MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

OREGON

Meeting date: August 19, 2020

Department: Treasurer's Office | Agenda Planning Date: 8/13/2020 | Time required: 5 Min

☐ Audio/Visual aids | N/A

Contact: Laurie Steele, Treasurer | Phone: 503-584-7750

Department Head Signature:

Laurie Steele

TITLE | Consider Approval of Contract # TO-3392-20 with Retail Lockbox, Inc. for Property Tax Credit Card Payments

Issue, Description & Background | In 2019, the Marion County Treasurer's Office conducted a request for proposals (RFP) for lockbox services to support the payment of property taxes. Services at that time included processing of paper checks with deposits directly to the county's preferred banking institution. During the evaluation of proposals and negotiations with Retail Lockbox, Inc. (RLI), it was discovered that RLI was able to provide online credit card merchant services. Through internal discussions, County personnel realized that having one service provider handling both payment options would be a more efficient means of collecting payments for the county and would present a cost savings.

On April 15, 2020, the Marion County Board of Commissioners acting as the Marion County Contract Review Board approved a board order allowing a contract-specific special procurement for a Merchant Services Agreement with RLI. This agreement is the final negotiated Merchant Services Agreement with RLI as authorized by this special procurement.

Financial Impacts: | There is no cost to the county for these services. Fees are paid by taxpayers who pay their property taxes online with a credit card.

Impacts to Department & External Agencies | Approval of this Contract will allow collection of property taxes online with a credit card or direct ACH transfer. Having one vendor for both lockbox and online merchant services will allow the Treasurer's Office to maximize efficiency

Options for Consideration: | 1) Consider approval of Contract # TO-3392-20 with Retail Lockbox, Inc.
2) Withhold approval of Contract # TO-3392-20 with Retail Lockbox, Inc.

Recommendation: | Treasurer's Office staff recommend approval of Contract # TO-3392-20 with Retail Lockbox, Inc.

List of attachments: | Contract # TO-3392-20; Special Procurement # 714

Presenter: | Laurie Steele, Treasurer

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

OREGON

Copies to:

Thomas Kissinger, tkissinger@co.marion.or.us

Contract Review Sheet

Contract #: TO-3392-20 _____

Person Sending: **Thomas Kissinger** _____ Department: **Treasurer's Office** _____

Contact Phone #: **503-588-5047** _____ Date Sent: **Wednesday, August 5, 2020** _____

☑ Contract ☐ Amendment# ___ ☐ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: **Credit Card Payments for Property Taxes** _____

Contractor's Name: **Retail Lockbox, Inc.** _____

Term - Date From: **Upon Signature** _____ Expires: **Jun 30, 2024** _____

Contract Total: **$0.00** _____ Amendment Amount: **$0.00** _____ New Contract Total: **$0.00** _____

Source Selection Method: Special Procurement (attach approval) # **714-20** _____

Additional Considerations (check all that apply)

☐ Board Order# _____ ☐ Feasibility Determination (attach approved form)

☐ Incoming Funds ☐ Federal Funds (attach sub-recipient / contractor analysis)

☐ Independent Contractor (LECS) approval date: _____ ☐ Reinstatement (attach written justification)

☐ Insurance Waiver (attach) ☐ Retroactive (attach written justification)

☐ CIP# _____ (required for all goods /software greater than $5,000)

Description of Services or Grant Award:

Merchant Services Agreement with Retail Lockbox, Inc. for the provision of online credit card and ACH merchant services regarding property tax payments. Agreement operates on a service fee model where transaction fees are paid by the customer with no cost to the county. Agreement is for a four-year term with an option to extend for an additional four years

FOR FINANCE USE

Date Finance Received: _____ BOC Planning Date: _____ Date Legal Received: _____

Comments: _____

_____

_____

_____

REQUIRED APPROVALS:

_____ _____
Finance - Contracts   Date   Risk Manager   Date

_____ _____
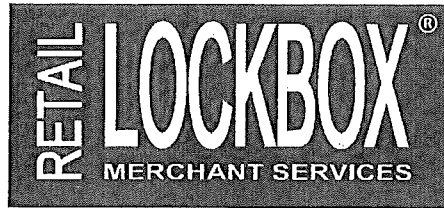Legal Counsel   Date   Chief Administrative Officer   Date
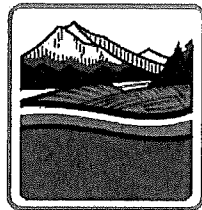
Date _____ ☐ To be filed ☐ Added to Finance Table

