



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

[www.washoecounty.us](http://www.washoecounty.us)

CM/ACM JS  
Finance DN/CH  
DA SH  
Risk Mgt. DE  
HR n/a  
Other n/a

## STAFF REPORT

BOARD MEETING DATE: June 28, 2016

**DATE:** June 8, 2016

**TO:** Board of County Commissioners

**FROM:** Craig Betts, CIO, Technology Services,  
[cbetts@washoecounty.us](mailto:cbetts@washoecounty.us), Phone: 775-328-2355

**THROUGH:** John Slaughter, County Manager  
Washoe County  
[jslaughter@washoecounty.us](mailto:jslaughter@washoecounty.us), Phone: 775-328-2000

**SUBJECT:** Recommendation to approve joining, under NRS 332.195, the Official Payments Services Agreement between the City of Reno and Official Payments Corporation. (All Commission Districts).

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### SUMMARY

As part of the implementation of Accela Automation as the regional business licensing and permitting platform a subset of the regional partner project team was tasked with selecting a single vendor for ePayment processing. The ePayment vendor selection process began in July of 2014. Financial staff from Washoe County, Washoe Health District, City of Reno and City of Sparks determined that only Official Payments Corporation was able to provide the functionality to collect, disburse and report funds in the appropriate way to the various agencies. It was also deemed necessary that each agency enter into its own contract with the ePayment vendor. Contract and pricing discussions began in August of 2015 and the City of Reno approved and entered into an agreement for ePayment services with Official Payments Corporation in May of 2016.

Under NRS 332.195, which allows a governing body to join the contract of a local government, Technology Services requests approval to join the Official Payments Services Agreement between the City of Reno and Official Payments Corporation.

**Washoe County Strategic Objective supported by this item:** Proactive economic development and diversification. Stewardship of our community.

**AGENDA ITEM # 5M2**

## **PREVIOUS ACTION**

- June 17, 2014 Approved the Interlocal Cooperative Agreement Establishing the Regional Business License and Permits Program between the County of Washoe, the City of Reno, the City of Sparks, and the Washoe County Health District, concerning the governance and implementation of a Regional License and Permit Program.
- June 17, 2014 Approved the Washoe County Business License and Permits System Contract between Washoe County and Accela, Inc.
- May 23, 2016 City of Reno entered into their contract with Official Payments Corporation.

## **BACKGROUND**

Washoe County entered into an agreement with Accela, Inc. for the implementation of the Washoe County Business License and Permits System on June 17, 2014. Also on June 17, 2014 the Washoe County Board of County Commissioners approved the Interlocal Cooperative Agreement establishing the Regional Business License and Permits Program among Washoe County, the City of Reno, the City of Sparks and the Washoe County Health District.

The Statement of Work for the implementation of the Washoe County Business License and Permits System states that the regional partners will standardize on the same payment processor. The selection process for the ePayment vendor stated in July of 2014. Initially, vendors with an already established relationship were considered and then the list of Accela preferred vendors was evaluated. Ultimately, financial staff representing Washoe County, Washoe Health District and the Cities of Reno and Sparks decided only Official Payments Corporation was able to meet the Accela system requirements and provide the functionality to collect, disburse and report funds in the appropriate way to the various agencies.

In August of 2015 contract and pricing discussions began for separate entity contracts. In May of 2016 the City of Reno approved and entered into their contract with Official Payments Corporation.

NRS 332.195 provides that a governing body can join a local government's contract, so long as the vendor authorizes the joinder.

## **FISCAL IMPACT**

Washoe County will be absorbing the fees for the services provided in this agreement. Total fees will vary according to the number and volume of transactions. Credit card transaction fees are likely to increase as more customers utilize credit/debit card payment methods. The use of eChecks is also an alternative and less costly than credit/debit card transactions.

**RECOMMENDATION**

It is recommended that the Board of County Commissioners approve joining, under NRS 332.195, the Official Payments Services Agreement between the City of Reno and Official Payments Corporation.

**POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be: "move to approve joining, under NRS 332.195, the Official Payments Services Agreement between the City of Reno and Official Payments Corporation."

**JOINDER AGREEMENT**

**BETWEEN WASHOE COUNTY, NEVADA AND OFFICIAL PAYMENTS**

**CORPORATION PURSUANT TO NRS 332.195**

Official Payments Corporation hereby authorizes Washoe County and its Departments to join and use the existing contract between Official Payments Corporation and the City of Reno, Nevada for payment processing services. As part of this authorization, Official Payments Corporation agrees to comply with applicable laws of the State of Nevada and the United States of America for the duration of this authorized Joinder.

