



OFFICIAL PAYMENTS SERVICES AGREEMENT

THIS OFFICIAL PAYMENTS SERVICES AGREEMENT (this "Agreement") is made effective this **21st** day of **August**, 2012 (the "Effective Date"), by and between Official Payments Corporation, a Delaware corporation ("Official Payments"), and **City of Saratoga Springs, NY** ("Client"). Client agrees to engage Official Payments, and Official Payments agrees to accept such engagement by Client, to perform the services (each a "Service" and collectively the "Services") in accordance with: (i) the Standard Terms and Conditions stated below as Schedule A, (ii) the Service Schedule for the Services selected which is attached hereto as Schedule B ("Service Schedule"), and (iii) the Fee Schedule which is attached hereto as Schedule C ("Fee Schedule"). Client will be provided with the Services as described in the attached Service Schedule on the terms set forth in Schedule A and in consideration of the fees set forth in the Fee Schedule.

SCHEDULE A — TERMS AND CONDITIONS

These Terms and Conditions, together with the Signature Page which appears after Schedule C, its attachments, exhibits, appendices, schedules, and/or Change Orders (collectively, this "Agreement"), are made and entered into by and between Official Payments and Client as of the Effective Date.

AGREEMENT

1. DEFINITIONS.

"Absorbed Fee" means the transaction fee, where applicable, charged to Client by Official Payments for a Customer making payment by use of the Services. The Absorbed Fees are set forth in Exhibit C, Fee Schedule.

"ACH" means the Automated Clearing House.

"Change Order" means the Change Order as defined in Section 14.2 below.

"Client Designated Account" means the credit/debit account(s) established and maintained by Client at an ACH receiving depository institution reasonably acceptable to Official Payments. Client Designated Account is further described in Section 4.2.

"Client Marks" means Client's logo, trademarks and other service marks.

"Customer" means the person, business or entity that initiates and makes payment through a Payment Transaction.

"NACHA" means the National Automated Clearing House Association.

"Net Revenue" means the aggregate of Service Fees received by Official Payments under this Agreement less direct costs of goods paid by Official Payments, including but not limited to servicing costs, interchange fees, processing fees and any other fees assessed or charged by the ACH network, processing banks and other financial institutions, card organizations, and walk-up network providers with respect to the Payment Transactions under this Agreement.

"Official Payments Marks" means Official Payments' logo, trademarks and other service marks.

“Official Payments System” means Official Payments’ and its Suppliers’ electronic payment processing system, including, without limitation, its technology, hardware, software and equipment. The term does not mean nor shall Official Payments be responsible for technology, hardware, software or equipment, acquired or licensed by Client including for Client’s use in connection with the Services of Official Payments, including but not limited to the software provided to Client as of the Effective Date herein by Tyler Technologies (or any alternative or succeeding entity).

“Payment Transaction” means an electronic payment transaction initiated by a Customer and processed by Official Payments and/or its Suppliers under this Agreement.

“Project Manager-Client” means the individual designated by the Client to represent Client in all matters affecting the delivery of Services from Official Payments. As of the Effective Date herein, the Project Manager for Client is the Commissioner of _____.

“Service” or “Services” means the payment processing service or services selected on Service Schedule, as amended from time to time by written Change Order.

“Service Fee” means the transaction fee charged to a Customer by Official Payments for the convenience of Customer making payments by use of the Services. The Service Fees are set forth in Exhibit C, Fee Schedule.

“Signature Page” means the Signature Page with the signature of each party as entered into by and between Official Payments and Client, as of the Effective Date, whereby Official Payments has been engaged by Client to provide the Services.

“Suppliers” means Official Payments authorized vendors including, but not limited to, ACH processor(s).

2. PROVISION OF SERVICES. Official Payments will provide the Services in accordance with the Service Schedule(s) and Change Orders. It is understood that no Client employee, including the Project Manager - Client set forth herein, has the authority to request that Official Payments perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in the Service Schedule(s).

3. CLIENT OBLIGATIONS. With respect to each Service:

3.1 Client will comply with all applicable laws and regulations, including, without limitation, NACHA rules and regulations and applicable Payment Card Industry Data Security Standards (PCI-DSS) regulations on behalf of itself, its employees, agents and Customers, and will be liable to Official Payments for any and all liabilities, claims, costs, expenses, reimbursement obligations, fines and penalties which arise in connection with a failure to do so.

3.2 Client will take all reasonable security precautions within its system, hardware and software to prevent unauthorized or fraudulent use of the Official Payments System by Client, Client employees and agents, and Customers. Official Payments may, but will not be required to, assign to Client one or more identification numbers or passwords for Client’s use in obtaining the Services. Once such identification number(s) or password(s) have been delivered to Client by Official Payments, the use and confidentiality of such numbers and/or passwords will be the sole responsibility of Client.

3.3 Other than as provided in the Service Schedule(s), Client will not impose any surcharge or penalty on any of the Services.