☐ Date _____ Returned to department for signature

Retail Lockbox Merchant Services

RETAIL LOCKBOX®
MERCHANT SERVICES

PO Box 84451
Seattle, WA 98124

Payment Processing Agreement with:

Marion County
OREGON

PO Box 14500 | Salem, OR 97309

Presented By

Craig Dawson
President
Retail Lockbox, Inc.
206-624-9424
Craig@Retaillockbox.com

RETAIL LOCKBOX MERCHANT SERVICES
PAYSTATION® Logon with Electronic Bill Payment and Presentment (EBPP)
CUSTOMER SERVICES AGREEMENT

This **Service Agreement** (the "Agreement") is made by and between Retail Lockbox Merchant Services, LLC, a Washington limited liability company with headquarters at 105 14th Avenue, Suite 300, Seattle, WA 98122, (hereinafter "RLMS") and Marion County (hereinafter "CUSTOMER") as of July 1, 2020 (the "Effective Date"). RLMS and CUSTOMER hereby agree:

1. **System Access.** Subject to the terms of this Agreement, RLMS will enable Customer as a payee on RLMS's proprietary www.paystation.com payment portal enabling bill payers to process payment to Customer without requirement for access or logon credentials (the "System") in accordance with the Statement of Work on Exhibit A.

2. **Definitions.** The following definitions shall apply: (a) "RLMS Product(s)" means the computer software applications owned and developed by RLMS and accessible through the System as well as any documentation furnished to the CUSTOMER or a user concerning the use of such applications. (b) "Interface" shall mean the graphical user interface of the System and associated code developed by RLMS to facilitate communication and data transfer between the System, any third-party applications used in connection with the System and a user or CUSTOMER's customer. (c) "User(s)" shall mean an individual or entity who by use of the System agrees and accepts all the terms and conditions herein. (d) "Agents" means any duly authorized agent of RLMS, including bank affiliate or Automated Clearing House Network ("ACH") operator governed by the National Automated Clearing House Association ("NACHA") operating rules that enable depository financial institutions to exchange payments. (e) "Transaction" is defined as the posting of an amount to an account and/or the processing of a check.

3. **Term.** The License shall commence on the Effective Date and remain in effect until June 30, 2024. The parties may extend the term of this License provided that the term does not extend beyond June 30, 2028.

4. **Fees and Payment.** In exchange for the Services provided or delivered by RLMS to the CUSTOMER under the terms of this Agreement, the CUSTOMER shall pay to RLMS the fees (the "Fees") described in and/or computed in accordance with the rates set forth in Exhibit B (the "Fee Schedule"). **The rates set forth in this Agreement will remain constant through the initial term of the Agreement. RLMS may, at its discretion, modify and amend the Fee Schedule after the original term and any increases will not exceed the percentage of increase in the Seattle – Tacoma – Bellevue Consumer Price Index (CPI) for the same period.**

5. **CUSTOMER Covenants.** During the Term of the License CUSTOMER hereby agrees: (a) CUSTOMER will comply with the NACHA rules and credit card association rules; (b) CUSTOMER will bear the full financial liability of processing the ACH transactions and agrees to the Terms and Conditions of the ACH Agreement found in Exhibit D of this contract; (c) CUSTOMER hereby indemnifies RLMS and its Agents against any loss for its own or its customer's account, or damage, reasonable attorneys' fees or liability incurred by it on account of CUSTOMER's breach of this Agreement or CUSTOMER's, or its customers, transmittal of any transaction or file through the System, and (d) RLMS and its Agents may rely on the authority of such transmittals without inquiry if such transmittals are received by RLMS or its Agents on the System or on the RLMS Site.

6. **RLMS Covenants.** During the term of the license, RLMS agrees that it will comply with the NACHA rules and guidelines and credit card association rules and guidelines. RLMS will provide commercially reasonable procedures for the functionality of the System including system audit and disaster recovery procedures. RLMS shall be responsible for creating the electronic ACH and/or Credit Card transaction information file and submitting the file to the check and/or credit card operator as designated by RLMS.

