and that Client will not procure similar such services from any other party. Exceptions are listed on Exhibit D.

SECTION 8 TERM AND TERMINATION

8.1 Term

The initial term of this Agreement will commence on the Effective Date and will end on the third (3rd) anniversary of the Effective Date (the "Initial Term"). This Agreement will automatically renew for two (2) successive one (1)-year terms (each, a "Renewal Term," and the Initial Term and any Renewal Term may be referred to as a "Term"). The term of this Agreement will terminate at the end of the Initial Term or any subsequent Renewal Term if either party provides written notice of such termination to the other party at least sixty (60) days prior to the expiration of the applicable Term.

8.2 In the Event of Breach; Effect on Affiliates

8.2.1 Subject to the opportunity to cure set forth below, either party may terminate this Agreement upon sixty (60) days written notice to the other party in the event of a material, uncured breach of any provision of this Agreement by the other party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach ("Notice").

8.2.2 Following receipt of Notice, the alleged breaching party shall have sixty (60) days to cure such alleged breach. Upon termination or expiration of this Agreement, Client shall have no rights to continue use of the Service or the Modules. Expiration or termination of the Agreement by Client or PNP shall also terminate the Affiliates' rights under the Agreement unless otherwise agreed by the parties in writing. PNP may terminate the Agreement solely with respect to an individual Affiliate without affecting the rights and obligations of Client and other Affiliates under the Agreement.

8.3 Modification to or Discontinuation of the Service

PNP reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In addition, PNP will have the right to discontinue accepting any Payment Device by providing not less than ten (10) days' written notice to Client. In the event that PNP modifies the Service in a manner which removes or disables a feature or functionality on which Client materially relies, PNP, at Client's request, shall use commercially reasonable efforts to substantially restore such functionality to Client. In the event that PNP is unable to substantially restore such functionality within sixty (60) days, Client shall have the right to terminate the Agreement. Client acknowledges that PNP reserves the right to discontinue offering the Service and any support at the conclusion of Client's then-current Term. Client agrees that PNP shall not be liable to Client nor to any third party for any modification of the Service as described in this Section.

SECTION 9 PAYMENT DEVICE TRANSACTION DEPOSITS

The exact amount of each approved Payment Device transaction will be electronically deposited into the Client bank account identified on the Client Application. PNP shall initiate such deposits as specified on the attached Client Application. PNP will provide Client's authorized employees with access to PNP's online transaction reports for reconciliation purposes.

SECTION 10 FORCE MAJEURE

PNP will not be responsible for its failure to perform under this Agreement due to causes beyond its reasonable control, including acts of God, wars, riots, revolutions, acts of civil or military authorities, terrorism, fires, floods, sabotage, nuclear incidents, earthquakes, storms, or epidemics. If the provision of Services under this Agreement is delayed by such an event or condition, PNP will promptly notify Client thereof. PNP will use commercially reasonable efforts to overcome any such cause for delay as soon as is reasonably practicable.

SECTION 11 GOVERNING LAW

This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Michigan without reference to its conflicts of law principles.

SECTION 12 NOTICES

All notices or other communications required or permitted by this Agreement must be in writing and will be deemed to have been duly given when delivered personally to the party for whom such notice was intended, or upon actual receipt if sent by facsimile or delivered by a nationally recognized overnight delivery service, or at the expiration of the third day after the date of deposit if deposited in the United States mail, postage pre-paid, certified or registered, return receipt requested, to the respective parties at:

- If to Client: See Merchant Application
- If to PNP: Point & Pay, LLC
110 State St. E, Suite D
Oldsmar, FL 34677

MISCELLANEOUS

The headings of sections and subsections of this Agreement are for convenience of reference only and will not be construed to alter the meaning of any provision of this Agreement. PNP is an independent contractor and nothing in this Agreement will be deemed to create any agency, employee-employer relationship, partnership, franchise or joint venture between the parties. Except as otherwise specifically provided in this Agreement, neither party will have, or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party. Each of the parties will have any and all rights and remedies available to them under all applicable laws. The remedies provided for in this Agreement will be deemed to be non-exclusive and in addition to any other available remedy at law or in equity. All rights and remedies are cumulative and may be exercised singularly or concurrently. Client may not assign or transfer any of its rights or delegate any of its obligations under this Agreement to any third party, by operation of law or otherwise, without the prior written consent of PNP. Any attempted assignment or transfer in violation of the foregoing will be void. This Agreement will be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. Client shall comply with all applicable laws, rules, treaties, and regulations in its performance of this Agreement. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, the remaining provisions of this Agreement will not be affected and the illegal, invalid, or unenforceable provision will be deemed modified such that it the intention of the parties to the fullest extent possible. No amendment or modification of this Agreement will be effective unless it is in writing and executed by both of the parties. Nothing contained in this Agreement establishes, creates, or is intended to or will be construed to establish or create, any right in or obligation to any third party. This Agreement, the Exhibit(s) and the Client Application set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

The parties have duly executed this Agreement as of the date of the last signature below (the "Effective Date").