3.4 If Client requests a customized reporting format, Client will provide Official Payments with its desired reporting format sufficiently in advance of the requested report delivery date. Customized reporting formats require Official Payments’ prior written approval, and may result in the imposition of a fee by Official Payments to Client.

3.5 Client will not require, as a condition to initiating a Payment Transaction, that a Customer agree in any way to waive such Customer’s rights to dispute the transaction with their banking institution for legitimate reasons.

3.6 Subject to Section 8, Client will actively market and promote the Services including the marketing materials Client selects in accordance with the Fee Schedule. Client’s marketing and promotion of the

Services will include publishing the relevant URL for the Official Payments website and relevant telephone number (as applicable) on all relevant marketing materials. Client will obtain Official Payments' prior consent for the use of any promotional or marketing materials that reference the Services or Official Payments, except as to the pre-approved marketing materials provided by Official Payments. Client agrees to incorporate all reasonable changes requested by Official Payments into any of the marketing materials to ensure (i) the correct usage of the Official Payments trademarks and logos, (ii) the accuracy of the content and (iii) acceptable graphics and presentation.

3.7 Client will be solely responsible, at its own expense, for acquiring, installing and maintaining all of its own equipment, software and data communication service, which is not a part of the Official Payments System.

3.8 If requested by Official Payments, Client will execute, and deliver to Official Payments, ACH authorization agreement(s), in the format provided by Official Payments, to authorize electronic credits/debits to/from the Client Designated Account, and any other certificates, instruments or documents as required by applicable laws and regulations in order to consummate the transactions contemplated by this Agreement.

3.9 If required by a credit card association, with respect to a Service, Client will enter into any applicable merchant credit card agreements and Client will fully adhere to the rules, regulations and operating procedures of such association, including without limitation, the use of specific credit card logos and marks.

3.10 Client shall (i) collect and verify all identification information as required by law or government regulation, and (ii) make such identifying information available to Official Payments if requested by a regulator, law enforcement officials, or judicial process.

4. FEES, TAXES, AND PAYMENTS.

4.1. Fees, Taxes and Payments. For each Service provided, Client and/or Customer, as designated on the Fee Schedule, will pay Official Payments fees for Services without set-off or deduction in accordance with the fees and charges set forth on the Fee Schedule. Except as otherwise specifically set forth on a Service Schedule, fees owed by Client will be calculated on a monthly basis and will be debited from the Client Designated Account monthly in arrears by Official Payments or its Suppliers. Fees are subject to change by Official Payments upon delivery of a Change Order as described in Section 14.2 below. During the Term of this Agreement, and for ninety (90) days thereafter, Official Payments (or its Suppliers) are authorized by Client to debit from the Client Designated Account, any fees and other amounts owed by Client under this Agreement, including, but not limited to, chargebacks, deposit charges, refunds, fines (inclusive of those imposed by NACHA), ACH debits that overdraw the Client Designated Account, and any other fines or liabilities incurred by Client. Official Payments may obtain and review Client's credit report solely related to the Services hereunder.

4.2 Client Designated Account. Prior to any Payment Transaction, Client will establish a Client Designated Account and will provide Official Payments with the electronic record specifications and permissions necessary for funds settlement. Client will maintain such account during the Term of this Agreement and for at least ninety (90) days after expiration or termination for any reason. Client agrees to maintain sufficient funds in the Client Designated Account to satisfy all fees and other obligations of Client. Client authorizes Official Payments, its assignee or its Suppliers to debit via ACH transfer, the Client Designated Account for any such amounts Client owes Official Payments. If the amount in the Client Designated Account does not contain sufficient funds to cover fees and obligations of Client, Client agrees to pay Official Payments the amount it owes under this Agreement upon demand, in readily available funds, together with all costs and expenses incurred to collect such amount, including, without limitation, reasonable attorneys' fees.

5. SUSPENSION; RESTRICTIONS. Official Payments may immediately suspend the Services or withhold Services or individual Payment Transactions in the event: (i) Official Payments has reason to believe there has been or may be a breach of security, fraud, or misrepresentation in connection with the Services, (ii) continued provision of the Services would violate any applicable law, government regulation, the NACHA rules and regulations or the rules and regulations of a credit card association, (iii) of a significant increase in Official Payments' and/or its Suppliers' cost of providing the Services (iv)

performance is delayed, impaired or rendered impossible as a result of a cause beyond Official Payments' or its Suppliers' control, (v) of breach of the terms of this agreement by Client, its employees, or representatives, (vi) the financial status or credit quality of Client is substantially diminished in the reasonable discretion of Official Payments, or (vii) of non-payment of fees or other charges when they become due. In the event that Official Payments suspends the Services under this Section 5, in its reasonable discretion, Official Payments will provide Client with notice and opportunity to cure the act or situation giving rise to the suspension. In the event of a suspension under this Section 5, Official Payments may require Client to establish a reserve account or institute other mutually agreed restrictions prior to Official Payments restoring Services. Official Payments will have no liability for any suspension in accordance with the terms of this Section 5. Additionally, the availability and use of specific types of credit cards, debit cards and other payment options for Payment Transactions is determined by Official Payments in accordance with Official Payments' relationships with card associations, and the applicable rules, regulations and laws, and Official Payments may terminate or suspend the use of any such card(s) or payment options at any time, in its sole discretion, without prior notice.

