



**AGENDA SHEET**

**BOARD MEETING DATE:** January 18, 2025  
**AGENDA CATEGORY:** Consent Agenda  
**PREPARED AND PRESENTED BY:** Clerk & Recorder Jacklyn Harmon

**SUBJECT**

Consideration and signature approval of amendment 2 to agreement of services with Intellectual Technology, Inc.

**SUMMARY OF REQUEST**

During a regularly scheduled meeting of the Board of County Commissioners on August 7, 2023 the Board approved a contract with Intellectual Technology, Inc. (ITI) to provide a self-service kiosk that provides motor vehicle registration and renewal services. The kiosk was installed in the City Market located in Carbondale on October 16, 2024 and is being utilized. ITI would like to amend the agreement to transfer the payment processing services from LexisNexis to ITI with J.P. Morgan Chase Bank as the sponsoring bank, which will allow for ITI to expand the payment options at the kiosk. The Clerk's Office supports the request to transfer the payment processing services in order to better serve the citizens of Garfield County, as well as any Colorado residents that may use the kiosk.

**NECESSARY BOARD ACTION:**

Discuss and either approve or disapprove amendment 2 to the agreement of services with Intellectual Technology, Inc. (ITI) and allow the Chair to sign the amendment.

## AMENDMENT 2 TO AGREEMENT FOR SERVICES

Amendment 2 to the Agreement for Services, effective as of November 5, 2024 ("Effective Date")(the "Amendment"), between the Board of County Commissioners of the County of Garfield, of the State of Colorado, located at 109 8th St., #200, Glenwood Springs, CO, 81601 ("Agency"), and Intellectual Technology, Inc., a Delaware corporation, having its principal place of business at 2980 E. Coliseum Blvd., Suite 100, Fort Wayne, IN 46805 ("Sub-Merchant", and together with Agency, the "Parties", and each, a "Party").

WHEREAS, the Parties have entered into an Agreement for Services, dated June 15, 2023 (as amended with Amendment 1 on March 5, 2024, the "Existing Agreement"); and

WHEREAS, the Parties hereto desire to amend the Existing Agreement to transfer the payment processing services from LexisNexis to ITI with J.P. Morgan Chase Bank as the sponsoring bank on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.
2. Amendments. The following terms are added to the Existing Agreement:
  - (a) The Parties acknowledge that DMV is considered a merchant with respect to the credit or debit card or check payments processed by the ITI solution and that ITI is processing such payments through J.P. Morgan Chase. As such, DMV agrees that the fee and payment terms outlined on Exhibit 1 will apply to this Agreement and relate to how credit, debit, or check payments will be processed and paid to DMV.
3. All references in the Existing Agreement to ITI's preferred payment provider shall mean ITI with J.P Morgan Chase.
4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the Existing Agreement as amended by this Amendment.

*[Remainder of page left blank intentionally. Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Amendment 2 as of the Effective Date.

**BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF GARFIELD  
("Agency")**

**INTELLECTUAL TECHNOLOGY, INC.  
("Sub-Merchant")**

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

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

Name: \_\_\_\_\_

Name: Drew Nicholson

Title: \_\_\_\_\_

Title: Chief Executive Officer

Exhibit 1  
**Payment Services**

These terms govern Sub-Merchant's use of the Payment Services provided by ITI, a payment facilitator registered by JPMorgan Chase Bank, N.A. with the Card Brands. Member Bank's responsibilities are limited to the sponsorship and settlement of Transactions as set forth herein. If there is any conflict between the terms of this Agreement and any other agreement Sub-Merchant has with ITI, then to the extent such terms apply to the Payment Services, the terms of this Agreement will control.

**Definitions.** Terms that are not defined within the paragraphs of this Agreement or the Schedules shall have the following meanings:

**ACH** means a national automated clearing house system and an electronic fund transfer made through an ACH.

**Authorization** means an approval or the act of obtaining an approval through a Card Brand for an individual Transaction.

**Brand Marks** means the trade name, trademark, service mark, and logo of each Card Brand.

**Card** means a valid credit, debit, charge, stored value, or payment card issued under license from a Card Brand, including physical, electronic, and virtual devices used to access a Card Brand.