Point & Pay, LLC

City of Novi, MI |

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Services Description

The following is a description of all Services and Modules offered by PNP. PNP shall provide the Services to Client and its end-user customers via the specific Modules and Payment Devices chosen by Client in the Client Application. Applicable fees, if any, for Client's elections are set forth on the Client Application. The Services include support and training outlined below at no additional charge to Client.

Service Modules

- **Counter Module.** The Counter Module allows customers to make payments to Client in a face-to-face environment or over the phone using a Payment Device. PNP will issue unique confirmation numbers to customers who have completed a payment transaction using the Counter Module. The Counter Module also enables Client's staff to access reports via the web. The Counter Module is required to access the PNP Services. The Counter Module may be used in conjunction with or independently of point-of-sale (POS) terminals.
- **Web Module.** The Web Module allows customers to make payments to Clients online using a Payment Device via a secure website hosted by PNP. Customers who elect to make payments via the Internet can follow a link from the Client website to the Client-branded, PNP-hosted web pages to submit a payment. PNP will issue unique confirmation numbers to customers who have completed a payment transaction using the Web Module. PNP shall create the Client-branded, PNP-hosted web pages at no additional charge. Client may elect bill presentment and account validation functionality for the one-time set-up fee set forth on the Client Application under "Data File Integration."
- **Interactive Voice Response (IVR) Module.** The IVR Module allows Customers to make payments to Clients over the phone using a Payment Device. The Customer calls a toll-free phone number provided and managed by PNP to access the Client branded IVR. The IVR system recognizes Customer instructions through making a payment; the phone keypad is used to enter Payment Device numbers. The IVR system is configured and tested by PNP. PNP will issue unique confirmation numbers to customers who have completed a payment transaction using the IVR Module. Election of the IVR Module includes a Client-branded IVR environment and, if applicable, Client shall pay the one-time IVR set-up fee for the IVR Module set forth on the Client Application. In addition, Client may elect to have bill presentment and account validation functionality enabled through the IVR for the one-time set-up fee on the Client Application under "Data File Integration."

Customer Payment Devices

Each of the Modules can provide the Customer with the ability to pay by Credit Card, Debit Card and/or Electronic Check.

Training

PNP shall provide instruction manuals and up to four (4) hours of webinar training to Client and Client personnel in connection with the Modules chosen by Client.

Support

The following support shall be provided to Client and Client's customers at no additional charge during the term of the Services:

- **First Level Support.** PNP shall provide first-level support to Customers via PNP's call center. Customer service representatives shall be available 8 a.m. EST to 10 p.m. EST M-F, to handle customer inquiries.
- **Second Level Support.** PNP shall provide first-level support to Client via telephone. Second level support shall be available Monday through Friday during normal business hours.

Support availability shall be exclusive of downtime due to scheduled maintenance or events out of PNP's control. Support for the Products may be modified, suspended or terminated in PNP's sole discretion upon prior written notice.

Exhibit B

Client Banking Application, Client Application, Product Worksheet

Exhibit C

The Client reserves the right to convert to an absorbed pricing model at any point during the agreement. The absorbed pricing fees are pass through, which includes all card association fees, dues and assessments, plus 40 basis points of the payment amount.

Exhibit D

The following departments will be excluded from Section 7 Exclusivity unless software is changed to a PNP compatible software and the current service provider agreement is terminated:

- Parks and Recreation Department

Section 1 Introduction of Firm



Point & Pay (PNP) is a Michigan, Oakland County based company. Founded in 2001, PNP was acquired by North American Bancard (NAB) three years ago. The PNP team has the local government experience, resources and security measures in place to ensure quality service for the City and their customer's experience. We offer additional services not requested in this RFP which can be provided to the City.

Our management team has well over 75 years combined experience in the payment industry. With over 1,000 local government entities and over 2,500 different installations our implementation and support teams have gained a great understanding of our clients' needs. Working with clients across Michigan and Oakland County, our team understands the many different needs unique to each client.

PNP's customer service staff go through Four Seasons-Customer service training along with other training courses throughout the year to ensure outstanding service. Many of our team members have also worked in local, state or federal government in the past. A few of our team members have actually worked at a counter with clients to get a better understanding of daily routines and situations our clients' experience.

Our reputation for responsiveness, integrity and quality services has propelled us to the top of the electronic payment services and processing industry.