6. TERM AND TERMINATION.

6.1. Term. This Agreement will be effective on the Effective Date, as evidenced by both signatories executing the Agreement and in the case of Client such approval for signature having been received from Client's City Council, and thereafter will continue for a period of two (2) years (the "Initial Term").

6.2. Termination.

6.2.1 Termination for Cause. Either party may terminate this Agreement for cause if the other party: (i) fails to cure a material breach within thirty (30) days of receiving written notice detailing the breach; (ii) becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceeding, a receiver, trustee, liquidator or similar agent or officer is appointed for that party, or a party makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or (iii) commits any act related to the Services with the intent to defraud the other party.

6.2.2 Termination by Official Payments. Official Payments may terminate this Agreement at any time upon written notice to the Client in the event the provision of the Services hereunder is determined by Official Payments, to violate any law, statute, regulation, rule, order or operating procedure enacted or promulgated by a governmental or judicial authority of competent jurisdiction, NACHA (or any similar industry organization with authority over the Services), or in the event that any law, regulation, rule, order or operating procedure is enacted or promulgated which effectively reduces or eliminates the fees charged by Official Payments. Client may terminate this Agreement at any time upon written notice to the Official Payments in the event the provision of the Services hereunder is determined by Client, to violate any law, statute, regulation, rule, order or operating procedure enacted or promulgated by a governmental or judicial authority of competent jurisdiction, NACHA (or any similar industry organization with authority over the Services).

6.2.3 Termination for Convenience. Either party may terminate this agreement for convenience upon thirty (30) days prior written notice to the other party. In the event (i) Client terminates this Agreement for convenience within the first year of the Initial Term, or (ii) Client decides not to complete implementation after Official Payments begins the implementation process, Client shall pay Official Payments a termination fee of \$5,000 in recognition of Official Payments' start-up/decommissioning costs related to the Services.

7. ACCOUNT MONITORING; SECURITY. Official Payments and its Suppliers may monitor the use of Services or Payment Transaction activity and investigate unusual or suspicious activity, provided, that in no event does Official Payments assume any responsibility to discover any breach of Client's security or misuse of the Services. Client and Official Payments will immediately notify the other if either discovers any breach of security or misuse of the Service(s). Official Payments will have the right, at Official Payments' sole cost, to inspect Client's operation, system and web site to verify Client's compliance with its security obligations under this Agreement. Client will be responsible for failure to use reasonable security precautions and for any fraud committed by its employees, representatives or Customers.

8. INTELLECTUAL PROPERTY. In order that Client may promote the Services and Official Payments' role in providing the Services during the Term, Official Payments grants to Client a revocable, non-exclusive, non-transferable, royalty-free license to use Official Payments' Marks for such purpose only, in a form as approved by Official Payments. Client does not, and will not, have any other right, title, license or interest, express or implied, in and to any object code, software, hardware, Official Payments Marks, service mark, trade name, trade dress, formula, Official Payments System, know-how, telephone number, telephone line, domain name, URL, copyrighted image, text, script (including, without limitation, interactive voice response or the Official Payments website scripts) or other intellectual property right of Official Payments (collectively "Official Payments Intellectual Property"). All such Official Payments Intellectual Property, and all rights, title and interests therein (other than the license rights expressly granted in this Agreement) are owned exclusively by Official Payments. Client's license to use any Official Payments Marks will terminate upon the earlier of (a) the termination or expiration of this Agreement, (b) immediately, in the event of any breach of this section by Client (c) immediately, upon notice by Official Payments to the Client. Client will not utilize any Official Payments Intellectual Property in any manner that would diminish its value or harm the reputation of Official Payments. Client agrees that any use of the Official Payments Marks will conform to reasonable standards of acceptable use specified by Official Payments. All use of the Official Payments Marks will inure to the sole benefit of Official Payments. Solely in connection with the provision of the Services, Client grants to Official Payments a revocable, non-exclusive, non-transferable, royalty-free license to use Client Marks. All information and materials of Client received hereunder by Official Payments from Client are and shall remain the exclusive property of Client and Official Payments shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by Official Payments. Official Payments' license to utilize the Client Marks will terminate upon the termination or expiration of this Agreement.

9. COMPLIANCE WITH LAWS, RULES AND REGULATIONS; NO CONFLICT OF INTEREST. 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, PCI-DSS standards, 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. Official Payments and its Suppliers may from time to time establish reasonable rules, regulations and operational guidelines with respect to use of the Services by Client, and Client agrees to be bound by and comply with such rules, regulations and guidelines thirty (30) days after delivery thereof to Client, unless earlier or immediate compliance is (i) required by law or regulation, (ii) determined by Official Payments, in its reasonable discretion, to be necessary, or (iii) otherwise agreed upon in writing by the parties.

