

RESOLUTION NO. 23-19
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 15th
DAY OF April, 2019.

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A PRODUCTS AND SERVICES AGREEMENT FOR CREDIT CARD
PROCESSING SERVICES WITH THE BRIDGEPAY NETWORK
SOLUTIONS, LLC.**

WHEREAS, the City of Centerville is desirous of obtaining technical requirements for allowing the City to send and receive electronic transaction data for authorization and/or settlement from and to entities for electronic payment processing services; and

WHEREAS, the City desires to seek those services; and

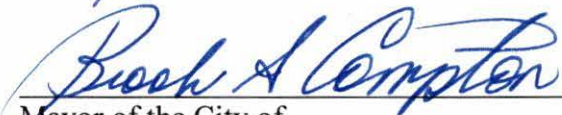
WHEREAS, Bridgepay Network Solutions, LLC (Bridgepay) has unique knowledge of such services and a demonstrated ability to assist in accomplishing the objectives of the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:**

Section 1. The City hereby agrees to enter into a Products and Services Agreement with Bridgepay Network Solutions, LLC, and the City Manager is hereby authorized to execute the Agreement with Bridgepay in a form substantially similar to the Agreement attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 15th day of April, 2019.



Mayor of the City of
Centerville, Ohio

ATTEST:

Carin R. Andrews

Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 23-19, passed by the Council of the City of Centerville, Ohio on the 15th day of April, 2019.

Carin R. Andrews

Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

Products and Services Agreement

This Products and Services Agreement ("Agreement") is made as of _____, 20__ ("Effective Date") by and between BridgePay Network Solutions, LLC with offices at 4300 West Lake Mary Blvd. Suite 1010-409, Lake Mary, FL 32746-2012 ("BridgePay") and The City of Centerville with offices at 100 West Spring Valley Rd., Centerville, OH 45458 ("Client").

I. Definitions

"Documentation" means the operations manuals, help files and other documentation designed to be used in conjunction with the Products and Services.

"Fees" means those fees payable to BridgePay, as set forth on the attached Exhibit A attached hereto.

"Payment Brand" means Visa, MasterCard and any other association, payment brand, payment instrument issuer, debit network or payment methodology or system having proprietary rights to and clearing and oversight responsibilities with respect to any payment instrument used to affect payment-related transactions.

"Products and Services" means the products and services described in this Agreement, including any upgrades, modifications or improvements thereto made available to Client by BridgePay under the terms of this Agreement.

"Provider" means the entity providing electronic payment processing services to Client pursuant to a separate merchant processing agreement.

II. Client's Rights and Obligations

2.1 Installation, Servicing, Maintenance. In consideration of use of the Products and Services, Client agrees to the best of its abilities to: (i) provide true, accurate, current, and complete information about Client and Provider as requested on any registration or application form, and (ii) to maintain and update this information to keep it true, accurate, current and complete. If any information provided by Client is untrue, inaccurate, not current, or incomplete, BridgePay has the right to terminate Client's access to the Products and Services and refuse any and all current or future use of the Products and Services. Client will be responsible for the installation, servicing and maintenance of the point-of-sale devices and related equipment at Client's facilities, and will likewise be responsible for the connection of those devices to the Products and Services in compliance with BridgePay's requirements.

2.2 License Grant. Subject to the terms and conditions of this Agreement, BridgePay hereby grants to Client a limited, non-exclusive, non-transferable, revocable, royalty free right, during the Agreement, to use the Products and Services, subject to the restrictions herein and any other restrictions communicated by BridgePay to Client, solely for Client's internal use. BridgePay and its suppliers shall retain title and all ownership rights to the Products and Services and this Agreement shall not be construed in any manner as transferring any rights of ownership or license to the Products and Services or to the features or information therein, except as specifically stated herein.

