

RESOLUTION NO. 16-1066

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON TO CONTRACT WITH LEXIS NEXIS VITALCHEK NETWORK INC. FOR COURT CUSTOMERS TO MAKE COURT PAYMENTS ON LINE, THEREBY OFFERING CUSTOMERS 24/7 ACCESS TO PAY FINES AND FEES, THEREBY INCREASING THE COURT'S COLLECTION OF COSTS AND DECREASING TRAFFIC AT THE COURT'S FRONT COUNTER.

WHEREAS, the City seeks enter a contract with LexisNexis VitalChek Network Inc. for Court customers to make on line payments, and

WHEREAS, such contract is at no cost to the City, and

WHEREAS, LexisNexis VitalChek Network Inc. is a vendor currently providing credit card processing services for other Washington Courts, and

WHEREAS, the requirements in RCW 39.04.270 and RCW 39.04.280 do not apply,

Therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to sign the contract attached hereto as Exhibit A with LexisNexis VitalChek Network Inc. for Court customers use of on line credit card payments.


PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF JANUARY, 2016.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:


Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

Exhibit A

LexisNexis[®] VitalChek Network Inc.
Payment Solutions Service Agreement

This agreement ("Agreement") is entered into as of _____ (the "Effective Date"), by and between LexisNexis VitalChek Network Inc. ("VitalChek") with its principal place of business located at 6 Cadillac Drive Suite 400, Brentwood, TN 37027, and The City of Black Diamond, WA ("Customer") with its principal place of business located at Black Diamond Municipal Court, 25510 Lawson Street, Black Diamond, WA 98010.

WHEREAS, VitalChek is engaged in the business of providing services which expedites the processing of various types of governmental or utility services and facilitates payment by consumers; and,

WHEREAS, Customer wishes to provide consumers who desire to pay for services rendered by Customer, the option of paying for such services using certain credit or debit cards (as more particularly described hereinafter, the "Service");

NOW THEREFORE, in exchange for the mutual consideration set forth herein, VitalChek and Customer do hereby agree as follows:

1. VitalChek shall, at its expense, provide at mutually agreed upon facilities of Customer the hardware and/or software required for the Service, to the extent described on Schedule 1 attached hereto (the "Equipment").
2. VitalChek shall, at its expense and in its sole discretion, train appropriate personnel designated by Customer in the use and operation of the Equipment associated with the Service, at no additional cost to Customer.
3. VitalChek will make payment to Customer in an amount equal to Customer's charges for all properly authorized requests in connection with services rendered by Customer and which are correctly processed through the Service. Such payments shall be made in a manner acceptable to both Customer and VitalChek.
4. VitalChek will charge the consumer certain service fees for the use of the Service ("Fees"), and will accept payment of such fees through the use of a valid payment method then accepted by VitalChek, which may include, without limitation, Visa, MasterCard, Discover Card or American Express credit card, as well as most major debit cards in VitalChek's reasonable discretion. The current Fees are detailed on Schedule 2 attached hereto.
5. This Agreement shall be effective as of the Effective Date and shall continue in effect for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive one year periods. Either party may terminate this Agreement for any reason by providing written notice to the other party to such effect at least thirty (30) days prior to the effective date of termination. Upon termination of this Agreement, the parties will abide by industry security standards as to the security of cardholder data.
6. Each party warrants that it will abide by: (i) the applicable rules, regulations, operating procedures, guidelines and requirements as may be promulgated or amended from time to time by VitalChek, VitalChek's payment processor(s), VISA USA, Inc., MasterCard International, Inc., Discover, any other applicable card association, and, to the extent such party stores or retains any card information, the Payment Card Industry Data Security Standard, the Visa Cardholder Information Security Program, and the MasterCard Site Data Protection program (collectively, the "Rules"), and (ii) all applicable federal, state, and local laws, ordinances, codes and regulations in the performance of its obligations under this Agreement (collectively, the "Laws"). The Customer shall have no responsibilities under part (i) of this Section unless and until the "applicable rules, regulations, operating procedures, guidelines and requirements" identified in this Section are provided to the Customer and VitalChek explains to the Customer what is needed in order to comply. VitalChek acknowledges that the Customer is a local governmental agency and has no familiarity with the "applicable rules, regulations, operating procedures, guidelines and requirements as may be promulgated or amended from time to time" by credit card companies, and cannot, without assistance from VitalChek, understand which of these many rules of all of

these varied companies apply to the Customer. The indemnification section 9 shall not apply to any cause of action arising from part (i) of this Section.

7. In conformity with industry security requirements, and in order to maintain the highest level of cardholder data security, VitalChek has instituted, among other policies, Paper and Electronic Media Policies, which are designed to meet or exceed industry security standards (the "VitalChek Policies"). An undated copy of the VitalChek Policies has been provided to Customer with this Agreement, and Customer agrees to comply with such policies as amended from time to time as well as with appropriate industry accepted security practices for handling non-public personal information. VitalChek agrees that the Customer is not required to comply with any amended policies adopted by VitalChek from time to time unless VitalChek provides such policies to the Customer. Customer acknowledges and agrees that (i) Cardholder data may only be used for assisting in completing a card transaction or as required by applicable law; (ii) In the event of a breach or intrusion of or otherwise unauthorized access to cardholder data stored within Customer's systems, Customer will immediately notify VitalChek, and provide VitalChek and/or its processor or the relevant card company access to Customer's facilities and all pertinent records to conduct a review of Customer's compliance with the security requirements, as well as fully cooperate with any reviews of facilities and records provided for in this paragraph.
8. Customer will work with VitalChek in order to maintain appropriate business continuity procedures and systems to insure security of cardholder data in the event of a disruption, disaster or failure of any data systems.
9. Customer hereby agrees to protect, indemnify, defend, and hold harmless VitalChek from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) to the extent arising from the negligence of Customer or its employees. VitalChek agrees to protect, indemnify, defend and hold harmless Customer from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) to the extent caused by VitalChek, its employees and subcontractors.
10. A party herein will not be liable to the other party or its customers for any delay or failure in its performance of any of the acts required by this Agreement if and to the extent that such delay or failure arises beyond the reasonable control of such party, including, without limitation, acts of God or public enemies, labor disputes, equipment malfunctions, computer downtime, material or component shortages, supplier failures, embargoes, earthquakes, rationing, acts of local, state or national governments or public agencies, utility or communication failures or delays, fire, flood, epidemics, riots and strikes.
11. It is agreed that under this Agreement VitalChek does not transfer, and Customer does not obtain, any patent rights, copyright interest or other right, claim or interest in the computer programs, systems, forms, formats, schedules, manuals or other proprietary items utilized by the Service or provided by VitalChek.
12. Notices provided in association with this Agreement shall be provided in writing to the address of the parties first set forth above, and in the case of notices to VitalChek, with a copy to: Legal Department, 1000 Alderman Drive, MD-71A, Alpharetta, Georgia 30005.
13. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER VITALCHEK NOR ANY SUPPLIER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ANY TERMINAL, ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH, OR ANY OF THE SERVICES FURNISHED HEREUNDER.
14. VitalChek's or the Customer's aggregate liability for any and all losses or injuries arising out of any act or omission of either party in connection with anything to be done or furnished under this Agreement, regardless of the cause of the loss or injury, and regardless of the nature of the legal or equitable right claimed to have been violated, shall never exceed the Fees collected by VitalChek under this Agreement during the 12-month period preceding the date of such loss or injury.
15. The terms of this Agreement, as well as all exhibits attached hereto, represent the full and complete agreement between the parties. They may not be altered or amended except by written instrument, duly executed by the parties.

16. This Agreement shall be construed and enforced in accordance with the laws of the State where Customer is located. Venue of any litigation brought to enforce this Agreement shall be filed in King County Superior Court, King County, Washington. The substantially prevailing party in any litigation shall be entitled to recover its attorneys' fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, the parties do hereby execute this Agreement, intending to be bound by its terms and conditions.

CUSTOMER: The City of Black Diamond, WA

LEXISNEXIS VITALCHEK NETWORK INC.

Signature: Carol Benson

Signature: _____

By: Carol Benson

By: Jeff Piefke

Title: Mayor

Title: Vice President, General Manager

Date: 1/22/16

Date: _____

Reviewed by
LNRS
Legal
Chris Buyting
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**Schedule 1
Hardware and Software**

1 POS Terminal w/Pin Pad
VPS Product Suite for Remote
Payments (web hosted software)
800# call center access

**Schedule 2
Fees**

Debit and Credit Cards are
\$2.50 or 3% whichever is greater

VITALCHEK NETWORK, INC.

Paper and Electronic Media Policies

1.1 Policy Applicability

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

1.2 Storage

1.2.1 Hardcopy Media

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

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

1.2.2 Electronic Media

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

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