Official Payments represents and warrants that it has no known conflict that would prevent it from performing its duties and responsibilities in connection with the Services to be provided under this Agreement.

10. WARRANTY AND DISCLAIMER.

10.1 Warranty. 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 and that the person who signs the Agreement for each party has full authorization to bind the respective party. Client will provide to Official Payments the forms that are necessary, as determined by Official Payments, to set up the Services within ten (10) days of full execution of this Agreement. Client represents and warrants to Official Payments that all information provided in such forms is current, correct and complete. Client agrees to notify Official Payments in writing of any changes to such Client information within ten (10) days of such change.

10.2. Disclaimer. Client acknowledges that electronic payment transactions and data processing involves the inherent risk of human and machine errors, omissions, delays and losses, including, without limitation, inadvertent loss or errors. Official Payments and its Suppliers do not, and cannot, control the flow of data to or from the Official Payments System, which depends in large part on the Internet and third parties, including, without limitation, connectivity/access providers. ACCORDINGLY, NEITHER OFFICIAL PAYMENTS NOR ITS SUPPLIERS WARRANT THAT THE SERVICES WILL BE ERROR FREE, UNINTERRUPTED, SECURE, OR VIRUS FREE, AND OFFICIAL PAYMENTS AND ITS SUPPLIERS DISCLAIM LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. EXCEPT

AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND OFFICIAL PAYMENTS, ITS AFFILIATES AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, NON-INTERFERENCE, TITLE, OR NON-INFRINGEMENT.

11. INDEMNIFICATION.

11.1 Indemnification of Official Payments. To the extent permitted by law, Client will indemnify, defend, and hold harmless Official Payments, and its officers, employees, directors, agents, affiliates and shareholders, in their individual capacities or otherwise, from and against any and all losses, claims, demands, penalties, actions, causes of action, suits, obligations, liabilities, damages, delays, costs or expenses, including, without limitation, reasonable attorney's fees (collectively, "Losses") asserted by a third party that result from, relate to, arise out of, or are incurred in connection with: (i) Client's gross negligence or willful misconduct resulting in personal injury or property damage; (ii) Client's misuse of the Service or the Official Payments System; (iii) inaccurate or incomplete Client data or Customer data collected by Client; (iv) Client's failure to comply with applicable laws; (v) Client's failure to comply with the terms of this Agreement; or (vii) any claim of libel, violation of privacy rights, unfair competition or infringement of patents, trademarks, copyrights or other intellectual property.

11.2 Indemnification of Client. Official Payments will indemnify, defend and hold harmless Client, and its elected and/or appointed officials, officers, employees, directors, agents and shareholders, in their individual capacities or otherwise, from and against any and all Losses asserted by a third party that result from, relate to, arise out of, or are incurred in connection with: (i) Official Payments' gross negligence or willful misconduct resulting in personal injury or property damage; (ii) Official Payments' failure to comply with laws applicable to Official Payments as a provider of a Service; or (iii) a claim that a Service infringes a registered U.S. patent, trademark or copyright. However, Official Payments will not be liable for (and Client will indemnify Official Payments against) any infringement claim that results, in whole or in part, from: (a) Client's use of a Service in a manner or for a purpose not specifically described in the applicable Service Schedule, or (b) Client's products or services; or (c) Client's failure to implement corrections or changes provided by Official Payments. If a claim has been asserted that the Service infringes a registered U.S. patent, trademark, or copyright, or in Official Payments' opinion such a claim is about to be asserted, Official Payments may, at its option either: (1) procure for Client the right to continue using the Service; (2) replace or modify the Service so that it becomes non-infringing; or (3) terminate the applicable Service.

11.3 Contingencies to Indemnification. The obligation to provide indemnification under this section is contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any claim; (ii) the indemnifying party having sole control over the defense and settlement of the claim, provided, however, that the indemnifying party may not settle a claim, accept liability or incur obligations on behalf of the other party without the other party's written consent, which will not be unreasonably withheld or delayed; or (iii) the indemnified party reasonably cooperating during defense and settlement efforts at its own expense. Notice will be considered prompt so long as there is no material prejudice to the indemnifying party.

12. LIMITATION OF LIABILITY. NEITHER OFFICIAL PAYMENTS NOR ITS SUPPLIERS WILL BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, BUSINESS, DATA OR DAMAGES FROM LOSS OF USE OR DELAY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER ARISING UNDER ANY THEORY (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, TORT, CONTRACT, STRICT LIABILITY OR UNDER STATUTE), EVEN IF OFFICIAL PAYMENTS HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS OR DAMAGE. OFFICIAL PAYMENTS' TOTAL AGGREGATE LIABILITY FOR DAMAGES FOR ANY ACTION RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED WILL IN NO EVENT EXCEED THE AMOUNT OF OFFICIAL PAYMENTS' NET REVENUE DURING THE SIX CALENDAR MONTHS IMMEDIATELY PRECEDING THE PARTICULAR TRANSACTION FOR THE SPECIFIC SERVICE GIVING RISE TO DAMAGES HEREUNDER. The foregoing limitation of liability and

exclusion of certain damages will apply regardless of the success, sufficiency or effectiveness of other remedies. Client acknowledges that without its agreement to the limitations contained herein, Official Payments would be compensated differently, and would charge Client increased fees for the Payment Transactions.