Official Payments Corporation  
705 Westech Drive  
Norcross, Georgia 30092

By \_\_\_\_\_

Eric Labiak, SVP Sales

Date \_\_\_\_\_

Washoe County  
Purchasing Division

By \_\_\_\_\_

Michael L. Sullens, Purchasing and Contracts Manager

Date \_\_\_\_\_



**OFFICIAL PAYMENTS SERVICES AGREEMENT**

THIS OFFICIAL PAYMENTS SERVICES AGREEMENT (this "Agreement") is entered into by Official Payments Corporation, a Delaware corporation ("Official Payments") and City of Reno, NV ("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 attached hereto 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. This Agreement is effective as of the date signed by Official Payments in the signature block below ("Effective Date").

Each party acknowledges that it has read and fully understands this Agreement 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.

**OFFICIAL PAYMENTS CORPORATION**

By: \_\_\_\_\_

Name: **David Baxter**

Title: **Vice President**

Date: **3/22/16**

Address: **705 Westech Drive  
Norcross, Georgia 30092**

Email: **mbox-opay-clientservices@aciworldwide.com**

Telephone: **404-923-3500**

Fax: **404-923-6727**

**CLIENT: City of Reno**

By: \_\_\_\_\_

Name: **Andrew Clinger**

Title: **City Manager**

Date: **3/23/16**

Address: **PO Box 1900**

**Reno, NV 89505**

Email: **oisenj@reno.gov (JIM OISEN)**

Telephone: **775-326-6655**

Fax: **775-334-2409**



## SCHEDULE A — TERMS AND CONDITIONS

These Terms and Conditions, together with the Signature Page, 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.

*"Commencement Date"* means the first day of the month immediately following the month in which the date of first Production Use of the Services has occurred.

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

*"Delivered" or "Delivery"* means the date upon which Services are ready for testing by Customer.

*"NACHA"* means the National Automated Clearing House Association.

*"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.

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

*"Production Use"* means any use of the Services resulting in actual data being processed in a live production environment.

*"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.

**3. CLIENT OBLIGATIONS.** With respect to each Service:

3.1 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.

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

3.3 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.

3.4 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.

3.5 Subject to Section 8, Client shall undertake reasonable efforts to market and promote the Services. Such marketing and promotion of the Services by Client 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 it utilizes 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.

3.6 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.

3.7 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.

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

3.9 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 the Fee 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. In the event that Official Payments incurs an increase in transaction processing fees, taxes or other increase in fees required by applicable law, an association regulation or other third party during the Term of this Agreement, Official Payments may pass through such charges with thirty (30) days prior notice. 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.

**4.3 Review of Reports, Charges and Invoices.** Client agrees that it shall review all reports, charges and invoices prepared by Official Payments and made available to Client. Client expressly agrees that Client's failure to reject any such report, charge or invoice within sixty (60) days from the date the report, charge, or invoice was made available to Client, shall constitute Client's acceptance of such report, charge, or invoice. In the event Client believes that any report, charge or invoice is in error, or Official Payments has failed in any way to provide the Services, Client agrees to provide Official Payments with written notice, specifically detailing any alleged failure, within 60 days of the date of the report, charge or invoice being made available to Client.

**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) more than thirty (30) days 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 and thereafter will continue for a period of three (3) years (the "Initial Term") commencing upon the Commencement Date. Thereafter, this Agreement will automatically renew for successive one year periods (each a "Renewal Term"), unless either party provides written notification to the other party of its decision not to renew this Agreement no later than sixty (60) days prior to the end of the Initial Term or the then current Renewal Term (the Initial Term, collectively with any Renewal Term(s), constitutes the "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, in its sole discretion, 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.

**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, or (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. 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. Official Payments' license will terminate upon the termination or expiration of this Agreement.

## **9. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.**

9.1 Each party will comply with all applicable federal and state laws, the rules and regulations of federal, state and local governmental authorities and governing industry associations, including without limitation, Federal Reserve Regulation E (12 C.F.R. Part 205), the rules of NACHA, the credit card association rules and regulations, Payment Card Industry Standards ("PCI"), and all applicable privacy laws and regulations, all of which are incorporated herein by reference and made a part of this Agreement as if set forth in full herein. 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.

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

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

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

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

## 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. Subject only to this Agreement and the limitation of Nevada Revised Statute 41.035(1), 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