

RESOLUTION NO. 47 2018

Moved by: Benj. Allen

A Resolution authorizing the City of Harrisburg to negotiate and enter into a Payment Processing Service Agreement with Value Payment Systems, LLC, for electronic payment processing services for the City of Harrisburg.

WHEREAS, Value Payment Systems, LLC (Value Payment) is an independent contractor that provides secure electronic payment processing services to municipalities and other government facilities; and

WHEREAS, the use of Value Payment's services, software, and equipment enables the City of Harrisburg (the "City") to offer a means for accepting electronic payments from third-party payees; and

WHEREAS, Value Payment provides its services without cost to the City in exchange for the authorization to charge the third-party payees voluntarily using the electronic payment services agreed upon fees; and

WHEREAS, a copy of the proposed Payment Processing Service Agreement is attached as "Exhibit A" and incorporated herein as if fully set forth.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to negotiate and enter into a Payment Processing Service Agreement with Value Payment Systems, LLC and to further effectuate the purpose of this resolution.

I second this resolution: Steve Noll

passed the City Council May 8, 2018

Wanda R. D. Williams
President of City Council

Attest [Signature]
City Clerk

[Signature] Approved

YEAS	NAYS
<input checked="" type="checkbox"/> MR. ALLATT	<i>Per Web</i>
<input checked="" type="checkbox"/> MS. DANIELS	
<input checked="" type="checkbox"/> MS. GREEN	
<input checked="" type="checkbox"/> MR. JOHNSON	
<input checked="" type="checkbox"/> MR. MADSEN	
<input checked="" type="checkbox"/> MR. MAJORS	Yeas <u>6</u>
<input checked="" type="checkbox"/> MS. WILLIAMS	Nays <u>0</u>

Exhibit "A"

CONVENIENCE FEE

PAYMENT PROCESSING SERVICE AGREEMENT

THIS CONVENIENCE FEE PAYMENT PROCESSING SERVICE AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 20____ ("**Effective Date**") by and between Value Payment Systems, LLC, a Tennessee limited liability company ("**VPS**"), and the entity set forth on the signature page hereto ("**Merchant**").

For and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VPS and Merchant agree as follows:

1. E-PAYMENT SYSTEM.

1.1. **E-Payment System.** Subject to the terms of this Agreement, during the Term, VPS will process electronic payments to Merchant ("**Payments**") from Merchant's customers ("**Customers**") via an electronic payment system that is owned, operated and managed by VPS and is described in more detail on Schedule A (the "**E-Payment System**"). Merchant will promptly provide VPS with information reasonably required by VPS in order to promptly and accurately perform the services contemplated by this Agreement.

1.2. **Payment Date.** The date on which a Payment is posted to the E-Payment System by a Customer will be deemed the date the Payment is made for all purposes, including any late fees, if any, that Merchant may charge to such Customer. The date the Payment is "posted" is the date the Customer manually transmits the Payment to the E-Payment System or the date an agreed automatic Payment is initiated, whichever is applicable. VPS will remit to Merchant all Payments paid via the E-Payment System no later than three (3) business days following the date a Payment is posted.

1.3. **Chargebacks.** Merchant will promptly investigate all Chargebacks (as defined by the Rules of the applicable Payment Network) with the assistance of VPS. Merchant is responsible for the amounts of all Chargebacks, deposit errors, refunds, and unfulfilled products and services ("**Disputed Amounts**"). VPS is responsible for the third party fees and penalties levied by a Payment Network in respect of the investigation and resolution of a Chargeback ("**Chargeback Resolution Fees**"). VPS may, in its discretion, debit Merchant's account in respect of Disputed Amounts or bill Merchant for the amount of such Disputed Amounts (and in such case Merchant agrees to immediately remit payment to VPS).

1.4. **Fraud.** VPS may, in its sole discretion, implement any fraud prevention systems that it deems necessary, appropriate and/or advisable, including, but not limited to, CVV2, Address Verification Service, Verified by Visa, MasterCard Secure Code and/or similar systems.