**Card Brand** means Mastercard International Incorporated, Visa Inc., Discover Financial Services, American Express Company, each including applicable subsidiaries, and any other payment card associations supported by ITI.

**Cardholder** means any person authorized to use a Card.

**Cardholder Data** means all information that a Cardholder provides in the course of completing a Transaction with Sub-Merchant, including Card numbers and expiration dates, account numbers, and other personal Cardholder information.

**Chargeback** means any reversal, return, or invalidation of a Transaction (or portion of a Transaction) through a Card Brand.

**Fee(s)** means any and all of the fees, charges, or costs charged to Sub-Merchant as specified in the Agreement, including, but not limited to, the fees, liabilities, charges, costs, or amounts owed for the Payment Services.

**Law** means all applicable federal, state, and local laws, statutes, regulations, rules, ordinances, codes, and court orders, and all applicable regulatory orders, directives, and guidance that govern or affect this Agreement or the subject matter hereof.

**Location** means each separate location or website operated by Sub-Merchant where or for which Sub-Merchant accepts Card payments, provided that each Location must operate under the same employer identification number or tax identification number as Sub-Merchant.

**Agreement** means the agreement for services provided by ITI to Submerchant.

**Member Bank** means a bank that is authorized by the Card Brands to provide sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank is JPMorgan Chase Bank, N.A. Member Bank may be changed at any time without prior notice to Sub-Merchant.

**Payment Services** means the services that allow Sub-Merchant to accept Cards for payment in connection with Sub-Merchant's sale of goods or services. ITI's involvement in, and responsibility for, any underlying sale of goods or services by Sub-Merchant is provided in the Master Agreement. Sub-Merchant agrees that all disputes between Sub-Merchant and any Cardholder relating to a Transaction will be settled between ITI and the Cardholder.

**Processor** means a payment processor that supports the Payment Services through its contracts with the Card Brands. As of the commencement of this Agreement, Processor is Paymentech, LLC, a wholly owned subsidiary of J.P. Morgan Chase. Processor may be changed at any time without prior notice to Sub-Merchant.

**Regulatory Authority** means any federal, state, or local government or any agency, board, commission, court, department, or division thereof, having jurisdiction, supervisory authority, or enforcement powers over any party to this Agreement, but which does not include any Card Brand.

**Rules** means the bylaws, operating rules, regulations, policies, and procedures of any applicable Card Brand, including where applicable, the Payment Card Industry Data Security Standard, the Visa Cardholder Information Security Program, the Mastercard Site Data Protection Program, the Visa and Mastercard Data Security Standards, and the American Express Data Security Requirements.

**Settlement Account** means an open checking account at a financial institution approved by ITI and J.P. Morgan Chase that can be accessed through ACH to receive settlement of Transaction funds and process Chargebacks or other liabilities as required by this Agreement.

**Third Party Agent** or **TPA** means any entity engaged by Sub-Merchant to perform contracted services on behalf of Sub-Merchant.

**Transaction** means a Card transaction between Sub-Merchant and a Cardholder that relates to the sale of Sub-Merchant's goods or services to the Cardholder.

**Transaction Funds** means the funds received by Processor and Member Bank for payments made by Cardholders to Sub-Merchant for Transactions.

#### **REQUIRED INFORMATION.**

To help the government fight the funding of terrorism and prevent money-laundering, ITI, Processor, Member Bank, or the Card Brands may obtain, verify, and record information that identifies Sub-Merchant. To permit ITI, Processor, Member Bank, or the Card Brands to comply with the Rules and Law, Sub-Merchant will, upon request, provide the documentary and other evidence of Sub-Merchant's identity. Sub-Merchant agrees that ITI, Processor, Member Bank, and the Card Brands may disclose such information as required to comply with their obligations under Law.