Section 2 Experience

Provide a profile of your firm, including history. The firm shall have on staff personnel who have experience with electronic payment processing services. Describe the project team and discuss each person's role and responsibility for the project as well as their qualifications and experience.

Founded 2001, PNP began its work by helping county offices expand their acceptance of tax and services payments in the Florida tax market.

PNP's continued success caught the attention of Michigan based company, NAB, leading to an acquisition in April, 2010. NAB appointed industry veteran Kevin Connell President to lead PNP and he continues to serve as the company's president. Mr. Connell's knowledge and expertise in electronic payments results from his nine years of service as Senior Vice President of Sales & Marketing for Tier Technologies and its subsidiary Official Payments Corp.

Mr. Connell assembled the Point & Pay team from the best and brightest individuals working in the specialty payments industry, including senior managers from OPAY/Tier, FIS, and other notable companies. The team set about enhancing the strengths of the PNP platform. From the ground up, they have refined the system to solve key client problems, such as facilitating in-person payments and simplifying reconciliation. With NAB's support, PNP has made major reinvestments in growing and improving its systems to provide elegant and scalable solutions for clients.

PNP has grown to over 1,000 local government clients in the 3 year time period after the NAB acquisition. PNP originally only offered web, counter and IVR the new purchase allowed PNP to expand into the mobile and kiosk markets. Our clients have never experienced any reduction in the levels of customer service and availability during this growth.

During this growth PNP partnered with expert software solutions in the market, such as BS&A software. We have been the only successful integrator to all BS&A products. We have over 200 BS&A clients today who utilize PNP services for many different levels of service. Our team meets with BS&A on a regular basis and nearly speaks with their team on a daily basis for implementations, new sales and future integrations. We would encourage the City to consider reaching out to the BS&A team for their opinions on the PNP team. We are confident that their support, sales and owners would recommend that the city continue to utilize PNP for payment processing.

Experience and Qualifications of Staff

PNP will provide a dedicated account team to work with the City during any implementations or changes to the current service and throughout the life of the contract. This team brings a high level of experience and knowledge to support the City. The PNP team will include the following individuals:



Kevin C. Connell, President

Kevin C. Connell joined PNP from Tier Technologies. As Senior Vice President of Sales & Marketing, he was responsible for the company's revenue growth, business development programs, sales force and marketing efforts at the Tier Technologies' direct biller subsidiary, Official Payments Corporation as well as the company's business process outsourcing, software integration, and IV&V operations. Before Official Payments, Mr. Connell held senior-level sales, marketing and business development positions at Discover Financial Services, where he ran the company's government group.

Frank Pollock, VP of Products & Services

Frank Pollock has 10 years of experience in marketing, development, and integration for thousands of public sector clients, including several of the largest companies in the government payments market. Mr. Pollock holds a BA from Stanford University and has formal training in PCI compliance, card industry rules and regulations, NACHA, project management, and agile development. Previously, he was Product Manager of the BillPointe program at Fidelity National Information Services (FIS) and held senior positions in product and business development at Official Payments.

Mark Evans, VP of Sales

Mark Evans leads the PNP sales and account management efforts, maintaining key client relationships, ensuring customer satisfaction, and assisting in client acquisition. Previously, he was the Chief Marketing Officer for Vesta Corp., responsible for all sales, account management, and business development for the company. Mr. Evans spent over 22 years as a VP at AT&T.

Martha Greer, MPM, PMP, VP of Operations

Martha Greer is responsible for Implementations & Client Services. She has 10 years of experience in the payment industry working for Motivano as product developer and later for FIS as a product manager for all bill payment solutions. Prior to working in the payment industry, she worked ten years in finance for multinational corporations. Ms. Greer has a bachelor's degree in Business Administration, a Master's degree in Project Management and is PMP certified.

Patricia Melton, Director, Business Development, Account Manager

Patty Melton is responsible for the acquisition, expansion, and management of PNP's portfolio of clients. She has over 10 years of experience in payment processing, specializing in government accounts. Ms. Melton spent three years working jointly with the National League of Cities and National Association of Counties on payment and web-based programs. She has managed and implemented more than 500 accounts in the government space.

John Prodan, Project Manager

John Prodan is responsible to oversee all new client implementations. He assigns an internal Project Manager/implementation analyst based on the accounts needs. He has been on the PNP team for nearly 3 years but is not new to the payment processing industry.

Sarah Books, Implementation Analyst/Internal Project Manager

Sarah Books is one of the several team members who work with BS&A clients. She will be assigned to your account as an expert with the BS&A client base. She has been working with the PNP team for nearly 2 years. She has an administrative background that has grown into a customer support and implementation role at PNP.