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

1.6. **Fees.** In consideration for the provision of the E-Payment System, Customers will pay to VPS, in respect of each Payment, the Convenience Fees that are detailed in Schedule B ("**Convenience Fees**") and Merchant, if applicable, will pay to VPS the other fees set forth on Schedule B. VPS will pay the charges levied by the Payment Networks for processing Payments, including interchange fees, assessments, authorization fees, risk fees, transmission fees and similar fees ("**Transaction Fees**") and for Chargeback Resolution Fees. The Convenience Fees must comply with Payment Network Rules. If federal and/or state statutes or Payment Network Rule changes impact the ability to impose the Convenience Fees, or if the Payment Network(s) notify either party of changes required to the Convenience Fees, the parties agree to amend the Convenience Fees to comply with such statutes and rule changes. VPS will not modify the Convenience Fees unless VPS can demonstrate that Third Party Fees exceed 80% of a Convenience Fee for a given payment type (e.g., property tax) and/or payment method (e.g., Visa credit). "**Payment Network**" means a group of credit/debit card issuer banks, debit networks and other method providers, including, without limitation, Visa U.S.A., Inc., MasterCard International, Inc., American Express, Discover, and the NYCE, Pulse, Star, and Interlink debit networks. "**Rules**" are the bylaws, rules, and regulations, as they exist from time to time, of the Payment Networks. "**Third Party Fees**" means all taxes imposed by any governmental entity and Transaction Fees.

1.7. **Reporting.** VPS will provide its standard monthly transaction reports; provided, however, that VPS may provide custom transaction reports to Merchant for an additional monthly fee upon Merchant's request.

1.8. **Routing: Transaction Processing.** VPS may, in its sole discretion, to priority route Payments, route debit card Payments through a PINless debit network and/or process Convenience Fees as a single transaction (Convenience Fee plus Payment) or as separate transactions.

2. GENERAL

2.1. **Payment Network Rules.** Merchant agrees to comply with all Payment Network Rules as may be applicable to the Merchant and in effect from time to time as published by any Payment Network, including, but not limited to, the rules published on Visa U.S.A.'s website and on MasterCard International's website. If applicable, Merchant will provide VPS with a copy of its annual PCI Attestation of Compliance (AOC) and/or PCI Self-Assessment Questionnaire (SAQ) (as applicable based on PCI DSS qualifications)

annually. Additionally, if Merchant chooses to accept American Express, then Merchant and agrees to the term and conditions set forth on Schedule C and agrees to comply with the American Express Merchant Operating Guide requirements, which are incorporated into this Agreement by reference as if they were fully set forth in the Agreement. The American Express Merchant Operating Guide may be viewed at: www.americanexpress.com/merchantopguide.

2.2. Exclusivity. Merchant will not accept credit card or other Electronic Payments through a similar E-Payment System for Payments from Customers for the services listed on Schedule A hereto other than through VPS without the prior written consent of VPS.

2.3. Compliance with Law. Each party will comply, at such party's own expense, with all laws, policies, guidelines, regulations, ordinances, orders, and rules of all governmental authorities and/or regulatory bodies having jurisdiction over such party and/or the subject matter of this Agreement, including, without limitation, the rules promulgated by the Credit Card Payment Networks, the Payment Card Industry (PCI) Data Security Standard, Visa Cardholder Information Security Program (CISP), the MasterCard Site Data Protection Program (SDP), and the Federal Trade Commission.

2.4. Nondisclosure. Each party agrees to keep confidential and to use only for purposes of performing under this Agreement, any proprietary or confidential information of the other party disclosed pursuant to this Agreement which is appropriately marked as confidential or which could reasonably be considered of a proprietary or confidential nature ("Confidential Information"), and, except as otherwise permitted by this Agreement, the terms of this Agreement and all negotiations relating thereto (but not the existence of this Agreement generally). The obligation of confidentiality does not apply to information which is required by law to be disclosed (including public right-to-know laws), which is publicly available through authorized disclosure, is known by the receiving party at the time of disclosure, or is rightfully obtained from a third party that has the right to disclose it. All Confidential Information will remain the property of the disclosing party.

