



DATE: April 3, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH CARACAL ENTERPRISES LLC (DBA VENTTEK INTERNATIONAL), FOR ONLINE SERVICES FOR THE CITY'S NETWORK OF AUTOMATED VENTEK PAY PARKING STATIONS**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement in the amount of \$26,295 annually for online services for the network of automated VenTek pay parking stations with Caracal Enterprises, LLC (dba, VenTek International), of Petaluma; and authorize the City Manager to execute the agreement.

BACKGROUND

In 1991 the City started purchasing pay parking machines from Pacific Parking Systems, Inc. Pacific Parking Systems is the single west coast distributor of the VenTek pay parking machines. The City currently has 21 of these pay parking machines located throughout the beach area parking lots.

In April 2009 the City upgraded twelve machines with a higher volume of transactions to accept credit card payments. In December 2012 the City upgraded one additional machine for a total of thirteen currently. Last calendar year, almost 110,000 credit card transactions were processed at these machines.

Since September 2012, the credit card transactions have not been working consistently. Parking enforcement officers have been called out to various machines with greater and greater frequency. Over the past several months, the machines have been inoperable leading to free parking and loss of revenue to the City's General Fund.

ANALYSIS

When the credit card capability was implemented in 2007, the City set up one merchant account to clear the transactions at all the pay stations that accepted credit cards. This is evidently one of the reasons that transactions are not always processing since there is only one clearing line for what has become a heavily-used account. Additionally, the company has streamlined their processing options; however, due to added expense Oceanside has not implemented the upgrades.

Because VenTek is the manufacturer of the pay station machines, they are sole source for the credit card processing. The processing requires modification to the hardware and software that can only be provided by the manufacturer of the pay stations. Thus, no other bids were obtained.

Since the implementation of the credit cards, some of the Payment Card Industry (PCI) rules for processing transactions have changed. One rule is that a merchant account is required for each location where a transaction is being executed. Thus, by upgrading to the company's latest processing program, the City will become compliant with this rule by creating a separate merchant account for each lot. This will also assist with handling the high volume of transactions.

VenTek has provided proof that the upgraded processing is PCI compliant. These compliance standards are mandatory for any entity processing credit card transactions. It is important that the vendor has proven compliance because compliance provides protection of critical card information.

FISCAL IMPACT

There are annual fixed amounts, based on the current number of machines, of \$16,205 for hosting fees, cellular connections and software subscriptions. Additionally, the City will incur a per transaction fee of \$0.07. Based on 110,000 transactions per year, the charge would be \$7,700 annually. The budgeted amount of \$26,295 includes ten percent (10%) contingency for growth in the number of credit card transactions. These charges will be budgeted in the Finance Department budget (211010101.5320).

Starting in year three, the fixed charges will increase by three percent (3%) and there after on an annual basis. Thus, in year three the fixed amount would increase to \$16,691 provided the same numbers of machines with credit card capability are in place. The per transaction fee would remain at the \$0.07. However, we'd anticipate that the number of transactions would increase annually as cash transactions are replaced with card transactions.

Each service has a minimum two-year term. Thereafter, the 30 day termination becomes effective. Thus, the Finance Department budget will include these fees in the annual budget until the contract is terminated.

COMMISSION/COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced document have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

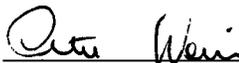
Staff recommends that the City Council approve a professional services agreement in the amount of \$26,295 annually for online services for the network of automated VenTek pay parking stations with Caracal Enterprises, LLC (dba, VenTek International), of Petaluma; and authorize the City Manager to execute the agreement..

PREPARED BY:



Sheri Brown
Financial Services Director

SUBMITTED BY:

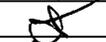


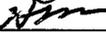
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director
Hans K Kroger, Public Works Division Manger







Attachments:

Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: VenTek Pay Station Network Online Services – Project #2013-001)

THIS AGREEMENT, dated _____, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Caracal Enterprises LLC (dba VenTek International), a limited liability company, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:

To provide a suite of Online Services (the "SERVICES") for the CITY's network of Automated VenTek Pay Station Units ("PSU"), including:

- a. Digital cellular online connectivity service for PSUs*
- b. Secure data hosting service for PSUs*
- c. Web-based Management Software (venVUE®) for system administrators*
- d. Electronic transaction switching, authorization and settlement services for payments made at PSUs, aka Transaction Processing Service ("TPS")*

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

VenTek Pay Station Network Online Services – Project #2013-001

4. **LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
---------------------------------------	--------------

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

VenTek Pay Station Network Online Services – Project #2013-001

- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

- 6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S

VenTek Pay Station Network Online Services – Project #2013-001

indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price detailed in "SCHEDULE "A" – ONLINE SERVICE ELECTIONS & FEES"

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the CITY. CONSULTANT shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within 30 days of executing this agreement.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

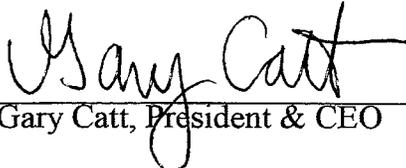
VenTek Pay Station Network Online Services – Project #2013-001

- 11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
- 12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement as specified in Schedule A. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination except as specified in Schedule A.
- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

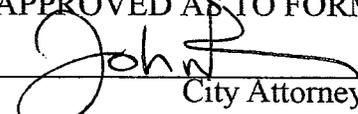
CARACAL ENTERPRISES LLC DBA
VENTEK INTERNATIONAL

CITY OF OCEANSIDE

By: 
Gary Catt, President & CEO

By: _____
City Manager

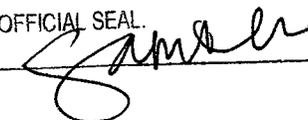
APPROVED AS TO FORM:

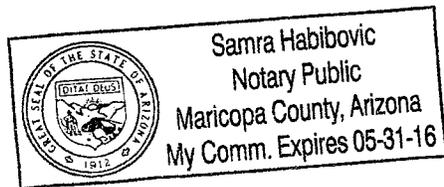

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

STATE OF ARIZONA >SS
COUNTY OF MARICOPA

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS
18 DAY OF March, 2013, BY Gary Catt
IN WITNESS WHERE OF I HEREWITH SET MY HAND AND
OFFICIAL SEAL.

 NOTARY PUBLIC



VenTek Pay Station Network Online Services – Project #2013-001

SCHEDULE "A" –ONLINE SERVICE ELECTIONS & FEES

A.1 Service Elections & Service Delivery

Table 1 in this schedule, describes all of the Services selected by SUBSCRIBER and fees due thereof, to be delivered by VENTEK pursuant to this Agreement, as amended from time to time to reflect the purchase/retirement of Service elections and/or added/removed PSU Units connected to the System.

The Terms and Conditions are described under A.2 (next page).

SCHEDULE "A" - ONLINE SERVICE ELECTIONS & FEES

Description	Unit Cost	Qty	Units	Extended Cost	Months	Annual Amount	Total
Initial Year							
Data Hosting Fees	\$45	15	per PSU	\$675	12	\$8,100	\$16,205
<i>APS Unit Online Connectivity Services Election(s)</i>							
Digital Cellular Connectivity Fees	\$45	13	per PSU	\$585	12	\$7,020	
<i>Remote Management Software Annual Subscription Election(s)</i>							
venVUE® Subscription	\$495	1	per credentialed User	\$495		\$495	
venVUE® Subscription (Additional User(s))	\$295	2		\$590		\$590	
<i>Transaction Processing Services (TPS) Election</i>							
Option 1 – Payment Gateway Transaction Switching	\$0.07		per electronic payment transaction	\$		\$	Variable
Option 3 – Full Service "Turn-Key" Processing	3.0% of Electronic Revenue (Credit Card). Merchant Provider Service Fees will be billed as a pass through to SUBSCRIBER. (variable rate)						N/A
<i>Optional Electronic/Payment Card Election(s)</i>							
Electronic Coupon Processing Services ECPS)	\$0		per PSU	\$0		\$0	
Campus Card Processing Services (See Schedule D)	\$0		per number of PSUs	\$0		\$0	
Annual Pass Card Processing Services	\$0		per PSU	\$0		\$0	
Value Card Processing Services	\$0		per PSU	\$0		\$0	
<i>Optional Services</i>							
Cyber Insurance Coverage (Named Insured)	\$0		per System	\$0		\$0	
Year 1 Total + variable costs							\$16,205 + Variable costs
Year 2 Total + variable costs							\$16,205 + Variable costs
Total Price (2 year period) + variable costs							\$32,410 + Variable costs
Year 3 (Data Hosting, Digital Cellular, & venVue @ additional 3% - will increase annually + variable costs							\$16,691.15 + Variable costs

**Table 1: Annual Service Fees for Pay Station Units (PSUs)
With (Commencement Date July 1, 2013)**

VenTek Pay Station Network Online Services – Project #2013-001

A.2 Service Delivery Terms & Conditions

1. Minimum Term – Each Service has a minimum term of two (2) years.
2. If a Service is terminated by CITY before the end of the effective term (the “Service Maturity Date”), then payment for the remainder of the Services becomes due as per Section 6, entitled “TERMINATION”.
3. Renewal – After the Service Maturity Date, each service remains in effect until explicitly cancelled by CITY.
4. Payment – Payment for each Service is due in advance. The Annual Increase of 3% described in Schedule A, shall apply at the start of each year in a new Term, after the first initial two year period. The variable transaction fees will be paid in arrears when the number of transactions is known.
5. Carrier Service Types:
 - a. GSM/GPRS Digital Cellular
 - b. CDMA/1xRTT Digital Cellular
 - c. Satellite
 - d. Analog Dial-up