Sub-Merchant agrees that all information Sub-Merchant provides to ITI is and will be accurate and complete, and Sub-Merchant agrees to keep such information up to date. Upon request, Sub-Merchant will provide the current addresses of all Locations

#### **CARD ACCEPTANCE AND CARD ELECTION**

ITI on Sub-Merchant's behalf will honor any valid Card properly tendered by a person asserting to be the Cardholder. ITI on Sub-Merchant's behalf will obtain an Authorization for each Transaction and include the Authorization when transmitting each Transaction. Authorizations are not a guarantee of acceptance, do not waive

any provision of this Agreement, and do not otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card. ITI, Processor, or Member Bank may refuse to authorize any Transaction.

All Transactions are subject to audit and verification by ITI, Processor, or Member Bank. All credits provided to Sub-Merchant are as permitted and in accordance with the Rules, irrespective of whether a Transaction is returned or reversed by the Card issuer. ITI on Sub-Merchant's behalf will retain a copy of the sales transmittal for each completed Transaction in accordance with the Rules and Law. Upon request by Processor or Member Bank, ITI on Sub-Merchant's behalf will provide copies of sales transmittals and other Transaction evidence.

### **Compliance with the Rules and Law**

*Compliance.* Sub-Merchant agrees to comply with these terms, the Rules, and Law. In the event of any conflict between these terms and the Rules, the Rules will prevail. Sub-Merchant agrees that it is responsible for its employees' actions. Sub-Merchant agrees to cooperate with ITI, Processor, and Member Bank in monitoring of compliance with these terms. ITI, Processor, or Member Bank, each in its sole discretion, may suspend or delay processing Transactions to investigate suspicious or unusual activity upon notice to Submerchant or as required by legal authorities. ITI, Processor, or Member Bank, each in its sole discretion, may reverse any Transaction that violates these terms, the Rules, or Law. ITI and Sub-Merchant must maintain compliance with applicable PCI DSS requirements. Further, Sub-Merchant must notify ITI of any vendor of Submerchant who has access to Cardholder Data and must also require such vendor to comply with PCI DSS requirements.

*Prohibitions.* Sub-Merchant must not submit any Transaction that the Sub-Merchant knows or should know violates Law or the Rules.

*Audit.* Sub-Merchant agrees to cooperate in any legal audit, examination, or investigation as may be required by a Card Brand or Member Bank due to an actual or suspected security event.

### **Settlement and Transaction disputes**

*Settlement.* Sub-Merchant agrees that ITI will maintain a Settlement Account on Sub-merchant's behalf to receive Transaction Funds. Transaction Funds, less any amounts ITI is authorized to deduct or withhold under the Agreement, will be remitted to Sub-Merchant by ACH to the Settlement Account in accordance with the payment terms in the Agreement. Amounts owed to Sub-Merchant will be calculated based on records maintained by Sub-merchant. Sub-Merchant authorizes ITI to initiate ACH entries to the Settlement Account, which authorization will remain in full force and effect until thirty (30) days after ITI receives written notice from Sub-Merchant of termination of the ACH authorization. Sub-Merchant is responsible for promptly and consistently inspecting Sub-Merchant's Transaction and settlement history, and Sub-Merchant must immediately report any possible errors to ITI.

*Transaction Disputes.* If a Cardholder disputes a Transaction, if a Transaction is charged back for any reason, ITI accepts responsibility for such costs and Submerchant agrees to help investigate cases where ITI believes the Chargeback may be in error or invalid.

### **Fees**

Sub-Merchant authorizes and directs ITI and Processor to deduct and set off from Transaction Funds any fees and other amounts that ITI is entitled to under the Agreement, and Sub-Merchant understands that the Transaction Funds Processor remits to Sub-Merchant will be net of these amounts. In the event that any set off against Transaction Funds is not sufficient to cover the fees and other amounts owed under this Agreement, Sub-

Merchant agrees that ITI or Processor will invoice Sub-merchant to the Settlement Account or Reserve Account for such amounts.

### **Data and Security**

*Data Ownership.* No Cardholder Data will be owned by ITI. ITI will use Cardholder data only to (i) provide Sub-Merchant's products and services, (ii) comply with the Rules and Law, and (iii) assist law enforcement agencies by responding to requests for the disclosure of information in accordance with Law.