7. **Intellectual Property Representation.** RLMS warrants and represents that it owns or has the right and authority to use all such intellectual property, copyrighted materials or trademarks, which make up the System and are used in the services provided to CUSTOMER, and that such use of the System does not as of the Effective Date knowingly infringe or violate any copyright or other property rights.

8. **Confidentiality and Non-Disclosure.** CUSTOMER and RLMS each agrees that information regarding the other party's operations, strategies, organization, finances, business, trade secrets, pricing, and Customer Information obtained from the other party, whether marked confidential or not, and any information obtained from the other party that is marked confidential or about which notice of confidentiality is given within 30 days of the receiving party's receipt of such information ("Confidential Information") shall be held in strict confidence and shall be used only for purposes of this Agreement. At the termination of this Agreement, each party shall, at the written request of the other party, either return to the other party or destroy all Confidential Information provided by the other party in whatever form or medium and so certify to the other party in writing. In no event shall either party use Confidential Information to compete with the other

party in its business.

9. **Taxes.** CUSTOMER will pay or reimburse RLMS for any sales, use, excise or other taxes or other governmental charges which RLMS or its Agents are required to pay or collect by virtue of the furnishing of goods or services under this Agreement, exclusive of taxes upon the income of RLMS or its Agents. If CUSTOMER is exempt from certain taxes, CUSTOMER shall provide RLMS with a certificate of exemption or comparable document issued by the applicable taxing authority.

10. **Maintenance and Support.** RLMS will maintain the System in accordance with its internal policies. CUSTOMER will be notified via electronic mail of routine maintenance or System downtime and RLMS will make reasonable effort to schedule it outside of regular business hours.

11. **Notices.** Unless otherwise noted herein, any notice hereunder shall be deemed to have been given and received (I) upon receipt if personally delivered in writing (ii) one business day after being sent via overnight express courier, or (iii) three business days after being mailed through the United States Post Office by registered or certified mail, return receipt requested. All notices shall be sent to the address set forth below or at such other address to which notice is to be given, at least thirty days prior to initial use of revised address, as provided at end of Agreement.

12. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR SAVINGS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SYSTEM, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED. THE MAXIMUM AGGREGATE LIABILITY OF RLMS OR ITS AGENTS UNDER THIS AGREEMENT SHALL BE A SUM EQUAL TO THE AGGREGATE PAYMENTS MADE BY CUSTOMER TO RLMS FOR THE PRECEEDING ONE (1) MONTH PERIOD.

The System is provided to CUSTOMER "AS IS". Other than as expressly set forth herein, RLMS expressly disclaims, and CUSTOMER hereby expressly waives, all warranties, express or implied, including, without limitation, warranties of title, warranties of CUSTOMER ability and fitness for a particular purpose, or warranties as to any results to be obtained from the System or information or results derived therefore. RLMS does not warrant access to the System or that access to the System will be uninterrupted or error-free.

13. **Force Majeure.** Neither party shall be liable, or be deemed to be in default, to the other by reason or account of any delay or omission caused by an event beyond their control (each, a "Force Majeure Event"). The time of performance of each party's obligations under this Agreement shall be extended for so long as such Force Majeure Event continues; provided, however, that in the event such period of extended delay exceeds thirty days in respect of a party, the other party may terminate this Agreement upon notice to such party.

14. **Termination.** Either party may immediately terminate this Agreement without notice in the event of: (a) any act of fraud or dishonesty is committed by the other party, its employees and/or its agents or that a party or its agents believes in good faith that such parties committed, are committing or are planning to commit any acts of fraud or misrepresentation; (b) the other party breaches this Agreement or any representation or warranty made by the other party in this Agreement is not true and correct; (c) the other party files a petition under any bankruptcy or insolvency law.

15. **Relationship of the Parties.** The relationship of RLMS to CUSTOMER shall be that of an independent contractor. Nothing herein shall be construed to constitute the parties as partners or joint ventures, or as employees or agents of the other. It is understood that in order for RLMS to enable CUSTOMER to accept customer payments by facilitating ACH and/or Credit Card transactions, and to submit such payments to CUSTOMER, RLMS may need to process certain forms with Agents on CUSTOMER's behalf. For CUSTOMER's convenience, CUSTOMER hereby acknowledges, agrees, and authorizes RLMS to provide necessary CUSTOMER information, including without limitation, and any information provided herein, to RLMS's Agents and to sign such forms on CUSTOMER's behalf.

16. **Modification Assignment.** This Agreement shall not be amended except by written agreement signed by both parties.

17. **Subcontracting.** CUSTOMER acknowledges and agrees that RLMS may use one or more Agents to perform under this Agreement, including for Hosting the System and maintaining and developing the Interface or the RLMS Products. RLMS will provide CUSTOMER a list of all subcontractor, and will update that list if additional subcontractors are used.

18. **Successors and Assigns.** All terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and permitted assigns.

19. **Severability.** Any provision of this Agreement which is unenforceable under any applicable law of any jurisdiction will be ineffective as to such jurisdiction without affecting any other provision in this Agreement, and the remaining provisions of this Agreement shall remain valid and binding enforceable in accordance with its terms and interpreted to achieve the same economic effect as the original Agreement. In addition, any interpretation of this Agreement shall not be construed against the party who drafted same.

20. **GOVERNING LAW AND VENUE.** This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

21. **Authority.** Each of the parties represents and warrants that it has the requisite power and authority to execute, deliver and perform this Agreement, and that such execution, delivery and performance shall not constitute a violation or breach of any charter or by-law or any other provision of any other agreement to which RLMS or CUSTOMER is a party or by which it may be bound. Each party further represents that it has been represented by separate and independent counsel in the preparation and negotiation of this Agreement, or has waived their right to such counsel. Both parties agree to preserve as confidential all information related to the business of the other, its affiliates, agents, and their customers, and clients, suppliers, which may be obtained or may be developed as a result of this Agreement, and further agrees to cause any agent to be bound by the confidentiality provisions contained therein.

22. **Entire Agreement.** The parties agree that this Agreement, and pricing included within (and made a part hereof), by RLMS on CUSTOMER's behalf as provided herein, evidence the complete understanding and agreement of the parties with respect to the subject matter hereof and supersedes and merges all previous communications, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

List of Exhibits

Exhibit A	Statement of Work
Exhibit B	Fee Schedule
Exhibit C	IRS W-9
Exhibit D	ACH Services Agreement (applicable if processing ACH on Paystation®)
Exhibit E	Authorization agreement for Direct Payment

The parties below hereby execute this Agreement and Exhibits as of the Effective Date:

Marion County

By: _Laurie Steele_
    Authorized Signature

Name: _Laurie Steele_

Title: _Treasurer_

Date: _8|6|20_

Email: _lsteele@co.marion.or.us_

Phone: _503-584-7750_

Address: _PO Box 14500_
        Salem, OR 97309

Retail Lockbox Merchant Services, LLC

By: _____
    Authorized Signature

Name: ___Craig Dawson_____

Title: ___President_____

Date: _____

Email: Craig@Retaillockbox.com_____

Phone: (206) 624-9424_____

Address: PO Box 84451
        Seattle, WA 98124

EXHIBIT A

Statement of Work

Paystation® Logon with Electronic Bill Payment & Presentment (EBPP)

RLMS will build an external facing website for Marion County to present invoices to users. The invoice will be presented once a user logs into the website. The invoice presented online will match the invoice sent by Marion County in the mail. One-time and recurring credit or ACH payments may be made, as directed by Marion County.

Marion County will send a Payment Data / Billing file to RLMS for upload into the system once per week. The file can be the same file that is sent to the invoice printer. Timing of the file will be determined during implementation.

The system will include the following standard features for a user:

User Features
- Notification of bill payment due
- Account Details
- Account Summary
- Forgot Password and Username Reset and Recovery (Without admin aid)
- Maintain Bank Account Information
- Maintain Credit Card Information
- Pay Now (ACH and Credit Card)
- Recurring Payment / Auto Debit
- Payment Details
- Payment Summary (Transaction History)
- Payment Type Configuration On/Off (Only ACH vs. ACH & VISA & MASTERCARD)
- Schedule/Delete/Edit/View a Future Payment
- Opt out of Paper Statement
- Email confirmation of payment

Admin Features
- Admin able to add and edit payment profiles
- Assign/Remove Accounts from users
- New Account Set up
- Admin able to make a payment + future payment (+ Recurring Billing)
- Recurring Payment / Auto Debit
- Payment History + Search customer online payment history (only online bill presentment payments)
- Account / Policy Inactive vs. Active Status. (Based off client provided Payment Data / Billing File)
- Search for customers by Account Number, Customer Name, Amount, and Statement Date
- Secure Password Reset + Force User Password Change on Login
- Daily Detail and Summary Report
- Update Transaction Display Type (Pending, NSF, Successful, Com Failure)
- User Group Controls (Dynamic Menu's and Permissions per user Group)
- View User Invoices
- Web Grids convert to CSV/Excel File

Site Features
- Time Zone Control (Must match Observance of Daylight Savings Time)
- User Lockout/Admin Unlock (Automatic Unlock)

ACH payments processing will be underwritten and processed through Jack Henry & Associates.

Jack Henry & Associates are a leading provider of ARC, Check 21, and ACH for daily processing, with more than 9,000 customers and over 6,000 associates worldwide.

Retail Lockbox Merchant Services will provide verification of the bank account number used to make ACH/E-Check payments each time the account number is used to make a payment. The verification will confirm that the bank account exists and that it is in good standing.

<center>**Paystation® Interactive Voice Response (IVR)**</center>

- Marion County will be provided with a phone number which customers wishing to make a payment to Marion County can call.
    - Customers will follow prompts to enter applicable information necessary to complete a transaction.
        - Customer will be prompted for their account number
        - IVR system will prompt back with the amount owed
        - Customer will be prompted for payment method
        - Customer will enter payment details
        - IVR system will provide a confirmation number
        - Call flow will end with successful completion
- Payments can be made via credit card or e-check (ACH).

Additional Statement of Work – Additional Programming Requested

a. Retail Lockbox Merchant Services will provide verification of the bank account number used to make an ACH/E-Check payments each time the account number is used to make a payment

b. Marion County will provide an account number verification file on a periodic basis to be determined. The file will include the Account number, Name on the account and the current balance owed. The name and Balance will be returned to the Payer.

c. For IVR, Retail Lockbox Merchant Services will capture the phone number that tax payer used to call in the payment. The phone number will be added to the daily report that we will provide the County.

d. New Pricing (This pricing is inclusive of the programming for the new features and reporting requested, and will be paid by the tax payer in a service fee model):
    i. Credit Card & Debit Card   3.00% per transaction
    ii. ACH/E-Check $ 1.70 per transaction

Terms: All fees for the prior month will be billed by the 3rd day of the next month. The fees will be due on the 10th of the month and collected via an ACH electronic transfer from Bank *(To Be Provided)* account number *(To Be Provided)* on that date. Late fees will be added to any and every month's bill that is late. There is a 5 day grace period beyond the Due Date printed on your invoice. The fee will be $50.00 and 12% per year on the outstanding balance.

If Customer reasonably and in good faith disputes all or any portion of a bill, Customer will notify RLI in writing within ten (10) days from the date of Customer's receipt of the bill, provide the reasons for the objection, and pay any portion of the bill which is not in dispute. If Customer's account is ten (10) days or more overdue (except with respect to charges under reasonable and good faith dispute), RLI reserves the right to immediately suspend services, without liability to the Customer, until Customer pays all overdue amounts in full. Suspension of services will not relieve Customer of its obligation to pay the service fees as outlined in Exhibit A.

Service Providers and third party providers and the Customer represent and warrant to the other party that it is Payment Card Industry Data Security Standard (PCI DSS) compliant and shall remain compliant during the term of the agreement. Should either party become non-compliant during the term, the non-compliant party shall promptly notify the other party of its non-compliance status. Both parties are responsible for the security of the cardholder data that is in such party's control or possession, as mandated by PCI DSS in the performance of their individual and mutual responsibilities under this Agreement. Should the Customer's Merchant ID incur any Non-Compliance Penalties, these penalties will be passed through to the non-compliant party.

The above pricing proposal is valid for 60 days and predicated on the services as outlined above. Any other functionality may be an additional charge. Retail Lockbox Merchant Services is allotting six (6) hours of labor for the implementation of the Paystation® site. If additional labor is required, charges may be billed at the hourly rate of $185.00.

Exhibit B—Fee Schedule

Paystation® Logon EBPP $ Included
    Includes:
- Customer Access
- Daily Reporting (Summary & Detail)
- Daily Accounts Receivable Posting File
- Email Message of Statement Availability & Due Date
- Integrated Non-Logon system

Monthly Billing Database Management $ Included
    Includes:
- ✓ File Uploads
- ✓ Processing Database and Storage
- ✓ Validation Feature (validates account #, plus secondary validation)

Paystation® IVR Platform $ Included
Includes:
- ✓ IVR Access
- ✓ Phone Number
- ✓ Daily Reporting (Summary & Detail)
- ✓ Daily Accounts Receivable Posting File
- ✓ Bilingual (English/Spanish) with Standard Script
- ✓ "I Accept" Storage for 2 years

Implementation & Programming $ ~~1,200.00~~ one-time Waived

Paystation® Logon EBPP & IVR Transaction Fees (Service Fee Model to be Paid by the Tax Payer)

Credit Card & Debit Card 3.00% per transaction *
ACH/E-Check $ 1.70 per transaction

*RLMS merchant services transaction processing cannot differentiate between credit card and debit card transactions. Both transactions types are charged at the same rate.

***** **Note:** Credit card interchange fees through credit card processor may apply. Convenience fees, if desired, may be determined during implementation.

ACH Processing Charges
ACH Return / NSF / Returned Items $ 18.00 per item

    Note: If an ACH transaction for a convenience fee is rejected, Retail Lockbox Merchant Services will collect the convenience fee and the associated ACH return fee directly from the Customer.

Miscellaneous Services
Change Request or Maintenance Charges $ 185.00 per hour

EXHIBIT C (W-9)

Form **W-9** (Rev. December 2011) Department of the Treasury Internal Revenue Service	**Request for Taxpayer** **Identification Number and Certification**	**Give Form to the** **requester. Do not** **send to the IRS.**

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____

☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Print or type See Specific Instructions on page 2.

Part I   Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II   Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign **Here**	Signature of U.S. person ▶	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

• An individual who is a U.S. citizen or U.S. resident alien,

• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,

• An estate (other than a foreign estate), or

• A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

EXHIBIT D
RETAIL LOCKBOX MERCHANT SERVICES
ACH SERVICES AGREEMENT

THIS ACH SERVICES AGREEMENT ("Agreement") is made by and between, RLMS and CUSTOMER as of July 1, 2020 (the "Effective Date").

CUSTOMER desires that RLMS provide the Services as set out in this Agreement. The Services provided hereunder shall be subject to the CUSTOMER application, CUSTOMER pricing, any other exhibits attached hereto and all documents signed by the CUSTOMER, all of which are incorporated by reference and specifically made a part of this Exhibit. Therefore, the parties agree as follows:

1. **NACHA RULES AND RLMS GUIDELINES:** RLMS and CUSTOMER each agree that it will be in compliance with the current rules and regulations of the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA and any other applicable rules, regulations, laws and card association rules (collectively the "NACHA Rules") applicable to it at all times during the term of this Agreement. All NACHA Rules are hereby incorporated herein by reference including any changes and updates to the NACHA Rules. In the Event of any inconsistency between the NACHA Rules and this Agreement the NACHA rules shall prevail and control. In addition, RLMS may publish to CUSTOMER and other companies its own standard operating and implementation guidelines for the Services with respect to specific NACHA Rules which will govern and apply to this Agreement as if set forth herein.

2. **SERVICES:** RLMS shall provide various Services as selected by CUSTOMER. CUSTOMER shall utilize and access the selected Services in accordance with the practices and procedures established by RLMS.

3. **MERCHANT ACCOUNTS:** CUSTOMER agrees to immediately reimburse RLMS for any shortfalls that occur due to non-sufficient funds in the commercial demand deposit checking accounts (the "Merchant Accounts") designated by CUSTOMER for use in conjunction with the Services. RLMS reserves the right to delay the availability of funds for deposit without prior written notices to CUSTOMER if in its sole discretion RLMS deems itself at financial or relative risk for any and all services performed under this Agreement.

4. **RIGHT OF SETOFF:** CUSTOMER may be required to maintain a reserve ("Settlement Reserve") of an amount to be solely determined by RLMS. CUSTOMER hereby acknowledges and agrees that any Settlement Reserve will be deposited in a RLMS account for exclusive use by RLMS for purposes of offsetting any CUSTOMER obligations under this Agreement. If CUSTOMER's Settlement Reserve falls below the required amount, CUSTOMER authorizes RLMS to immediately replenish the Settlement Reserve to an amount to be determined by RLMS via an ACH debit to the CUSTOMER Account or by a direct deposit to the Settlement Reserve. No interest will be paid on the Settlement Reserve. CUSTOMER grants RLMS a Security interest in any Settlement Reserve so that RLMS may enforce any obligation owed by CUSTOMER under this Agreement without notice or demand to CUSTOMER.

CUSTOMER's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement for the duration of the Termination Period during which time RLMS' security interest shall continue.

5. **RLMS shall have a right of setoff** against any and all fees, Returns and Refunds owed RLMS by CUSTOMER under this Agreement. CUSTOMER hereby authorizes RLMS to either initiate transaction entries to CUSTOMER's depository account number, (and as those numbers may be changed, any new account numbers provided to RLMS) without additional authorization or consent for any balance due RLMS, including amounts due associated with any ACH reversal initiated by a Customer's financial institution for reasons such as cancellation of order, non-receipt of goods or services purchased, or fraud ("Chargeback(s)"). In the event that an ACH reversal initiated by a Customer's financial institution for reasons such as cancellation of order, non-receipt of goods or services purchased, or fraud is unable to collect monies owed from CUSTOMER by these methods, CUSTOMER authorizes an ACH reversal initiated by a Customer's financial institution for reasons such as cancellation of order, non-receipt of goods or services purchased, or fraud to instruct the CUSTOMER's bank to return any monies originally transferred by an ACH reversal initiated by a Customer's financial institution for reasons such as cancellation of order, non-receipt of goods or services purchased, or fraud to CUSTOMER, until the balance of CUSTOMER's ACH account with RLMS is brought current with a zero balance. If RLMS reasonably believes that a Chargeback or refund is likely with respect to any transaction submitted by CUSTOMER to RLMS, RLMS may withhold from payments otherwise due to CUSTOMER under this Agreement until such time that: (a) RLMS is charged back by Customer's bank, in which case RLMS shall retain the funds; (b) the period of time under applicable law or regulation by which the Customer may dispute the ACH charge and the Customer's bank may exercise its chargeback rights has expired (generally 60 days from the date the financial institution first made available to the Customer its bank statement with the applicable charge transaction listed on it); and/or (c) RLMS determines that a Chargeback on the ACH charge requested by CUSTOMER will not occur. CUSTOMER further grants RLMS permission to initiate adjustment entries to CUSTOMER's checking account

in the event of erroneous transactions being posted to said account.

6. PRICING AND PAYMENT: CUSTOMER shall pay RLMS the fees, penalties and charges for the Services shown in RLMS' then-current standard published Services fee schedule for CUSTOMER. RLMS may increase the Services fees by giving CUSTOMER at least thirty (30) days prior written notice of such increase.

7. PROCESSING DEADLINE: RLMS has specific processing deadlines imposed by its ODFI ("Originating Depository Financial Institution") and the ACH Operator. Files received by the deadline will be transmitted that day to the Federal Reserve RLMS for settlement on the effective entry day. Files received after the deadline will be processed the next business day.

8. INDEMNIFICATION: CUSTOMER shall indemnify, defend and hold RLMS harmless from and against all claims, actions, losses and expenses, including attorney's fees and costs, incurred by RLMS arising out a third party claim related to or in connection with CUSTOMER's breach of this Agreement or the NACHA Rules or wrongful use of the Services. This indemnification shall survive the termination of this Agreement.

9. ENTRIES: CUSTOMER shall be responsible for the accuracy and propriety of all Entries submitted to RLMS for processing, as well as responsible for obtaining all required approvals for the processing of the Entry from the Customer. CUSTOMER shall be liable for each Entry and warrants that its Entries comply with the NACHA Rules.

10. DISCREPANCIES: In the event of any conflicts in the instructions received by RLMS regarding the CUSTOMER or any Entries relating to them, RLMS may at its option and with or without notice, hold or interplead, comply with the legal process or other order, or otherwise limit access by the CUSTOMER or by RLMS to the funds, Entries or proceeds thereof.

11. SECURITY PROCEDURES: CUSTOMER shall comply with the security procedures described herein and as set forth in the NACHA Rules; CUSTOMER acknowledges that the purpose of such security procedure is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between RLMS and CUSTOMER. CUSTOMER is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions.

12. WARRANTY: RLMS warrants to CUSTOMER that its Services will be performed in a professional and timely manner consistent with ACH transaction processing industry standards and in accordance with the NACHA Rules and any written RLMS policies and procedures communicated by RLMS to CUSTOMER. EXCEPT FOR THE FOREGOING WARRANTY, RLMS MAKES NO OTHER THE SERVICES ARE PROVIDED BY RLMS ON AN 'AS IS' BASIS WITHOUT WARRANTY OF ANY KIND, AND RLMS DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF CUSTOMER

13. ABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RLMS does not guarantee the completeness or accuracy of the information provided from a third-party database. RLMS shall have no liability to CUSTOMER for any invalid Customer information or Customer checks returned unpaid to CUSTOMER.

14. LIMITATION OF LIABILITY: In no event shall RLMS be liable to CUSTOMER or any other party for any loss of profits or any incidental, special, exemplary, punitive, or consequential damages even if RLMS has been advised of the possibility of such claims or demands. RLMS' cumulative liability to the CUSTOMER for all claims relating to or stemming in any way from the Services, this Agreement, or the relationship between RLMS and CUSTOMER, including any cause of action in contract, negligence, tort, strict liability of otherwise, shall not exceed the total amount of all fees paid by the CUSTOMER to RLMS during the three (3) month period preceding the origination of the claim giving rise to liability.

15. TERM AND TERMINATION:

a.   **TERM:** The Agreement shall commence on the Effective Date and remain in effect until June 30, 2024. The parties may extend the term of this Agreement provided that the term does not extend beyond June 30, 2028. .

b.   **TERMINATION:** This Agreement may be terminated by either party for cause upon giving the other party written notice of the breach of this Agreement committed by the other party and giving the other party a reasonable time to cure the breach. For the purpose of this Agreement, a reasonable time to cure the breach specified in the written notice shall be deemed to be:

(1) For any breach of Section 3, 4 or 6 above: Five (5) business days.

(2) For all other breaches of this Agreement: Thirty (30) calendar days.

RLMS may cancel this Agreement for any reason, or no reason at all, by providing CUSTOMER with seven (7) days' notice.

16.   MISCELLANEOUS:

a. <u>GOVERNING LAW AND VENUE:</u> This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

b. **NOTICE:** Any notice required or permitted hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight express mail, with proof of delivery retained, and addressed to the respective parties at the address set forth below. A copy of any notice of breach or termination sent to RLMS shall be delivered to the following:

Retail Lockbox Merchant Services, LLC
105 14th Avenue, Suite 300
Seattle, WA 98122
Attn: Legal Department

c. **ASSIGNMENT:** This Agreement shall not be assigned or delegated by CUSTOMER to any other party without the prior written consent of RLMS, which shall not be unreasonably withheld. RLMS may assign this Agreement in its sole discretion without the written consent of CUSTOMER.

d. **LEGAL FEES:** In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery.

e. **FORCE MAJEURE:** If performance by RLMS, ODFI or their affiliates, of any Service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of, among other things, labor disputes, strikes, acts of God, fire, floods, lightning, earthquakes, severe weather, utility or communications failures, failures of the ODFI or the ACH network, computer associated outages or delay in receiving electronic data, war, civil commotion, or any law, order or regulation, etc. having legal effect, then RLMS, ODFI and their affiliates shall be excused from their performance hereunder to the extent of the prevention, restriction, delay or interference.

f. **AMENDMENT:** Except as otherwise set forth herein, this Agreement may be amended only by a written document signed by authorized representatives of both parties.

g. **CAPITALIZED TERMS:** All capitalized terms used in the Agreement have the meaning assigned to that term in the current NACHA Rules.

h. **ENTIRE AGREEMENT:** This Agreement, contains the entire agreement between the parties relating to the subject matter addressed herein, and supersedes any prior or contemporaneous understandings or agreements, whether oral or written, between the parties regarding the subject matter contained herein. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature hereto, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.

APPROVE CONTRACT # TO-3392-20
MARION COUNTY and RETAIL LOCKBOX, INC. FOR
PROPERTY TAX CREDIT CARD PAYMENTS
SIGNATURE PAGE

MARION COUNTY
BOARD OF COMMISSIONERS

_____

Chair

_____

Commissioner

_____

Commissioner

_____

Date

APPROVED AS TO FORM:

_____   _____

Chief Administrative Officer   Date

_____   _____

Marion County Legal Counsel   Date

_____   _____

Marion County Contracts & Procurement   Date

*Treasurer approval on attached