2.3 Description of Products and Services. BridgePay is providing Client with information concerning the technical requirements for allowing the Products and Services to send and receive electronic transaction data for authorization and/or settlement from and to Provider. To utilize the Products and Services, Client must: (i) provide for Client's own access to the World Wide Web and pay any fees associated with such access, and (ii) provide all equipment necessary for Client to make such connection to the World Wide Web, including a computer, modem and Web browser. Client will receive a password when registering. Upon approval, that password will allow Client access to the Products and Services. Client is responsible for maintaining the confidentiality of the password and account, and is fully responsible for all activities that occur under Client's password or account. Client agrees to immediately notify BridgePay of any unauthorized use of Client's password or account or any other breach of security.

2.4 Data Collection. Client is solely responsible for the security of data residing on the servers owned, controlled or operated by Client or a third party designated by Client (e.g., a web hosting company, Provider, or other service provider). Client will comply with all state and federal laws and Payment Brand rules and regulations, including without limitation laws, rules and regulations regarding disclosure to customers on how and why personal information and financial information is collected and used. Furthermore, Client shall comply with all of BridgePay's policies, procedures and guidelines governing the Products and Services provided hereunder, as may be amended from time to time. Client agrees not to use, disclose, sell or disseminate any cardholder information obtained in a card transaction to any third party other than to, or authorized by, BridgePay. Client agrees that BridgePay shall not be liable for any improperly processed transaction or third party, illegal or fraudulent access to Client's account, Client's IDs and passwords, end-user data or transaction data.

2.5 Compliance, Data Privacy and Security. Client agrees to comply with all Payment Brand rules and regulations as amended from time to time. Client shall comply with all applicable federal, state and local statutes and BridgePay required procedures and identified best practices. Client agrees (i) not to use the Products and Services for illegal purposes; and (ii) to comply with all applicable laws regarding the transmission of technical data exported from the United States. Client agrees to comply with the Security Standards. For purposes of this Agreement "Security Standards" means all security protocols, advisories, standards and guidelines required by the Payment Brands. Client warrants that its servers and electronic systems are secure from breach or intrusion by unauthorized third parties. If there is a security breach of Client's system and/or access to end-user data or transaction data by an unauthorized third party, Client shall notify BridgePay promptly of such breach and shall take such precautions as may be necessary to prevent such breaches from occurring in the future, as required by BridgePay.

2.6 Other Obligations. Client shall not alter or remove any copyright or other legal notices contained in the Products and Services and the related Documentation. Client shall not: (A) decompile, disassemble, reverse compile, reverse assemble, reverse translate or otherwise reverse engineer the Products and Services; (B) circumvent any technological measure that controls access to the Products and Services; or (C) use the Products and Services other than

pursuant to the terms of this Agreement. Client shall utilize its BridgePay assigned developer ID in each application utilizing the Products and Services. Client shall have no right to (i) disclose any BridgePay source code or Documentation to any third party, (ii) use or reproduce any BridgePay source code or Documentation other than as permitted or contemplated by this Agreement. No licenses are granted by BridgePay to Client by implication or estoppels to the BridgePay source code or Documentation.

III. BridgePay's Rights and Obligations

3.1 Ownership and Use of the Products and Services. Client shall use the Products and Services only for bona fide transactions between Client and a cardholder. Unless otherwise specifically permitted by this Agreement, Client's use of the Products and Services shall be restricted to a single merchant account owned and controlled by Client. Client agrees not to submit payment data to BridgePay or otherwise process orders on behalf of any other entity or individual. BridgePay retains all right, title and interest in and to the Products and Services and all related Documentation and all technology utilized under or in connection with this Agreement, and Client shall not take any action inconsistent with such ownership. The Products and Services, Documentation and the related Confidential Information (defined below) may be protected by copyright, trade secret and other intellectual property laws, all of which belongs to BridgePay. Client acknowledges that Client shall have no intellectual property or ownership rights in the Products and Services. Client will not contest the ownership of the Products and Services, and will cooperate with BridgePay in defending BridgePay's ownership rights to the Products and Services. The restrictions in this Agreement shall not be construed to supersede or eliminate any rights which BridgePay may have under applicable laws pertaining to trade secrets.

