

PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is by and between

Participant Name: **MILWAUKEE COUNTY OFFICE OF THE SHERIFF**
Address: **821 WEST STATE STREET**
City, State, Zip: **MILWAUKEE, WISCONSIN 53233**
Main Voice Phone: **(414) 278-4766**

referred to herein as “Participant” and Government Payment Service, Inc. (d/b/a GovPayNet®), a Delaware corporation having a principal place of business at 7102 Lakeview Parkway West Drive, Indianapolis, Indiana 46268 (“GPS”).

WHEREAS, GPS has assembled and supports the “GovPayNet Payment Network,” consisting of governmental entities that have each contracted with GPS to accept payments on their behalf made by cardholders through GPS; and

WHEREAS, GPS ~~accepts~~ credit cards and debit cards carrying the American Express®, Discover®, MasterCard® and Visa® brands from cardholders and, in accordance with the rules and requirements of such credit and debit card companies, executes payments made by these cardholders to participants in the GovPayNet Payment Network; and

WHEREAS, in order to improve Participant services and enhance administration, Participant desires to enter into this Agreement for participation in the GovPayNet Payment Network;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Participant and GPS agree as follows:

1. Recitals.

The above recitals are by this reference incorporated into and made a part of this Agreement.

2. Term and Termination.

- 2.1 Contract Term. The term of the contract is one (1) year effective upon the date it is fully executed and shall automatically renew for four (4) successive one (1) year terms unless terminated by either party upon written notice given to the other not less than ninety (90) days prior to the end of the then current term.
- 2.2 Termination by GPS. GPS may, at its option, terminate this contract upon the failure of the Participant to pay any amount which may become due hereunder for a period of forty-five (45) days following submission of appropriate billing and supporting documentation. Upon said termination, GPS shall be paid the compensation due for all services rendered through the date of termination including any retainage.
- 2.3 Terminations by Participant for Violations by GPS. If GPS fails to fulfill its obligations under this contract in a timely or proper manner, or violates any of its provisions, Participant shall thereupon have the right to terminate it by giving thirty (30) days’ written notice of termination of contract, specifying the alleged violations and effective date of termination. It shall not be terminated if, upon receipt of the notice, GPS promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of the termination, the Participant will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by GPS for use in completing the contract.
- 2.4 Unrestricted Right of Termination by County. County further reserves the right to terminate this Agreement at any time for any reason by providing GPS thirty (30) days’ written notice by Certified Mail of such termination. In the event of said termination, Consultant shall reduce its activities

hereunder as mutually agreed to, upon receipt of said notice. Upon said termination, GPS shall be paid for all services rendered through the date of termination.

3. GPS Obligations.

GPS will enable cardholders to pay amounts due to Participant by doing the following:

- 3.1 GPS shall obtain cardholder authorization to process a charge to the cardholder's credit card account or debit such cardholder's debit card account for purposes of funding payment(s) by such cardholder to Participant. Such charges or debits shall be subject to acceptance by the card issuer, card association rules, and any applicable laws or regulations.
- 3.2 GPS shall act on Participant's behalf in accepting payments from cardholders made by credit cards and debit cards for the purposes and at the service fees listed on each attachment designated in Section 11.9 of this Agreement. Service fees are non-refundable.
- 3.3 GPS shall transmit funds to Participant to apply to cardholder obligations as Participant directs based on unique payment codes GPS establishes on its system for the routing of cardholder funds to Participant, such codes to be made available to cardholders by Participant or accessed by cardholders through the GPS web site.
- 3.4 Participant shall have no liability for reversals (i.e., chargebacks). GPS shall be responsible for handling all chargebacks, re-presentments, customer service to cardholders, claims and any transaction disputes associated with cardholders' use of cards to make payments to Participant through GPS. For purposes of closing GPS books and records, all payments will be considered final 12 months after being authorized by the card-issuing bank.
- 3.5 GPS shall not charge Participant any fees to participate in the GovPayNet Payment Network. GPS reserves the right to charge Participant for other services or equipment, such as custom software development, peripheral devices, and other services and support as the parties may agree upon from time to time.
- 3.6 GPS shall provide GovPayNet Payment Network administrative support to cardholders and to Participant through a toll-free telephone help line and the Internet.
- 3.7 GPS shall provide Participant with training, procedures, toll-free telephone numbers, web addresses, and promotional and instructional materials all at GPS' sole expense.
- 3.8 GPS shall be responsible for all federal, state, and local taxes legally imposed upon its services.

4. Participant Obligations.

Participant's continued participation in the GovPayNet Payment Network is conditioned upon the following:

- 4.1 Participant shall (i) keep available for reference any user manuals and instructional materials GPS provides to Participant, (ii) display logos, signage, literature, and other promotional and instructional materials that GPS provides, and (iii) cooperate with all reasonable GPS requests to encourage greater use by cardholders of the GovPayNet Payment Network.
- 4.2 Participant shall provide telecommunication capabilities, such as telephone, facsimile, and Internet connections to enable cardholders to access GPS from Participant locations and enable GPS to communicate with Participant.
- 4.3 Participant shall be responsible for establishing and maintaining secure access at its locations to the GPS administrative system, including user identification, passwords and precautions for accessing all confidential information. GPS shall be entitled to rely on any communications or instructions

initiated with Participant's user identification, passwords or other security and identity tokens or devices.

- 4.4 Participant shall designate a primary contact and a secondary contact for GPS to communicate with on operational, technical, and administrative issues.
- 4.5 Participant shall provide accurate bank routing and account numbers to GPS if Participant requests electronic deposit of funds from GPS.
- 4.6 Participant shall cooperate with GPS in the event of an overpayment to refund to GPS funds that GPS can demonstrate exceed cardholder liabilities to Participant.
- 4.7 Participant shall provide GPS with prompt written notice of any change in the information Participant provides to GPS necessary for Participant's participation in the GovPayNet Payment Network, including but not limited to any change in its bank routing and account numbers.
- 4.8 In the event Participant receives a payment from GPS that appears to have been obtained through fraud, Participant shall cooperate in any resulting investigation.
- 4.9 Participant shall follow the GovPayNet Payment Network participation procedures that GPS provides to Participant, as such procedures may be updated from time to time. Participant must follow GPS instructions and procedures regarding display of card association logos.
- 4.10 Participant shall not enter into any other agreement or make any other arrangement for services similar to those available through the GovPayNet Payment Network for the duration of this Agreement.

5. GPS Representations and Warranties.

- 5.1 This Agreement is valid, binding, and enforceable against GPS in accordance with its terms. GPS has full power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- 5.2 GPS employees, agents and subcontractors have and shall possess the education, knowledge and experience necessary to qualify them individually for the particular duties they perform.
- 5.3 During the performance of this Agreement, GPS shall provide services in a non-discriminatory manner and shall not deny services or employment on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status or any other legally protected class.
- 5.4 GPS will comply with the rules and procedures applicable to the credit and debit card brands it accepts and with all applicable laws and regulations.

6. Participant Representations and Warranties.

- 6.1 Participant has taken all administrative, legal, and regulatory measures necessary for it to enter into this Agreement.
- 6.2 If Participant desires to extend services under this Agreement to another public agency, as defined in any applicable law, Participant shall first notify GPS in writing of the planned service extension and shall take all actions necessary under such law to make this Agreement binding upon any such public agency.
- 6.3 This Agreement is valid, binding, and enforceable against Participant in accordance with its terms.

7. Notices.

Notices to Participant provided for in this Agreement shall be sufficient if sent by mail, postage prepaid, sent to the below address. All notices permitted or required by this Agreement to GPS shall be in writing and shall be delivered in person, sent by first class mail or sent by facsimile (with a hard copy following) addressed to:

Participant:

David A. Clarke, Jr., Sheriff
Milwaukee County Office of the Sheriff
821 West State Street, Room 107
Milwaukee, Wisconsin 53233-1488

GPS:

Client Services Department
Government Payment Service, Inc.
7102 Lakeview Parkway West Drive
Indianapolis, Indiana 46268
Phone: (866) 564-0169
Facsimile: (888) 665-4755
Email: accountservices@govpaynet.com

or to such other person or place that the parties may from time to time designate. Notices and consents under this section shall be deemed to be received, if sent by mail or courier, five days following their deposit in the U.S. Mail or with such courier and, if sent by facsimile, when such facsimile is transmitted to the number provided in this section and sender receives a confirmation of such facsimile.

8. Disclaimers and Limitation of Liability.

- 8.1 The sole purpose of this Agreement is to enable Participant to participate in the GovPayNet Payment Network. Participant understands and agrees that GPS takes no responsibility that amounts GPS transmits to Participant will fully satisfy any cardholder's obligation to Participant, and that GPS does not warrant any particular outcome or result other than the delivery of such cardholder's payment to Participant.
- 8.2 GPS shall provide all services hereunder to Participant as an independent contractor. Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of master and servant or employer and employee between the parties or to provide either party with the right, power, or authority, expressed or implied, to create any such duty or obligation on behalf of the other party.
- 8.3 GPS shall indemnify and save harmless Participant, its agents, officers, and employees from responsibility or liability for damages, costs, expenses, (including reasonable attorney fees and defense costs) resulting from the death of or injuries to any person or damages to or destruction of any tangible property directly caused by the negligence or willful misconduct of GPS, its employees, or agents in the performance of services hereunder. **This indemnification shall not extend to claims, demands, damages, costs, expenses (including attorney's fees and defense costs), judgments or liabilities resulting from the sole or contributory negligence or willful misconduct of Participant.**
- 8.4 **EXCEPT AS STATED IN SECTION 8.3, GPS LIABILITY TO PARTICIPANT IS LIMITED TO MAKING PAYMENTS TO PARTICIPANT IN THE AMOUNTS THAT GPS HAS INFORMED PARTICIPANT HAVE BEEN AUTHORIZED. THE GOVPAYNET PAYMENT NETWORK, ANY INCIDENTAL GOODS AND RELATED SERVICES ARE PROVIDED ON AN AS-IS, AS-AVAILABLE BASIS. GPS MAKES NO WARRANTIES THAT GPS SERVICES WILL BE ERROR FREE OR UNINTERRUPTED AND DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTICIPANT NOR GPS SHALL BE LIABLE FOR LOST REVENUES, PROFITS, INTEREST, GOOD WILL, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE OTHER PARTY IN CONNECTION WITH OR ARISING FROM SERVICES PERFORMED UNDER THIS AGREEMENT. PARTICIPANT BEARS ALL RESPONSIBILITY FOR ADMINISTRATIVE AND OFFICIAL ACTIONS TAKEN BY PARTICIPANT.**

9. Publicity.

GPS shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of Participant.

10. Intellectual Property.

Participant acknowledges and shall not challenge GPS' ownership of GPS copyrights, trademarks, service marks, trade names, patents, patent applications, or other intellectual property ("GPS Intellectual Property"). Participant agrees that use of GPS Intellectual Property shall be in accordance with GPS instructions and subject to the control, direction and approval of GPS, any rights arising out of such use shall inure solely to the benefit of GPS, and that Participant shall have no ownership or other interest in GPS Intellectual Property.

11. Miscellaneous Terms and Conditions.

- 11.1 **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 11.2 **Assignment.** This Agreement may not be assigned, in whole or in part, by either party hereto without prior written consent of the other party, which consent shall not be unreasonably withheld.
- 11.3 **Force Majeure.** Either party is excused from performance and shall not be liable for any delay in performance or non-performance, in whole or in part, caused by the occurrence of any contingency beyond the control of the parties including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, terrorism, loss of power or telecommunications, flood, storm, Acts of God and similar occurrences.
- 11.4 **Governing Law.** Matters of contractual interpretation shall be governed by the internal laws of the State of Wisconsin. Any dispute hereunder shall be heard in a state or federal court of competent jurisdiction in Milwaukee County.
- 11.5 **No Waiver.** A waiver of any portion of this Agreement shall not be deemed a waiver or renunciation of other portions.
- 11.6 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.
- 11.7 **Severability.** In the event that any provision of this Agreement is adjudicated by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, all other provisions of this Agreement shall nevertheless remain in full force and effect.
- 11.8 **Counterparts.** This Agreement may be executed simultaneously in multiple counterparts, each of which is deemed an original, but all of which taken together constitute one and the same instrument.

11.9 Complete Agreement. This Agreement, together with its attachments, is the entire agreement between and expresses the complete understanding of the parties, superseding all prior agreements, with regard to the subject matter herein and may not be altered, amended or modified except in a writing incorporated hereto, and signed by the parties, provided, however, that GPS may revise the terms of this Agreement if required to comply with card association rules, law or regulation and GPS provides notice to Participant of such change. The following are attachments to this Agreement:

Attachment A Attachment B Attachment C Attachment D

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives or agents as of the date written below.

MILWAUKEE COUNTY OFFICE OF THE SHERIFF

GOVERNMENT PAYMENT SERVICE, INC.

Kevin A. Clarke Jr.

Mark E. MacKenzie

Sheriff's Office

Signature

Mark E. MacKenzie

Chief Executive Officer

Approved as to appropriate use of form and independent contractor status:

Date: 3/16/13

[Signature]

Corporate Counsel

Date: 4/2/2013

Approved with regards to Chapter 42 County Counsel General Ordinances:

[Signature]

CDBG Director

Date: 3/26/2013

Reviewed by Risk Manager

[Signature]

Risk Manager

Date: 4/2/13



ATTACHMENT "A" – SERVICES

GPS Agreement No.: WI-MILWAUKEECOOFFICEOFTHESHERIFF, 2013MAR15

Participant has elected the following options in accordance with the terms of services in the Agreement:

GovPayNet Basic

GovPayNet GovSwipe®

GovPayNet Connect

GovPayNet BailCall®

General Service Terms

Participant is responsible for advising GPS as to the types of payments GPS is authorized to accept on Participant's behalf (per the service fees stated in any Attachment to this Agreement). Participant may at any time (i) authorize GPS to accept additional types of payments within the scope of the applicable service fees; (ii) cancel the processing through GPS of any types of payments; (iii) modify the options selected above, (iv) modify the account(s) to which GPS shall direct payments to Participant; or (v) add other agencies, departments or sub-agencies ("Affiliated Agencies") to, or delete Affiliated Agencies from Participant's use of any GPS services and equipment by specifying all such changes to GPS in writing (via letter, email, or facsimile). Any such changes will be subject to GPS acceptance and confirmation in writing and will require reasonable lead time to implement.

Participant warrants that all service and equipment selections Participant makes and the extension or termination of services with respect to Affiliated Agencies shall be in compliance with the laws and regulations applicable to Participant's organization.

GovPayNet Basic

GovPayNet Basic is designed to be available 24 hours a day, 7 days a week, 365 days a year. GPS will provide Participant with access, at Participant's option, to "ProviewEXP," a secure website for transaction administration and review, report generation, and analysis. For Bail Transactions, GPS will make available a bail summary report to Participant each day for all transactions completed the previous day. For Non-Bail Transactions, GPS will make available a reconciliation report to Participant each day for all transactions completed the previous day. This report will also include any open transactions not previously approved.

Transactions may be completed by:

- Internet, using the www.govpaynow.com web site, or
- Telephone, accessing a Customer Service Representative ("CSR"), including bilingual (English and Spanish) CSRs, supported by a language line for additional translation services.

For Bail Transactions, either method of transaction completion shall be available to Participant. For Non-Bail Transactions, if Participant has elected not to use CSR services, the service fees GPS provides to Participant reflecting CSR support shall not apply.

GPS will forward electronically to Participant's designated account(s) the funds for all approved transactions within two business days after transaction authorization, or will remit funds by check if Participant so requests in writing.

GovPayNet Connect

GovPayNet Connect includes the same services as GovPayNet Basic, but provided in an integrated mode. For Participants that select GovPayNet Connect, GPS establishes an electronic data interface with Participant's internal accounting, cashiering, and other management systems to exchange encrypted data. The interface is based on specifications Participant and GPS mutually develop. A Participant using GovPayNet Connect may receive information from cardholders that is subject to Payment Card Industry Data Security Standards ("PCI DSS"). GPS ACCEPTS NO RESPONSIBILITY FOR SECURITY OR PCI DSS COMPLIANCE WITH RESPECT TO CARDHOLDER INFORMATION THAT RESIDES ON SYSTEMS OTHER THAN THOSE CONTROLLED BY GPS.

GovPayNet GovSwipe

GovSwipe may be used for all payment types. GPS will provide Participant with card readers and peripheral equipment (cables, etc.), which are and will remain the property of GPS, at GPS's expense. Participant understands that GPS card readers are embedded with proprietary technology ("Firmware"). GPS grants Participant a license to use such card readers and Firmware for the duration of the Agreement.

Participant's use of card readers and Firmware shall be limited to the purposes of this Agreement. Acceptance and use of card readers does not convey to Participant any title, patent, copyright or other proprietary right in or to the Firmware. At all times, GPS or its suppliers retain all rights to the Firmware, including but not limited to updates, enhancements, and additions. Participant shall not attempt to access or disclose the Firmware to any party, or transfer, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on the Firmware.

Participant will use reasonable care to protect card readers from loss, theft, damage or any legal encumbrance. GPS shall provide card readers and installation instructions at service implementation and when providing any replacement or additional card readers, by shipment to a location Participant designates. Or, at GPS's option, Participant will allow GPS and its designated representatives reasonable access to Participant's premises for training purposes and device installation, repair, removal, modification, upgrades, and relocation. GPS is solely responsible for the maintenance of any card readers and shall supply Participant with replacement card readers on Participant's request and as GPS deems appropriate. Upon termination of this Agreement, GPS may require Participant to return card readers to GPS, at GPS's expense and by such method as GPS specifies.

Participant may increase or decrease the number of card readers deployed upon request in writing to and accepted in writing by GPS. GPS shall communicate any shipping and handling procedures and costs to Participant prior to taking any requested action.

Card readers are designed to communicate cardholder data to GPS through Participant's computing equipment to which they are cable-attached via USB port. Internet access to GPS is required for

transaction processing and is enabled solely by Participant's computers and networks. Participant is responsible to use standard safeguards and practices to keep its computers and networks secure and free from malicious software or hardware. GPS shall not be held liable to Participant for exposure of Participant's computers or networks to malicious software or hardware of any kind.

GovPayNet BailCall

BailCall may be used for cash bail and related transactions only. GPS will provide Participant with wall-mounted "courtesy telephones" at GPS's expense. Any telephones and peripheral equipment GPS provides are and will remain the property of GPS. All telephones will ring directly into the GPS call center when the handset is lifted.

Participant shall be solely responsible for the installation or removal of telephones in Participant's premises, consistent with GPS instructions and using qualified technicians, and at Participant's expense. Participant will use reasonable care to protect telephones from loss, theft, damage or any legal encumbrance.

GPS shall provide telephones and installation instructions at service implementation and when providing any replacement or additional telephones, by shipment, at GPS's expense, to a location Participant designates. If Participant elects to terminate *BailCall* or upon termination of the Agreement, GPS will require Participant to return telephones to GPS, at GPS's expense and by such method as GPS specifies.

Participant may increase or decrease the number of telephones deployed upon request in writing to and accepted in writing by GPS. GPS shall communicate any shipping and handling procedures and costs to Participant prior to taking any requested action.



ATTACHMENT "B" – SERVICE FEE SCHEDULES

GPS Agreement No.: WI-MILWAUKEECO OFFICE OF THE SHERIFF, 2013MAR15

Service Fee Schedule for Bail Payments	
Service Fee for Payments via Web/Gov\$wipe®	Service Fee for Payments via Call Center/Live Agent
6.0%	6.0%

Service Fee Schedule for Bail-Related Payments	
Service Fee for Payments via Web/Gov\$wipe®	Service Fee for Payments via Call Center/Live Agent
3.5% <i>Minimum Service Fee: \$3.50</i>	5.0% <i>Minimum Service Fee: \$5.00</i>

All Service Fees Are Non-Refundable

Example: *Bail payment made via the Internet*

<i>Web Payment Transaction Amount</i>	= \$300.00
<i>GovPayNet Service Fee = (300 x 0.06)</i>	= <u>\$ 18.00</u>
<i>Total Payment</i>	= \$318.00



ATTACHMENT "C" – SERVICE FEE SCHEDULES

GPS Agreement No.: WI-MILWAUKEECO OFFICE OF THE SHERIFF, 2013MAR15

Non-Criminal Justice Payments			
Payments Made via Internet (Web/Gov\$wipe®)		Telephone-Assisted Payments (Call Center/Live Agent)	
Transaction Range	Fee Amount	Transaction Range	Fee Amount
\$0.01 > \$50.00	\$1.50	\$0.01 > \$50.00	\$5.50
\$50.01 > \$75.00	\$1.75	\$50.01 > \$75.00	\$5.75
\$75.01 > \$100.00	\$3.00	\$75.01 > \$100.00	\$7.00
\$100.01 > \$150.00	\$4.00	\$100.01 > \$150.00	\$8.00
\$150.01 > \$200.00	\$5.00	\$150.01 > \$200.00	\$9.00
<i>For each additional increment of \$50.00, or portion thereof, add \$1.40.</i>		<i>For each additional increment of \$50.00, or portion thereof, add \$1.40.</i>	

All Service Fees are Non-Refundable