13. CONFIDENTIALITY. Each party that receives confidential information (as "Receiving Party") will treat information received from the other (as "Disclosing Party") (verbally, electronically, visually, or in a written or other tangible form) that (i) is designated as "confidential" at or prior to disclosure, or (ii) should be reasonably understood to be confidential or proprietary ("Confidential Information") as strictly confidential. Official Payments designates information relating to the Services and the terms of this Agreement as its Confidential Information. Client designates any and all Client communications, records, documents, written, oral or electronic communication or other information of any kind that meets the criteria in (i) and (ii) above as its Confidential Information. Non-public financial information that is personally identifiable to a Customer (referenced in the Gramm-Leach-Bliley Act of 1999 as "Non-public Personal Information" or "NPI") is designated as Confidential Information.

Each party will: (i) restrict disclosure of the other party's Confidential Information to only its own employees and agents solely on a "need to know" basis in accordance with the Agreement for the purpose of performing the Services hereunder; (ii) advise its employees and agents of their confidentiality obligations; (iii) require agents to protect and restrict the use of the other party's Confidential Information; (iv) use the same degree of care to protect the other party's Confidential Information as it uses to safeguard its own Confidential Information of similar importance but in any event at least commercially reasonable care; (v) establish procedural, physical and electronic safeguards, designed to prevent the compromise or unauthorized disclosure of Confidential Information; and (vi) notify the other party of any unauthorized possession or use of the other party's Confidential Information as soon as possible after learning of that unauthorized use or possession. Official Payments will promptly notify Client and, if requested by Client, each of its affected Customers, of any incident that has resulted or is likely to result in the misuse of NPI, and will comply with all laws regarding NPI that are applicable to it and the Services it provides.

Except as expressly provided for in this Agreement, Confidential Information will remain the property of the party from or through whom it was received. Except for NPI, neither party will be obligated to preserve the confidentiality of any information that: (a) Receiving Party can demonstrate was rightfully known by Receiving Party prior to disclosure by Disclosing Party; (b) is a matter of public knowledge without Receiving Party's violation of these terms; (c) Receiving Party can demonstrate was or is independently developed by Receiving Party without use of Disclosing Party's confidential information; (d) is released for disclosure to Receiving Party with written consent of Discloser; or (e) properly came into the possession of Receiving Party from a third party that has the right to disclose it without an obligation of confidentiality. Disclosure of Confidential Information will be permitted if it is: (1) required by law; (2) in connection with the tax treatment or tax structure of the Agreement; or (3) in response to a valid order of a U.S. court or other governmental body, including in response to a deposition, interrogatory, request or demand for information or documents, subpoena, investigative demand, court order or other similar process, provided the owner receives written notice and is afforded a reasonable opportunity to obtain a protective order and further provided that such disclosure is limited to the minimum extent required by law as determined by an attorney. Upon termination of a Service Schedule, each party will destroy the other party's Confidential Information (including all copies, extracts or other reproductions in whole or in part thereof) relating to that Service Schedule in a manner designed to preserve its confidentiality, or, at the other party's written request and expense, return it to the disclosing party, except as otherwise required by law. Official Payments shall be permitted to retain one copy of internal memoranda and other documents developed by Official Payments during the Term of this Agreement, which contain or refer to Confidential Information, subject to the confidentiality provisions of this Section 13.

14. GENERAL PROVISIONS.

14.1 Notices. Except as expressly provided herein, all notices and other communications required or permitted hereunder will be given in writing and will be delivered personally, by nationally recognized overnight courier, by facsimile or by e-mail to the applicable address shown on the Signature Page. Such notice, regardless of the manner delivered, will be deemed to have been delivered the next business day after delivery to the applicable address set forth on the Signature Page, with a second copy. Additionally,

a second copy of any notice to Official Payments shall be addressed to the General Counsel at the same address. Any party may change its address for notice hereunder by providing notice to all other parties as provided herein. Each party agrees that any notice delivered by email is hereby deemed to be notice delivered "in writing" and, for notices containing requests for new services, agreements to receive new services, and other offers or acceptances regarding modifications to this Agreement, such email constitutes such party's "electronic signature" to such writing (provided that such email is sent by an authorized representative of such party).

14.2 Modifications. This Agreement may not be amended except by a writing executed by authorized representatives of both parties, or by a Change Order issued by Official Payments as set forth in this Section 14.2 and executed by authorized representatives of both parties.