3.2 Cardholder Information Security. BridgePay hereby acknowledges to Client User that BridgePay is responsible for the security of cardholder information BridgePay possesses or otherwise stores, processes, or transmits on behalf of Client, or to the extent that BridgePay could impact the security of the Client's cardholder information environment. BridgePay will maintain and comply with all applicable PCI DSS requirements.

3.3 Warranty and Disclaimers. Each party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein, (b) no authorization or approval from any third party is required in connection with such party's execution, deliver or performance of this Agreement, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, and (d) the party's obligations under this Agreement do not violate any law or breach of any other agreement to which such party is bound. THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. BRIDGEPAY DOES NOT REPRESENT OR WARRANT THE PRODUCTS AND SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, ACCURATE, COMPLETE OR ENTIRELY ERROR-FREE. CLIENT MAY NOT RELY ON ANY REPRESENTATION OR WARRANTY REGARDING THE PRODUCTS AND SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS. BRIDGEPAY SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS,

WARRANTIES AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE PRODUCTS AND SERVICES. CLIENT UNDERSTANDS AND AGREES THAT BRIDGEPAY SHALL BEAR NO RISK WITH RESPECT TO CLIENT'S SALE OF ITS PRODUCTS OR SERVICES INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CREDIT CARD FRAUD OR CHARGEBACKS. BRIDGEPAY MAKES NO WARRANTY THAT THE PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS, NOR DOES BRIDGEPAY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PRODUCTS AND SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH USE OF THE PRODUCTS AND SERVICES.

IV. Fees

4.1 Fees. Client will pay to BridgePay on a monthly basis all Fees and other amounts owed to BridgePay under this Agreement on or prior to 60 days from the date of receipt of an invoice therefor. Client will promptly examine all invoices, and will notify BridgePay in writing within 30 days of any error. Unless BridgePay is notified of an error within 30 days of the date of the invoice, BridgePay shall be under no obligation to adjust invoiced amounts. All amounts unpaid on the due date under this Agreement shall bear interest at the rate of one and one-half percent per month (but in no event more than the highest rate of interest legally allowable) on such delinquent amount from its due date until the date of payment. BridgePay reserves the right to revise the Fees from time to time.

V. Confidential Information

5.1 Confidential Information. Except as may be required under applicable Law and pursuant to Ohio's Public Records Law, neither party will use for any purpose other than contemplated by this Agreement, will not disclose to any third party, and will cause its employees, independent contractors, and agents to not use or disclose, any term of this Agreement, the Products and Services, the Documentation, and any information learned about the business practices and ways in which either party conducts business that is not generally known to others, including without limitation details about BridgePay's Products and Services, any data or information that is a trade secret or competitively sensitive such as computer software and documentation, data and data formats, and financial information (collectively, "Confidential Information"). The party receiving Confidential Information (the "Receiving Party") will inform the party disclosing Confidential Information (the "Disclosing Party") of any request by a court or government agency to disclose such Confidential Information to enable the Disclosing Party to waive the provisions of this Section or defend the nondisclosure. This Section will survive termination of this Agreement.

5.2 Exclusions. The Receiving Party will not be obligated to maintain the confidentiality of Confidential Information: (i) it is required to reveal in performing its obligations under this Agreement, (ii) that is or becomes within the public domain through no act of the Receiving Party in breach of this Agreement, (iii) was legitimately in the possession of the Receiving Party prior to its disclosure under this Agreement, and the Receiving Party can prove that, or (iv) is

required to be disclosed by state or federal law, provided that the Receiving Party provides the Disclosing Party with notice and an opportunity to oppose the disclosure.

5.3 Remedy. In the event of a breach of this section, the parties agree that the Disclosing Party will suffer irreparable harm, and that the amount of monetary damages would be impossible to calculate. Thus, the Disclosing Party will be entitled to seek injunctive relief in addition to any other rights to which it may be entitled, without the necessity of proof of actual damages or the requirement of a bond.

VI. Term, Termination

6.1 Term. This Agreement will become effective on the Effective Date and will remain in effect until terminated as provided herein.

6.2 Termination. Client agrees that BridgePay may terminate Client's password, account or this Agreement (i) for cause at anytime without prior notice, or (ii) without cause upon providing not less than ten (10) days prior written notice to Client. Client acknowledges and agrees that any termination of access privileges to the Products and Services under any provision of the Agreement may be effected without prior notice. BridgePay agrees that Client may terminate this Agreement (i) for cause at any time without prior notice, or (ii) without cause upon providing not less than thirty (30) days prior written notice to BridgePay.

VII. Limitation of Liability

7.1 Limitation of Liability. The liability, if any, of BridgePay under this Agreement for any claims, costs, damages, losses and expenses for which it is or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of compensation paid to BridgePay for the preceding 3 month period, measured from the date the liability accrues. In no event will either party be liable for indirect, special, consequential, or punitive damages even if advised of that possibility. Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

VIII. General

8.1 Assignability. Client may not transfer, sell, or otherwise assign any of its rights under this Agreement, either directly or by operation of law, without providing prior written notice to BridgePay.

8.2 Notice. All communications under this Agreement will be in writing and will be delivered in person, by email, or by nationally-recognized overnight mail courier, return receipt requested, addressed to the addresses specified in the opening paragraph of this Agreement and to the attention of that party's president. The parties may, from time to time, designate different persons or addresses to which subsequent communications will be sent by sending a notice of such designations in accordance with this Section.

8.3 Entire Understanding, Amendment. This Agreement, including the attached exhibits which are incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter. Amendments to this Agreement must be in writing and signed by both parties.

8.4 Severability. If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the provisions hereunder.

8.5 No Waiver of Rights. No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

8.6 Successors and Assigns. This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns.

8.7 Applicable Law. This Agreement will be deemed to be a contract made under the laws of the State of Ohio, and will be construed in accordance with the laws of Ohio (State) without regard to principles of conflicts of law. The exclusive forum and venue for the adjudication of any rights, claims or disputes arising out of or in connection with this Agreement shall be the federal or state courts located in Montgomery County, Ohio (State). The parties specifically waive the right to a jury trial in connection with any dispute arising out of this Agreement, or between the parties for any reason.

8.8 Independent Contractors. BridgePay and Client will be deemed to be independent contractors and will not be considered to be agent, servant, joint venture, or partner of the other.

8.9 Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. All Sections mentioned in the Agreement reference Section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

8.10 Survival. All sections that by their context are intended to survive the termination of this Agreement will survive termination of this Agreement.

8.11 Force Majeure. In no event shall BridgePay be liable with respect to the failure of its duties and obligations under this Agreement which is attributable to acts of God, war, terrorism, conditions or events of nature, civil disturbances, work stoppages, equipment failures, power failures, fire or other similar events beyond its control.

8.12 Name and Trademarks. Except as otherwise provided in this Agreement, neither party will use the other's name or trademarks in any promotional or marketing materials without prior written consent. Client understands and agrees that this Agreement confers, and Client

shall obtain, no other right to BridgePay's name or trademarks by virtue of such use. Client acknowledges that BridgePay is the sole owner of its trademarks (the "Marks"), and acknowledges that the Products and Services are a proprietary product of BridgePay. Accordingly, Client acknowledges that ownership of all existing patents, copyrights, mask work rights, trademarks, trade names, trade secrets and other proprietary rights relating to or residing in Products and Services, and all copies of all or any part thereof ("Intellectual Property"), will remain with BridgePay. Client will not contest the ownership of the Marks or Intellectual Property, and BridgePay may at any time and upon reasonable notice prohibit Client from using the Marks or Intellectual Property for any reason.

8.13 Counterparts/Signatures. 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 or PDF copies reflecting the party's signature, and any such facsimile copy or PDF copy shall be sufficient to evidence the signature of such party as if it were an original signature.

BridgePay Network Solutions, LLC

By: _____
Name: _____
Its: _____

The City of Centerville, Ohio

By: _____
Name: Wayne S. Davis
Its: City Manager

Approved as to form:

Scott A. Liberman
Municipal Attorney

**Exhibit A
Products and Fees**

Tyler Technologies Per Transaction Fee	\$0.10
Activation Fee	waived
Monthly Minimum Fee	waived