*Data Security.* The Parties agree that the Payment Services must be provided through secure systems for maintaining, accessing, processing, and transmitting Cardholder Data or Transaction information to ITI, Processor, and Member Bank. All such systems comply with the Rules and will undertake any required self-assessments, audits, and web infrastructure scans. All media containing Cardholder Data or Transaction information will be maintained in a secure manner and destroyed in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. All use and storage of Cardholder Data will comply with the obligations under Law and PCI Service Provider Level One regarding the confidentiality, use, and disclosure of such Cardholder Data.

*Data Use.* All Laws related to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure, or transfer of data (including Cardholder Data) will be complied with. Industry best practices and PCI Service Provided Level One regarding continuity procedures and systems will be maintained to ensure security of Cardholder Data and Transaction information in the event of a disruption, disaster, or failure of any data storage system or facility.

### **SUSPENSION OF PAYMENT SERVICES**

ITI may immediately cease providing the Payment Services, without prior notice, if (i) ITI is required to do so by Processor, Member Bank, any Card Brand, or any Regulatory Authority; (ii) ITI's agreement with Processor or Member Bank terminates; (iii) ITI is deregistered by any Card Brand; or (iv) Member Bank ceases to be a member of the Card Brands or to have the required licenses. In addition, to ensure that payment processing services will not be impeded, ITI may at its option elect to suspend direct Payment Services and transfer Sub-Merchant to an alternative payment processing solution made available by ITI through its relationship with a third-party payment processor. If ITI transfers Sub-Merchant to VitalChek Payment Network Inc., then the terms of in the Agreement related to that processor will apply upon such transfer.

### **LIABILITY AND LIMITATIONS**

ITI's cumulative liability to Sub-Merchant is limited to direct damages and in all events will not exceed in the aggregate the amount of compensation actually received by ITI for the Payment Services during the six (6) month period immediately preceding the event that gives rise to the claim of liability. This limitation of liability will not apply to claims against ITI for failure to remit Transaction Funds in accordance with the Fees section, in which case ITI's liability will be limited to the amount of any Transaction Funds that ITI failed to transfer to Sub-Merchant as required by this Agreement.

IN NO EVENT WILL ITI BE LIABLE TO SUB-MERCHANT FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS, OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR PROCESSOR WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

ITI PROVIDES THE PAYMENT SERVICES “AS IS” AND “AS AVAILABLE”. EXCEPT AS EXPRESSLY STATED AS A “WARRANTY” IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ITI DOES NOT MAKE ANY, AND ITI SPECIFICALLY DISCLAIMS, ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PAYMENT SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ITI DOES NOT GUARANTEE OR WARRANT THAT THE PAYMENT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

Sub-Merchant shall be responsible for losses, damages, costs, or expenses arising or resulting from (i) Sub-Merchant’s misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) Sub-Merchant’s or Sub-Merchant’s employees’, agents’ fraud, gross negligence, willful misconduct or failure to comply with applicable law and this Agreement. Sub-Merchant is responsible for reimbursing Payment Facilitator for applicable Card Brand fines and assessments that result from Sub-Merchant’s actions or inactions.

### **ADDITIONAL TERMS FOR AMERICAN EXPRESS**

Submerchant authorizes ITI to submit Transactions to and receive settlement from American Express on Submerchant’s behalf.

ITI may collect and disclose Transaction data, Sub-Merchant data, and other information to American Express. American Express may use such information to perform its responsibilities in connection with American Express Card Acceptance, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including commercial marketing communications purposes within the parameters of American Express Card Acceptance, and important transactional or relationship communications from American Express. American Express may use the information obtained in the American Express Card Acceptance application at the time of setup to screen and/or monitor Submerchant in connection with Card marketing and administrative purposes.

These terms confer third party beneficiary rights in American Express for enforcing these terms. They impose no obligations on American Express.

### **GENERAL PROVISIONS**

*Merchant Resources.* Rules may be downloaded at (i) Mastercard: <http://www.mastercard.com/us/merchant/support/rules.html>; and (ii) Visa: <https://usa.visa.com/support/merchant/library.html>.