14.3 Entire Agreement; Severability; Waiver. This Agreement, together with the Signature Page, the Schedules, and any exhibits, as amended by any Change Orders, constitutes the entire agreement between Client and Official Payments with respect to the subject matter hereof, and supersedes any prior agreement, oral or written, between Client and Official Payments and/or its representative(s) in connection with this Agreement. The failure of either party to enforce any terms or conditions of this Agreement shall not be construed as a waiver of such or any other terms or conditions herein contained. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a provision that most closely approximates the intent and economic effect of the invalid provision.

14.4 Remedies. Except as otherwise expressly provided in this Agreement, (i) all remedies available to either party are cumulative and not exclusive, and (ii) termination, expiration or suspension of this Agreement will not limit either party from pursuing other remedies available at law or in equity.

14.5 Assignment. This Agreement may not be assigned by either party (by operation of law or otherwise) without the prior written consent of the other party; provided, however, that the foregoing will not prohibit Official Payments from assigning this Agreement or its rights hereunder, nor require the consent of the Client, in connection with any change of control, corporate reorganization, merger or consolidation of Official Payments. Any purported assignment, transfer, or delegation in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

14.6 Status of the Parties; Suppliers. Official Payments is the agent of Client for the limited purpose of accepting payments from Customer and forwarding such payments to Client ("Official Payments Agency Role"). Except for the Official Payments Agency Role, the parties are independent contractors, and nothing herein will be construed to create a partnership, joint venture, franchise, or employer-employee relationship by or between Client and Official Payments and for purposes of clarification, that no staff member, officer, director or person employed by Official Payments in connection with this Agreement shall be considered or deemed to be an employee of the City of Saratoga Springs, NY or represent him or herself as an employee of the City of Saratoga Springs, NY. Except for Official Payments Agency Role, no party will have the authority to commit or bind any other party without such party's prior written consent. Client acknowledges and agrees that certain portions of the Services which enable Payment Transactions may be provided by Official Payments Suppliers, including, but not limited to, processing and formatting of Payment Transactions and the debiting and crediting of the Client Designated Account in accordance with the terms of this Agreement.

14.7 Headings. The headings that appear in this Agreement are inserted for convenience only and do not limit or extend its scope.

14.8 Construction. This Agreement will not be construed more strongly against either party, regardless of who is more responsible for its preparation.

14.9 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York excluding its conflicts of law rules.

14.10 No Third Party Rights. This Agreement is for the sole benefit of the parties hereto and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.11 Force Majeure. Neither Official Payments nor Client will be considered in breach of or in default of any of its obligations under this Agreement, and will in no way be liable to the Client or Official Payments, respectively, hereunder, to the extent its performance hereunder is delayed, impaired or rendered impossible as a result of a cause beyond its control, including, without limitation, acts of God, natural disasters, acts of terror, war, riots, fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walkouts, extraordinary losses of utilities (including, but not limited to, telecommunications services), external computer “hacker” attacks, delays of common carriers or similar causes that are beyond Official Payments’ or Client’s reasonable control.

14.12 Enforcement. Each party acknowledges that the provisions of this Agreement regarding confidentiality and use of the other party’s resources (including, without limitation, the Official Payments System and each party’s intellectual property) are reasonable and necessary to protect the other party’s legitimate business interests. Each party acknowledges that any breach of such provisions will result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach of such provisions, then the injured party will be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action that a party (or any other person involved in the breach) may have against the other party will not constitute a defense or bar to the enforcement of such provisions.

14.13 Insurance. Official Payments shall obtain and maintain commercial general liability insurance (minimum of \$1 million per occurrence; \$2 million aggregate), excess liability insurance (minimum of \$3 million per occurrence aggregate), commercial automobile insurance (minimum of \$1 million combined single limit for owned, hired and non-hired vehicles), professional liability insurance (minimum of \$1 million per claims with \$2 million aggregate) and workers compensation coverage in accordance with statutory levels. Official Payments may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form). Said policies shall be effective until all Services required by the Agreement have been completed. Official Payments shall furnish to Client a certificate of insurance naming: the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents and employees as an additional insured. Failure to object to the contents of the certificate or insurance or the absence of the same shall not be deemed a waiver of any and all rights held by the Client. In addition:

(a) It shall be an affirmative obligation of Official Payments to advise the Client’s Office of Risk Safety at fax number 518-693-4070 (email Marilyn.Rivers@ Saratoga-Springs.org or mail via Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substance change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement;

(b) Official Payments shall be solely responsible for any self-insured retention or deductible losses under each of the required policies;

(c) The Client’s Office of Risk & Safety Management must approve all insurance certificates;

(d) For all insurance policies required under this Agreement shall be issued by insurance companies authorized to do business under the laws of the State of New York and must be rated “A-VII” or better by A.M.Best (Current Rate Guide);

(e) If Official Payments fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon if such material breach remains uncured, as set forth in Section 6.2 herein, then the Client may exercise any rights it has in law or equity, including but not limited to termination.

