

WINNEBAGO COUNTY
PURCHASE OF SERVICES AGREEMENT

RE: **MERCHANT SERVICES**

THIS AGREEMENT made and entered into this 18TH day of *March 2020*, by and between Winnebago County, hereinafter referred to as "COUNTY" (whether a department, board, or agency thereof), and **Gila LLC dba Municipal Services Bureau**, hereinafter referred to as "PROVIDER."

WITNESSETH:

WHEREAS the COUNTY, whose address is 415 Jackson Street, Oshkosh, WI 54901, desires to purchase services from the PROVIDER for the purpose of ***Credit Card, Debit Card and E-Check Processing Services***; and

WHEREAS the PROVIDER whose address is **8325 Tuscan Way Bldg. 4, Austin, TX 78754**, is able and willing to provide such services;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, the COUNTY and the PROVIDER do agree as follows:

1. **TERM**: The term of this Agreement shall commence as of the **1st day of April 2020**, and shall terminate as of the **31st day of March 2022**, unless sooner agreed upon by the parties. In any event, the PROVIDER shall complete its obligations under this Agreement not later than the 15th day of April 2022, and upon its failure to do so, the COUNTY may invoke the penalties set forth in one of the following: the bid specifications, the RFP, or Schedule A. The COUNTY shall not be liable for any services performed by PROVIDER other than during the term of this Agreement.
2. **SERVICE TO BE PROVIDED**: PROVIDER agrees to provide the services detailed in the request for proposals (RFP# VA04-19), the PROVIDER's response thereto, and in Schedule A, attached hereto, and incorporated herein by reference. In the event of a conflict between or among any of the above provisions, it is agreed that the terms of Schedule A, to the extent of any conflict, will be controlling.
3. **ASSIGNMENT**: PROVIDER shall not assign any interest or obligation in this Agreement and shall not transfer any interest or obligation in this Agreement, whether by

- assignment or novation, without the prior written consent of the COUNTY unless permitted otherwise by the bid specifications, the RFP, and/or Schedule A.
4. **TERMINATION**: If, through any cause, the PROVIDER shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the PROVIDER shall violate any of the covenants or stipulations of this Agreement, the COUNTY shall thereupon have the right to terminate this Agreement by giving a thirty (30) day written notice to the PROVIDER of such termination and specifying the effective date thereof. There shall be no other termination or cancelation of this Agreement during its term, without the prior written consent of both parties unless specifically permitted otherwise by the bid specifications, RFP, and/or Schedule A.
 5. **UNFINISHED WORK**: In the event the COUNTY exercises its unilateral right to terminate this Agreement for cause in the manner provided for in Paragraph 4, above, all finished or unfinished documents, services, papers, data, products, or the like prepared, produced, or made by the PROVIDER under this Agreement shall, at the option of the COUNTY, become the property of the COUNTY, and the PROVIDER shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, services, papers, data, products, or the like. Notwithstanding the above, the PROVIDER shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by the PROVIDER, and the COUNTY may withhold any payments to the PROVIDER for the purpose of set-off.
 6. **FAILURE TO APPROPRIATE FUNDS**: The failure of the Winnebago County Board of Supervisors to appropriate sufficient funds in any year covered by this Agreement shall automatically terminate this Agreement.
 7. **TERMS OF PAYMENT**: The COUNTY will pay the PROVIDER for all the aforementioned work the sum of **as detailed in Schedule A. There are no direct payments from Winnebago County to the provider, fees (when appropriate) will be deducted from payments collected** upon satisfactory completion of the work and performance of this contract. All goods and services delivered prior to December 31st must be invoiced to COUNTY by January 31st of the subsequent year or the invoice will be subject to a 10% deduction for late billing.
 8. **WISCONSIN LAW CONTROLLING**: It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.
 9. **ARBITRATION**:

- A. This Agreement shall be covered by the laws of the State of Wisconsin.
- B. Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration in accordance with the Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties of this Agreement. In the event the parties proceed to arbitration, the proceedings shall be governed by the following:
- 1) The American Arbitration Association shall submit a panel of five (5) arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
 - 2) The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.
 - 3) Any arbitration shall take place in the City of Oshkosh, Winnebago County, Wisconsin.
 - 4) Unless otherwise agreed upon by the parties, the arbitration hearing shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
 - 5) Any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, relating to the discovery procedure including, but not limited to, witness, reporter's fees for depositions, photocopying fees, postage fees, and delivery fees.
 - 6) In issuing any ruling regarding any arbitration matter, the arbitrator shall issue a written decision which shall include written findings of fact and conclusions of law.
 - 7) The proceeding and arbitration shall be governed by the laws of the State of Wisconsin including, specifically, Chapter 788, Wis Stats.
10. **PROVIDER EFFICIENCY:** PROVIDER shall commence, carry on, and complete its obligations under this Agreement with all deliberate speed and in a sound, economical, and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, the PROVIDER agrees to cooperate with the various departments, agencies, employees, and officers of the COUNTY.

11. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that the PROVIDER is an independent contractor and that the PROVIDER, its employees, and agents are not employees of COUNTY. PROVIDER agrees to secure at PROVIDER's own expense all personnel necessary to carry out PROVIDER's obligations under this Agreement. Such personnel shall not be deemed to have any direct contractual relationship with COUNTY.
12. **DELIVERY BY MAIL:** Notices, bills, invoices, and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth above. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.
13. **HOLD HARMLESS:** At all times during the term of this Agreement, PROVIDER agrees to indemnify, save harmless, and defend the COUNTY, its boards, commissions, agencies, officers, employees, and representatives against any and all liability, losses, damages, costs, or expenses, whether personal injury or property damage, that the COUNTY, its officers, employees, agencies, boards, commissions, and representatives may sustain, incur, or be required to pay by reason of the PROVIDER furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the COUNTY, its agencies, boards, commissions, officers, employees, or representatives.
14. **INSURANCE:**
 - A. Prior to commencing work, PROVIDER shall, at its own cost and expense, furnish COUNTY with a Certificate of Insurance indicating proof of the following insurance from companies licensed in the State of Wisconsin:
 - 1) **Workers' Compensation:** (Statutory) In compliance with the Compensation Law of the State of Wisconsin and Employers' Liability Insurance with a limit not less than \$100,000 each accident.
 - 2) **Comprehensive or Commercial General Liability Insurance** with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate combined Single Limit for bodily injury and property damage. This insurance shall include, but not be limited to, the following coverages:
 - a) Premises—Operations
 - b) Products and Completed Operations
 - c) Broad Form Property Damage
 - d) Contractual

e) Personal Injury

- 3) **Professional Liability:** (If applicable) Insurance with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate.
- 4) **Automobile Liability:** Insurance with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate Combined Single Limit for bodily injury and property damage. This insurance shall include bodily injury and property damage coverage for all of the following:
 - a) Owned Automobiles
 - b) Hired Automobiles
 - c) Non-Owned Automobiles

B. The certificate shall list the **Certificate Holder and Address** as follows:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

The Winnebago County Department(s) involved shall be listed under "**Description of Operations.**"

- C. Such insurance shall include, under the **General Liability and Automobile Liability Policies**, Winnebago County, its employees, elected officials, representatives, and members of its boards and/or commissions as "**Additional Insureds.**"
- D. Such Insurance Certificate shall include a thirty (30) day notice prior to cancelation or material policy change, which notice shall be given to:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

All such notices shall name the contractor and identify the contract project. All of the above coverages, limits, and conditions are required unless waived in writing by the COUNTY's Safety Insurance Coordinator.

- E. The Winnebago County Insurance Coordinator must approve any exception to these requirements. Submit any requests in writing to:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

or email to: dpetraszak@co.winnebago.wi.us.

15. **LIMITATION EFFECT ON PAYMENTS BY COUNTY:** In no event shall the making of any payment required by this Agreement constitute or be construed as a waiver by

- COUNTY of any breach of the covenants of this Agreement or a waiver of any default of the PROVIDER, and the making of any such payment by COUNTY while any such default or breach shall exist in no way shall impair or prejudice the right of COUNTY with respect to recovery of damages or other remedies as a result of such breach or default.
16. **DISCRIMINATION**: During the term of this Agreement, the PROVIDER agrees not to discriminate against any person, whether a recipient of services (actual or potential), an employee, or an applicant for employment on the basis of race, religion, sex, handicap, national origin, age, cultural differences, sexual preference, marital status, or physical appearance. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, or any other form of compensation. The PROVIDER agrees to post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this Agreement as they relate to affirmative action and nondiscrimination.
 17. **AFFIRMATIVE ACTION**: PROVIDER may be required to file an Affirmative Action Plan with the COUNTY if the PROVIDER receives \$10,000 in annual aggregate contracts or other such consideration of comparable worth, and PROVIDER has ten (10) or more employees. Such plan must be filed within fifteen (15) days of the effective date of this Agreement, and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by the COUNTY.
 18. **EQUAL OPPORTUNITY EMPLOYER**: PROVIDER shall, in all solicitations for employment placed on PROVIDER's behalf, state that PROVIDER is an "Equal Opportunity Employer."
 19. **COMPLIANCE INFORMATION**: PROVIDER agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine such compliance.
 20. **PROVIDER'S LEGAL STATUS**: PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so and, if a corporation, that the name and address of PROVIDER's registered agent is as set forth opposite the heading REGISTERED AGENT on the last page of this Agreement. PROVIDER shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and the PROVIDER's legal status.