2.5. Privacy and Security. Merchant is solely responsible for the security of data residing on servers owned or operated by Merchant and all third parties (other than VPS) designated by Merchant (e.g., a Web hosting Merchant, processor and other service providers), and for data transmitted to VPS. Merchant will not use, disclose, sell and/or disseminate any cardholder information obtained in connection with a Payment (including the names, addresses and card account numbers of cardholders) except for purposes of authorizing, completing and settling a Payment and resolving any Chargebacks, retrieval requests or similar issues involving a Payment, other than pursuant to a court or governmental agency request, subpoena or order. Merchant will use proper controls for and limit access to, and render unreadable prior to discarding, all records containing card account numbers and card imprints. Merchant agrees that it will comply with all VPS security protocols and security advisories in effect during the Term. Merchant is responsible for verifying the accuracy and completeness of all Payments submitted and processed by VPS associated with Merchant's account and verifying that all corresponding funds are accurately processed.

2.6. System Breach. Merchant warrants that Merchant has taken such precautions as are necessary to ensure that Merchant server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that Merchant system is breached, or is suspected of having been breached, and an unauthorized third party has access to or has accessed end-user data or Payment data, Merchant will notify VPS promptly of such breach and will take such precautions as may be necessary to prevent such breaches from occurring in the future.

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

2.8. Intellectual Property. VPS represents that it owns, licenses or has the right to use and will retain during the Term all proprietary rights in and to the E-Payment System and all development tools, routines, subroutines, applications, software and other materials that VPS may use in connection with implementation and operation of the E-Payment System. Merchant acknowledges that, as between Merchant and VPS, VPS owns, licenses and/or has the right to use, all right, title and interest, including without limitation any and all rights existing under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights in and to all of the intellectual property developed, owned, used and/or licensed by VPS in connection with its performance under this Agreement, including the E-Payment System (the

“VPS IP”) and that Merchant will not acquire any right, title, or interest in or to the VPS IP, including the E-Payment System. There are no implied licenses granted under this Agreement, and any rights not expressly granted to Merchant hereunder are reserved by VPS. Merchant will not take any action inconsistent with VPS’s property rights in and to the E-Payment System, and/or any other intellectual property right of VPS.

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

3. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.**

3.1. AVAILABILITY. VPS MAKES NO WARRANTIES REGARDING THE QUALITY, RELIABILITY, TIMELINESS OR SECURITY OF THE WORLD WIDE WEB OR TELEPHONE LINES, THE INTERNET AND OTHER GLOBALLY LINKED COMPUTER NETWORKS, OR THE WEBSITES ESTABLISHED THEREON INCLUDING THE E-PAYMENT SYSTEM, WILL BE UNINTERRUPTED OR ERROR FREE AND VPS WILL IN NO WAY BE LIABLE TO MERCHANT OR CUSTOMER DUE TO ANY DISRUPTION OF VPS’ E-PAYMENT SYSTEM OR NON-AVAILABILITY OF THE E-PAYMENT SYSTEM DURING WHICH CUSTOMERS ARE UNABLE TO ACCESS OR USE THE E-PAYMENT SYSTEM DUE TO A CONFIRMED PROBLEM THEREIN.

3.2. THIRD PARTY PRODUCTS. MERCHANT UNDERSTANDS AND AGREES THAT VPS MAY USE THIRD PARTY PRODUCTS IN CONNECTION WITH THE E-PAYMENT SYSTEM OFFERED HEREUNDER. THESE PRODUCTS MAY INCLUDE FIREWALL SECURITY, WEB SERVER SOFTWARE AND ENCRYPTION SOFTWARE. VPS MAKES NO REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE OF SUCH THIRD PARTY SOFTWARE, SPECIFICALLY INCLUDING ANY WARRANTY THAT PERFORMANCE WILL BE UNINTERRUPTED OR ERROR-FREE.

3.3. NO IMPLIED WARRANTIES. EXCEPT FOR ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER VPS NOR ANY THIRD PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE E-PAYMENT SYSTEM OR SERVICES PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT, TO THE MAXIMUM EXTENT POSSIBLE BY LAW.

3.4. NO CONSEQUENTIAL DAMAGES; LIABILITY CAP. IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THE PARTY THAT WOULD OTHERWISE HAVE BEEN LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL VPS’ LIABILITY EXCEED THE CONVENIENCE FEES PAID TO VPS UNDER THIS AGREEMENT REGARDLESS OF THE FORM OF THE CLAIM (INCLUDING, WITHOUT LIMITATION, ANY CONTRACT, PRODUCT LIABILITY, OR TORT CLAIM).

4. **TERM AND TERMINATION.**

4.1. Term. Subject to Section 3.2, this Agreement will commence upon the Effective Date and will continue for three (3) years, at which point in time the Agreement will automatically renew for successive one (1) year periods unless either party, at least thirty (30) days prior to the expiration of the then applicable term, provides the other with written notice of its desire to terminate this Agreement.

4.2. Termination for Cause. Either party may terminate this Agreement at any time upon written notice to the other party as a result of any of the following events: (i) any noncompliance with this Agreement which is not cured within thirty (30) days of notice thereof from the other party (except that no cure period is allowed for termination based on fraud); and/or (ii) any voluntary or involuntary bankruptcy or insolvency proceeding involving the other party.

4.3. Effect of Termination. Termination of this Agreement will not relieve either party of any obligation to pay the other party any amounts due and owing to the other party prior to such termination, including, without limitation any amounts owing in respect of Disputed Amounts.

4.4. Survival. Sections 2, 3, 4 and 5 will survive any termination or expiration of this Agreement.

5. **MISCELLANEOUS.**

5.1. Promotion of Services. Merchant will promote the use by Customers of the E-Payment System by, including, but not limited to, publishing relevant URL(s) and telephone numbers for the E-Payment System on the Merchant’s home page, billing notices and promotional materials and distributing point of sale materials. All published materials referencing VPS or the E-Payment System will be approved for accuracy by VPS prior to publishing.

- 5.2. Governing Law; Waiver of Jury Trial. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee without reference to conflict of law provisions. Any action, proceeding, litigation, or mediation relating to or arising from this Agreement must be brought exclusively in Davidson County, Nashville, Tennessee. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.
- 5.3. Binding Upon Successors and Permitted Assigns. This Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither this Agreement nor any right, license, privilege or obligation provided herein may be assigned or transferred by a party without the other party's prior written consent, which consent will not be unreasonably withheld, and any attempted assignment or transfer without such consent is void; provided, however, that each party may, without the consent of the other party, assign this Agreement (and its rights hereunder) in connection with any reorganization, consolidation, merger, sale of stock, sale of substantially all assets and/or similar type of transaction(s), if the successor in interest to such assigning party assumes the obligations of the assigning party under this Agreement in writing, is properly licensed to conduct the business contemplated hereunder, and otherwise agrees to be bound by all of the terms of this Agreement.
- 5.4. Relationship of Parties. The relationship of VPS to Merchant under this Agreement will be that of an independent contractor and nothing contained in this Agreement will create or imply an agency relationship between Merchant and VPS, nor will this Agreement be deemed to constitute a joint venture or partnership between Merchant and VPS.
- 5.5. Notices. All notices required or permitted under the Agreement will be in writing and sent to the other party at the address specified on the signature page below or to such other address as either party may substitute from time to time by written notice to the other and will be deemed validly given upon receipt of such notice given by mail (postage prepaid), electronic mail or personal or courier delivery to such address.
- 5.6. Captions and Headings. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.
- 5.7. Waiver. No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.
- 5.8. Severability. If any provision of this Agreement, or the application thereof, is found invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.
- 5.9. Publicity. The parties agree that they will not use the other party's name, trademark or service mark or the existence of the contractual relationship in any press release, marketing, promotional, advertising or any other materials without the other party's prior written consent.
- 5.10. Amendment and Changes. This Agreement or any provision hereof may not be changed, amended, supplemented, discharged, terminated or otherwise altered except by a statement in writing signed by the party against whom enforcement of same is sought.
- 5.11. Force Majeure. Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications, utility, or power failures, equipment failures, labor strife, riots, war, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 5.11 will affect or excuse your liabilities and obligations for Disputed Amounts.
- 5.12. Entire Agreement. This Agreement, including the Schedules, contains the entire understanding and agreement between the parties with respect to its subject matter, superseding all prior or contemporaneous representations, understandings, and any other oral or written agreements between the parties with respect to such subject matter.
- 5.13. Facsimile Signature and Counterparts. This Agreement may be executed by exchange of signature pages by facsimile, e-mail and in any number of counterparts, each of which will be an original as against any party whose signature appears thereon and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

[INSERT MERCHANT NAME]

Print Name: _____
Print Title: _____
Street Address: _____

Value Payment Systems, LLC

Name: J. Scott Slusser
Title: Chief Marketing Officer
Street Address: 2207 Crestmoor Rd., Suite 200
City/State/Zip: Nashville, TN 37215-2031

**SCHEDULE A
SCOPE OF SERVICES**

(Please check the box or boxes associated with the services to be provided.)

WEB AND POINT OF SALE E-PAYMENT SOLUTIONS

Web E-Payment Solution

The Standard Web E-Payment Solution may include the following:

- Standard development technology;
- Payment screens including personal information, payment entry, payment review, payment receipt;
- Payment confirmation number and optional confirmation email;
- Collect and transmit payment information for authorization and settlement; and
- Method for transferring transaction data back to the Merchant and/or reporting;

Please choose one of the following options if the Web E-Payment Solution is selected:

- Option 1: Input File Integration or API is not required; or
- Option 2: Input File Integration or API is required.

Payment Types to be accepted:

- Property Tax
- Licenses
- Utility Bills
- Other _____

**SCHEDULE B
CONVENIENCE FEE SCHEDULE**

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

CONVENIENCE FEES FUNDED BY THE CONSTITUENT

ITEM	FEE	FREQUENCY
<u>Property Tax Payments (Real Property Tax, etc.)¹</u>		
Visa, MasterCard, Discover and AmEx – credit cards	2.35%	Per transaction
Visa, MasterCard and Discover - debit cards	1.50%	Per transaction
Electronic Checks (Optional)	\$1.95	Per transaction
Digital Wallets (Optional)	2.35%	Per transaction
American Express Move (Optional)	1.50%	Per transaction
<u>Non-Tax Payments (e.g., Court Fees, Permits, Licenses, etc.)²</u>		
Visa, MasterCard, Discover and American Express – credit cards	2.35%	Per transaction
Visa, MasterCard and Discover - debit cards	1.50%	Per transaction
Electronic Checks (Optional)	\$1.95	Per transaction
Digital Wallets (Optional)	2.35%	Per transaction
American Express Move (Optional)	1.50%	Per transaction
<u>Utility Payments (e.g., Water, Sewer, Electric, etc.)²</u>		
Visa, MasterCard, Discover and AmEx – Personal Credit Cards	2.35%	Per transaction
Visa, MasterCard and Discover - debit cards	1.50%	Per transaction
Visa, MasterCard, Discover & AmEx – Business/Commercial credit	2.50%	Per transaction
Electronic Checks (Optional)	\$1.95	Per transaction
Digital Wallets (Optional)	2.35%	Per transaction
American Express Move (Optional)	1.50%	Per transaction

PAYMENT PROCESSING SERVICES FUNDED BY THE MERCHANT (ALL OPTIONS)

ITEM	FEE	FREQUENCY
Start-up, support and training costs	\$0	One-time
Chargeback processing fee	\$0	Per occurrence
POS terminals – Ingenico iCT220	Waived	Per unit
Total cost to Harrisburg PA	\$0	

¹ The minimum convenience fee for Tax payments is \$3.95

² The minimum convenience fee for Non-Tax payments is \$1.00

SCHEDULE C

AMERICAN EXPRESS® CARD ACCEPTANCE

1. Processing Restrictions. Merchant is prohibited from processing Transactions or receiving payments on behalf of, or (unless required by law) re-directing payments to any other party.
2. Third Party Beneficiary Rights.
 - a. Merchant confers on American Express the beneficiary rights, but not obligations, to the Agreement and, as such, American Express has the express right to enforce the terms of the Agreement against the Merchant.
 - b. Merchant warrants that it does not hold third party beneficiary rights to any agreements between VPS and American Express and at no time will attempt to enforce any such agreements against American Express.
3. American Express Liability. MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

INTER

MEMO

OFFICE

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018 RESOLUTION NO. 47-2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

Ryan E. Baldoch 4-20-2018
Srl Deputy City Solicitor Date

Requested by Department/Bureau: IT/Treasury
Department/Bureau Contact Person: Steve Bortner

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: [Signature] Date: 4-20-18