14.14 Survival. Any provisions of this Agreement that are, by their nature continuing, will survive the expiration or termination of this Agreement, including, without limitation, Sections 1, 4, 8, 11,12,13, and 14.

SCHEDULE B - SERVICE SCHEDULE

The services provided by Official Payments are described in accordance with this Service Schedule and are subject to and governed by the terms and conditions of the Agreement. Attached to this Service Schedule and incorporated by reference into the Agreement is the **Fee Schedule**, which lists the fees to be paid to Official Payments by the Customer and/or Client for the Services.

- Electronic Check Services:** Official Payments accepts electronic payments from personal and business checking and savings accounts. Official Payments is NACHA compliant.
- Credit Card Services:** Official Payments accepts electronic payments from Customers using a major credit card, including VISA[®], MasterCard[®], American Express[®] and Discover[®].
- Debit Card Services:** Official Payments accepts electronic payments from Customers using a debit card, which may include VISA and MasterCard.
- Bill Me Later[®]:** Bill Me Later provides an another alternative way for Customers to pay. Customers choosing the Bill Me Later option are transferred to the Bill Me Later site where they are given an opportunity to be approved by Bill Me Later. Upon approval by Bill Me Later the Customers obligation to the Client is paid by Bill Me Later and the Customer now has an agreement to pay Bill Me Later at a later date. Bill Me Later will invoice the Customer for the amount due.
- Prepaid Cards:** Prepaid cards provide a convenient way for a Customer to convert physical cash to electronic funds; the purchaser then uses the card online to pay an obligation, similar to using a bank debit card. Many brands of prepaid cards are available at retail locations throughout the United States. Many brands permit a card to be loaded with funds and later reloaded up to a specific dollar limit.
- MoneyGram[®]:** Cash payments are accepted at remote walk-up locations through Official Payments' partnership with MoneyGram, a leading global remittance company and expedited cash payment provider. With a presence inside all Walmart and CVS locations in the United States, MoneyGram is a convenient payment channel. MoneyGram has thousands of additional payment centers nationwide.
- Point-of-Sale (POS):** Official Payments offers over-the-counter payment capability through its Virtual Terminal application which can turn any Internet-enabled Client computer into a POS payment processing station. It provides Client staff a streamlined process for making payments on behalf of Customers.

Virtual Terminals link directly to Official Payments' Internet payment gateway via Web Services technology. In this way, the virtual terminals perform all of the functions of traditional POS swipe machines while processing through Internet channels. Client personnel utilizing the Virtual Terminal begin transactions by entering user account and other information on the Virtual Terminal application screen. This page is similar to Official Payments' standard payment processing web pages but is reduced to the minimum requirements for the fastest possible transaction processing. Once account and user information is verified, Client personnel will be prompted to enter payment card information.

If the Virtual Terminal had been equipped with a swipe reader, Client Personnel then swipes the credit card through the wedge and the information that is present on Tracks 1 & 2 of the card's magnetic stripe is retrieved and inserted into the application. Although the data stored on the back of the card may vary slightly by card brand (e.g., VISA, MasterCard, American Express, etc.) the following elements are typically present: card number, expiration date, and cardholder

name. In all cases, the payment webpage is flexible enough to allow for the inclusion of all required data.

In POS transactions, Client personnel act as an agent of Customer in making the payment and not as agent of Official Payments in processing the payment. Client personnel are responsible for providing all consumer disclosures and notices to Customer, including but not limited to the amount of the service fee and the right of the Customer to cancel the transaction before it is finalized.

- IVR (Interactive Voice Response):** Official Payments offers hosted payments by telephone either through its standard IVR entry point (800-2PAYTAX) or a customized IVR solution which requires custom development at a cost to the Client. IVR systems are backed by the same security and reliability built into the Internet model to protect Customers and their sensitive data. IVR-based payments are integrated with the same reports generated for Web-based payments providing a single source for all payment information. All text messages and prompts are user-friendly and designed to collect the necessary information to identify and reconcile the collected payments. The IVR script can be presented in both English and Spanish.
- Mobile Payments:** Official Payments offers a mobile-friendly site to allow Customers to pay via their smartphones, tablet, or other approved mobile communication device.
- Installment Payment Plan:** The installment payment plan Service is a Web-based solution that allows Customers to make periodic installment payments instead of paying in one lump sum, subject to frequency and maximum number of installments as required by law. Official Payments administers the plan through its Website on behalf of the Client according to Client requirements. Client acknowledges that Official Payments is not a bank and does not provide credit, lend money or take deposits. Official Payments provides the Customer, on behalf of Client, an electronic payment processing service to facilitate payments from the Customer to the Client. Successful completion of a payment transaction is (a) conditioned on Customer providing to Official Payments accurate and complete information with regard to the transaction and Customer's method of payment; and (b) subject to financial institution and Client acceptance, approval, authorization and processing of each payment. To establish an account under the Service, a Customer must complete the online enrollment process, pay the application fee, and agree to the terms and conditions of the Online Services Agreement including authorization of the payment transaction debit.