21. **ENTIRE AGREEMENT**: The entire Agreement of the parties is contained herein, and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.
22. **COMPLIANCE WITH WISCONSIN PUBLIC RECORDS LAW**: Contractor understands that Winnebago County is bound by the Wisconsin Public Records Law, Wis. Stat. sec. 19.21, et. seq. Pursuant to Wis. Stat. sec. 19.36 (3), County may be obligated to produce to a third party the records of a Contractor that are "produced or collected" by the Contractor under this Agreement ("Records"). Contractor is further directed to Wis. Stat. sec. 19.21, et. seq. for the statutory definition of Records subject to disclosure under this paragraph, and Contractor acknowledges that it has read and understands that definition. Notwithstanding any other term of this Agreement, Contractor is (1) obligated to retain Records for seven (7) years from the date of the Record's creation; and (2) produce such Records to County if, in County's determination, County is required to produce the records to a third party in response to a public records request. Contractor's failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and Contractor must defend and hold County harmless from liability due such breach.

IN WITNESS WHEREOF, COUNTY and PROVIDER have executed this Agreement and its Schedules as of the day and date first set forth above.

Winnebago County Purchase of Services Agreement

FOR THE PROVIDER:

FOR WINNEBAGO COUNTY:

Mark L Harris
Winnebago County Executive

Susan T Ertmer
Winnebago County Clerk

REGISTERED AGENT:

Name

Address

City/State/Zip

Drafted by:
Mary Anne Mueller
Corporation Counsel for
Winnebago County

lls
Revised: 6/2018

Schedule A

PRICE PROPOSAL FORM CREDIT/DEBIT CARD PROCESSING SERVICES

Proposing firms shall detail below, any and all costs associated with providing the services requested in this RFP. This should include one-time, ongoing, fixed and variable costs; and the conditions under which they will be charged. Attach additional sheet(s) as necessary with details.

County Pays Processing Fees (District Attorney and Human Services):

\$/%	\$ 0.25	per e-check
\$/%	2.20%	per debit card transaction
\$/%	2.20%	per credit card transaction
\$	399.99 per Terminal	equipment costs (if applicable)
\$	99.99 Annual MID Fee	other fees – detail and explain

> waived per email 2/10/20

Customer Pays Processing Fees (Child Support, County Clerk, Highway, Land & Water, Park View, Parks, Public Health, Sheriff, and Solid Waste):

\$/%	\$ 0.25	per e-check
\$/%	2.20%	per debit card transaction
\$/%	2.20%	per credit card transaction
\$	399.99 per Terminal	equipment costs (if applicable)
\$	99.99 Annual MID Fee	other fees – detail and explain

> waived per email 2/10/20


Customer Pays Processing Fees (Treasurer -- property taxes):

\$/%	\$0.25	per e-check
\$/%	2.20%	per debit card transaction
\$/%	2.20%	per credit card transaction
\$	399.99 per Terminal	equipment costs (if applicable)
\$	99.99 Annual MID fee	other fees – detail and explain

> waived per email 2/10/20

SUBMITTED BY:

Firm Name: Gila LLC dba Municipal Services Bureau

Authorized Signature: 

Print name: Elye Sackmary

Title: CEO & President

Date: December 12, 2019

Address: 8325 Tuscan Way Bldg. 4

City/State/Zip: Austin, TX 78754

Phone/Fax: 512.323.4223

E-mail: elye.sackmary@gilacorp.com

Forbes, Laura

From: Duncan, Ken R <ken.duncan@gilacorp.com>
Sent: Monday, February 10, 2020 11:22 AM
To: Forbes, Laura
Subject: RE: Questions on Proposal

--- External Email ---

Good morning Laura,

I trust you had a good weekend. MSB would be pleased for the opportunity to work with the County and will agree to removing the fees requested. Based on the proposed schedule you listed, is there anything else you need from me at this time?

Ken Duncan
Senior Sales Executive
Gila LLC d/b/a MSB
615-238-1582 direct



EXPERIENCE • EXECUTION • ETHICS™
How long is your road to revenue recovery?



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From: Forbes, Laura <lforbes@co.winnebago.wi.us>
Sent: Monday, February 10, 2020 10:10 AM
To: Duncan, Ken R <ken.duncan@gilacorp.com>
Subject: RE: Questions on Proposal

--- External Email ---

Good morning Ken,

We are very interested in working with MSB based on everything you submitted. The evaluation team does have concerns about the MID annual fees that each department would have to pay. Would you be willing to waive those annual fees?

Some are also concerned with the per terminal equipment fees. The per transaction charges look acceptable. If you could waive the MID and terminal fees, I feel that we would be able to award you the contract without further discussion. I don't know for sure that is a reasonable request but I know other counties have implemented solutions with no cost to their counties.

If we could get a contract going and on the agendas for the March committee and board meetings then we could start the cutover to by the beginning of April.