



**GOVERNMENT CONTRACT AND PURCHASING RIDER
FOR CONTRACTS WITH THE CITY OF NORTH RICHLAND HILLS, TEXAS**

The Contractor identified below (collectively "Contractor"), agrees that the terms and conditions herein shall govern all agreements with the City of North Richland Hills ("Merchant" or "City"), unless otherwise agreed to by a **specifically executed provision** within the contract or purchase order, provided same is permissible by law. The terms are conditions herein are **BINDING** and **SUPERSEDE** any and all other terms and conditions whether oral or written in any separate agreement or found on Contractor's website or other electronic platform.

APPLICATION. This **GOVERNMENT CONTRACT AND PURCHASING RIDER FOR CONTRACTS WITH THE CITY OF NORTH RICHLAND HILLS, TEXAS** ("Government Rider") applies to, is considered a part of, is incorporated into, and takes precedence over any conflicting provision in, or attached to a Contract or Purchase Order, Authorized User Form, Order Form, Service Agreement, Terms and Conditions, Program Guide, Quote, Invoice, or other applicable agreement of the Contractor (collectively the "Agreement"), to which this Government Rider is attached and described as follows:

CONTRACTOR: Gravity Payments, Inc.

TITLE OF AGREEMENT WITH ADDITIONAL TERMS: (1) Gravity Payments Authorized User Form; (2) Gravity Payments Services Agreement; (3) Applicable provisions of Gravity Payments Program Guide

DESCRIPTION OF GOODS OR SERVICES: ("Goods or Services"): Merchant account services for processing credit and debit card payments and ACH transactions.

Notwithstanding any language to the contrary in the attached Agreement between Contractor and Merchant, individually referred to as a "party" and collectively referred to as the "parties," the parties stipulate by evidence of execution of this Government Rider below by a representative of each party duly authorized to bind the parties hereto, that the parties hereby agree that the provisions in this Government Rider below shall be applicable to and shall modify and supersede the Agreement as set forth below:

SECTION 1. INDIVIDUAL GUARANTY.

The provision regarding individual guaranty set forth on the 4th page of the Authorized User Form is hereby deleted in its entirety and shall have no effect on the Agreement.

SECTION 2. INDEMNIFICATION; LIABILITY; NO FUTURE DEBT.

2.1 Multiyear Contracts. If the NRH City Council does not appropriate funds sufficient to make any payment for a fiscal year after the City's fiscal year in which the Agreement becomes effective, and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Agreement shall automatically terminate at the end of the fiscal year for which funds were appropriated, in accordance with Section 5, Article XI of the Texas Constitution. The City shall have the right to terminate the Agreement at the end of any City fiscal year, without any penalty to the City, if the City Council does not appropriate sufficient funds to continue the Agreement to the next fiscal year. The City shall provide Contractor with as much advance written notice of such termination as is reasonably possible, but not less than thirty (30) days.

2.2 No Future Debt. In compliance with Section 5, Article XI of the Texas Constitution, all payment obligations of the City hereunder are subject to the availability of funds. If such funds are not appropriated or become unavailable during the Term of the Agreement, or in any renewal year of the Agreement, the City shall have the right to terminate the Agreement, except for those portions of funds which have been appropriated prior to termination. To the extent the Agreement requires the City to agree to the creation of future debt for which funds are not appropriated, any such requirement shall be null and void, is hereby deleted from the Agreement and shall have no force or effect.

2.3 INDEMNIFICATION AND LIABILITY. CONTRACTOR SHALL BE LIABLE FOR, AND SHALL INDEMNIFY AND HOLD THE CITY ITS OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, AND REPRESENTATIVES (collectively "CITY INDEMNITEES") HARMLESS FROM ANY INJURY, LOSS OR DAMAGE DUE TO, OR ARISING OUT OF, THE NEGLIGENT ACTS OR OMISSIONS OR INTENTIONAL MISCONDUCT OR MALFEASANCE OF CONTRACTOR. TO THE EXTENT THE AGREEMENT REQUIRES THE CITY TO INDEMNIFY, DEFEND AND/OR HOLD CONTRACTOR OR ANY OF ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, VOLUNTEERS, OR REPRESENTATIVES (collectively the "CONTRACTOR INDEMNITEES") HARMLESS, THE CITY SHALL NOT BE REQUIRED TO DEFEND ANY CONTRACTOR INDEMNITEE UNDER THE AGREEMENT AND THE CITY SHALL ONLY INDEMNIFY OR HOLD ANY INDEMNITEE HARMLESS TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND ONLY TO THE EXTENT SUCH INJURY, LOSS, OR DAMAGE IS DUE TO THE NEGLIGENT ACTS OR OMISSIONS OR INTENTIONAL MISCONDUCT OR MALFEASANCE OF THE CITY. THE CITY SHALL NOT BE UNDER ANY OBLIGATION TO CREATE ANY SINKING FUND TO SATISFY ANY OBLIGATION TO INDEMNIFY UNDER THE AGREEMENT. NOTWITHSTANDING ANY OF THE FOREGOING, IN NO EVENT SHALL THE CITY'S LIABILITY EXCEED THE TOTAL AMOUNT OF FEES PAID BY THE CITY UNDER THE AGREEMENT FOR THE PREVIOUS TWELVE MONTH PERIOD. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER THE AGREEMENT. THIS PROVISION SHALL SUPERSEDE ANY OTHER PROVISION OF CONTRACTOR IN ANY SEPARATE AGREEMENT, TERMS AND CONDITIONS, QUOTE OR INVOICE.

SECTION 3. TERM AND TERMINATION. The Term of this Agreement shall be for one (1) year with two one-year options to renew upon mutual agreement of the parties.

SECTION 4. CONFIDENTIALITY. The City is a Government entity under the laws of the State of Texas and all documents or information held or maintained by the City are subject to disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (the "Act"). To the

extent any provision in the Agreement attempts to prevent the disclosure of information that is subject to public disclosure under federal or Texas law, including any provision that prohibits disclosure of the terms and conditions of this Agreement, such provision is invalid. Any such requirement in the Agreement shall be null and void, is hereby deleted from the Agreement and shall have no force or effect.

SECTION 5. GOVERNING LAW AND VENUE. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed in accordance with the laws of the United States and the state of Texas, exclusive of conflicts of laws provisions. Venue for any suit brought under this Agreement shall be in a court of competent jurisdiction in Tarrant County, Texas. To the extent this Agreement is required to be governed by any state law other than Texas or venue in any jurisdiction other than Tarrant County, any such requirement in the Agreement shall be null and void, is hereby deleted from the Agreement and shall have no force or effect.

SECTION 6. ATTORNEYS' FEES; PENALTIES; LIQUIDATED DAMAGES: The City shall only be liable for attorneys' fees for breach of this Agreement to the extent such attorneys' fees are reasonable and necessary and equitable and just as authorized by Section 271.153 of the Texas Local Government Code. To the extent the attached Agreement requires the City to pay attorneys' fees for any action contemplated or taken, or to incur penalties or liquidated damages in any amount not authorized by Section 271.153, any such requirement shall be null and void, is hereby deleted from the Agreement and shall have no force or effect.

SECTION 7. LIMITATION ON CLAIMS. Any claim for breach of this Agreement shall be brought within four (4) years in accordance with Texas Civil Practices and Remedies Code Sec. 16.004 and Texas Business and Commerce Code Sec. 2.725. To the extent the Agreement requires a shorter period for limitation on claims, any such requirement shall be null and void, is hereby deleted from the Agreement and shall have no force or effect.

SECTION 8. FORCE MAJEURE. Either party may terminate this Agreement and shall not be liable for any alleged damages or loss due to failure to perform its obligations under this Agreement if the performance is delayed or canceled by reason of a Force Majeure event, including but not limited to, war; civil commotion; acts of God; inclement weather; Government restrictions, regulations, or interferences; fires; labor strikes; material shortages; lockouts, national disasters; epidemics; pandemics; riots; transportation restrictions; or any other circumstances which are reasonably beyond the control of the party.

SECTION 9. RIDER CONTROLLING: If any provisions of the attached Agreement, conflict with the terms herein of this Government Rider, are prohibited by applicable law, conflict with any applicable rule, regulation or ordinance of the City, the terms in this Government Rider shall control.

By signature below of an authorized representative, the parties hereby accept and agree to the terms and conditions set forth in this Government Rider.

CITY OF NORTH RICHLAND HILLS:

By: _____
Mark Hindman
City Manager

Date: _____

GRAVITY PAYMENTS, INC.

By: _____
Name Jennifer Lloyd
Title Acct coordinator
Date: 2/17/23

ATTEST:

By: _____
Alicia Richardson
City Secretary/Chief Governance Officer

APPROVED AS TO FORM AND LEGALITY:

By: _____
Maleshia B. McGinnis
City Attorney