Cancelling or Changing a Payment: A Customer may request to cancel or change a scheduled payment in accordance with the established procedures as provided in the Official Payments Website and must be submitted to Official Payments by 12:00 pm Eastern Time on the day prior to the scheduled payment that the Customer wishes to cancel or change. If the Customer does not provide such notice to Official Payments prior to the scheduled payment date, Official Payments may not be able to cancel or change the processing of the payment as originally scheduled.

Client Modifications: The Client may request a modification to the original schedule of installment payments as part of its billing cycle and process. Official Payments is obligated to disburse to the Client only those payments actually received directly from the Customer in an authorized and approved transaction. Official Payments may request and obtain a credit check on a Customer's credit.

SCHEDULE C - FEE SCHEDULE

Additional Payment Terms

Any fees owed by Client and not debited by Official Payments in accordance with section 4 of the Agreement are due and payable within ten (10) days of the date receipt of invoice. Fees and other charges owed to Official Payments and not paid when due will bear interest of 1.5% per month, but in no event more than the highest rate permitted by law. Official Payments may issue a Change Order from time to time which Change Order may contain changes to the Services, new Services, changes to the fees, and/or other modifications to this Agreement. Such Change Orders and the changes issued in the Change Order shall become effective as provided in section 14.2 of this Agreement.

A. Electronic Check Fees

Service Fees to be charged to Customer by Official Payments:

\$ 2.95 per Payment Transaction

Fees to be charged to Client by Official Payments:

Set-up Fee: \$ 0

Absorbed Fees:

Returned Transaction Fee: Please indicate Agency option choice:

- \$ 5.95 as a Returned Transaction Fee for each Returned Transaction. Official Payments will not represent the returned item to the depository institution identified by Customer in the Payment Transaction.
- \$ _____ as a Returned Transaction Fee for each initial Returned Transaction. Official Payments will make one Representation of the returned item to the depository institution identified by Customer in the Payment Transaction.

B. Credit/Debit Card Fee Schedule

Service Fees to be charged to Customer by Official Payments:

Service Fees to be charged to Customer by Official Payments:

For all Tax Payments when credit cards are used, Customer will pay Official Payments a Service Fee of 2.70% of the payment amount for each Payment Transaction, with a minimum Service Fee of \$3.95.

When a Visa Consumer Debit Card is used for a tax payment qualified under Visa regulations for \$3.95 flat fee treatment, Customer will pay Official Payments a Service Fee of \$3.95 for each Payment Transaction.

When a Visa Debit Card is used for any other tax payment, Customer will pay Official Payments a Service Fee of 2.70% of the payment amount, with a minimum Service Fee of \$3.95.

For Utility Bill Payments when credit cards are used, Customer will pay Official Payments a Service Fee of \$4.45 for each Payment Transaction.

For Utility Bill Payments when debit cards are used, Customer will pay Official Payments a Service Fee of \$3.95 for each Payment Transaction.

Absorbed Fees to be charged to Client by Official Payments:

C. Bill Me Later

D. Prepaid Cards

E. MoneyGram

F. Point-of-Sale (POS)

G. IVR (Interactive Voice Response):

H. Installment Payment Plan:

I. Marketing Material

In order to effectively market the services for the benefit of Official Payments and Client, Official Payments shall provide marketing materials to be used by Client to market and promote the services during the term of Agreement. In consideration of Official Payments providing the marketing materials Client shall select a marketing package and pay the corresponding fee.

Level I: Fee: \$2,500

- FAQs
- Buck Slips/Counter Cards
- Poster/Flyers
- Business Cards
- Access and training on Official Payments Client Connect marketing portal

Level II: Fee: \$5,000

- Customized FAQs
- Customized Buck Slips/Counter Cards
- Customized Poster/Flyers
- Customized Business Cards
- Website Consultation and Recommendations
- Access and training on Official Payments Client Connect marketing portal

Level III: Fee: \$10,000

- *Level II marketing*
- Creative for Client's Website –
- Call to Action; Banner; Copy
- Announcement of Partnership in Official Payments Social Media Channels
 - Facebook
 - Twitter
 - Linked In
- Upcoming Due Date Promotion (Select One)
- Promotion on Official Payments Social Media Channels
- Promotion on Official Payments Blog

ACCEPTED AND AGREED:

Each party acknowledges that it has read and fully understands this Agreement, including the Schedules incorporated therein, and, by having its authorized representative sign below, agrees to its terms. This Agreement may be executed in counterparts, each of which shall be considered an original, but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the Effective Date first referenced above.

OFFICIAL PAYMENTS CORPORATION

CLIENT: CITY OF SARATOGA SPRINGS, NY

By: _____

By: _____

Name:

Name:

Title:

Title:

Address: **3550 Engineering Drive, Suite 400**

Address:

Norcross, Georgia 30092

Email:

Email:

Telephone: **770-325-3100**

Telephone:

Fax: **770-325-3099**

Fax:

