

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

23-200 A-2

SAP Number

Big Bear Valley Recreation and Park District

Department Contract Representative
Telephone Number

Jeff Day
(909) 386-8816

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Wells Fargo
Miguel Haller
(301) 745-7002
3 Years
\$0.00
\$0.00
\$0.00
6200002582

Briefly describe the general nature of the contract: Addendum to merchant services agreement between the Big Bear Valley Recreation and Park District and Wells Fargo Merchant Services, LLC, providing special provision regarding Clover Services point-of-sale system used for ticket sales and gift shop sales critical to collection of Zoo's revenue and operation budget.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Aaron Gest

Aaron Gest, Deputy County Counsel

Date Mar 6, 2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► David R. Doublet

David R. Doublet, Assistant Director

Date Mar 6, 2023



Addendum to Agreement for Special Provisions Regarding Clover Service

This Addendum to Agreement: Special Provisions Regarding Clover Service (this “**Addendum**”) supplements, and is hereby made a part of, the merchant services agreement (the “**Agreement**”) you have entered into with Wells Fargo Merchant Services, LLC (“**Processor**”) and Wells Fargo Bank, N.A. (“**Bank**”) or their respective predecessors or assigns. This Addendum governs the provision of the Clover Service (as defined below) to you by Processor along with Processor’s third party service providers, including Clover Network, Inc., an affiliate of First Data Merchant Services LLC (“**Clover**”). By signing below, you are electing to receive the Clover Service and you agree to the terms and conditions set forth in this Addendum for the Clover Service.

The Clover Service is provided to you by Processor. Bank is not a party to this Addendum, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Addendum, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

The Clover Service, all transactions processed via the Clover Service, and other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of this Addendum will control.

1. Definitions. Capitalized terms have the meanings given to them in this Addendum or elsewhere in the Agreement.

Application Marketplace means the electronic marketplace provided to you via an agreement between you and Clover, through which Third Party Apps and Third Party Services are available to you at your election. For the avoidance of doubt, the Application Marketplace is not part of the Clover Service provided by Processor pursuant to this Addendum and the Agreement.

Card Not Present means a transaction submitted through the Clover Service where the cardholder does not physically present a payment card at the time that an order is placed (e.g. through the Virtual Terminal, via 3rd Party App, over the internet).

Clover Companion App means an optional mobile application that provides Clover merchants access to certain features and the capability to accept card payments through their mobile device which additional end user agreements apply.

Clover Apps means the non-modifiable (object code) software applications loaded on a Device at the time we provide the Device to you. For the avoidance of doubt, the Clover Apps do not include Third Party Apps.

Clover Dashboard means the back office platform that enables the Clover merchant to perform daily business functions, such as change account settings, review statements and deposit reporting, accept Card-Not-Present transactions through the Virtual Terminal and 3rd party eCommerce Apps, and access value-added services and other business operation needs.

Clover Hardware means Clover Flex, Clover Mini, and Clover Station.

- **Clover Flex** means a hand-held Clover Device that is enabled to accept payments (including credit, NFC, EMV, and signature/PIN debit); has a built-in printer, camera, and QR scanner; and can be used as a mobile, stand-alone, or integrated payment terminal.
- **Clover Mini** means the Device that is enabled to accept payments (inclusive of credit, NFC, EMV and PIN debit) that you submit to us using the Clover Service.
- **Clover Station** means the stationary Device that is enabled to accept payments (inclusive of credit, NFC, EMV and PIN debit) that you submit to us using the Clover Service. Includes Station Pro/Duo which has a customer-facing processing terminal. Clover Station requires either Register, Counter Service Restaurant, or Table Service Restaurant software.

Clover Marks means the trademarks or service marks used by Processor and Clover in connection with the Clover Service.

Clover Service means the hardware, software and services delivered through the Device that are designed to assist you with the management of your business and enable payment processing at the point of service or sale, including: (a) the website through which the Clover Service is provided to you by Processor, (b) the Clover Apps, (c) other non-modifiable (object code) software that enables the Clover Apps to work on the Device (d) the Clover Software, as defined below, (e) the Device, and (f) any related updates or new versions of such software (including software maintenance or bug fixes), materials, documentation and derivative works released by Processor or Clover from time to time. For the avoidance of doubt, the words “software” and “services” in the preceding sentence do not include the Application Marketplace, any Third Party Apps or any Third Party Services that may be obtained by you separately from the Clover Service. The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.

Clover Software means the software subscription plan that enables certain features, Clover Apps, and other functions of the Clover Service (e.g., Clover Payments, Clover Essentials, Register, Table Service Restaurant, or Counter Service Restaurant). Clover Software plans include access to the Clover Dashboard and the Clover Companion App.

- **Clover Payments** means Clover software with basic payment acceptance functionality within Clover Hardware and Clover Dashboard. Limited Access to the Clover App Market. Clover Payments can be accessed with or without Clover Hardware. Merchants with a Healthcare MCC may see Clover Payments appear as Healthcare (PP) during the activation process. **Healthcare (PP) is only available to healthcare providers, and healthcare providers will only have access to Healthcare (PP).**
- **Clover Essentials** means Clover software includes electronic cash register functionality such as item and category selections, simple inventory management, and sales discounts and taxes. Limited access to the Clover App Market. Pricing is on a per-device structure when using with Clover Hardware. Clover Essentials can be accessed with or without Clover Hardware.
- **Register** means the Clover Software that provides core point-of-sale functionality for various verticals including enhanced inventory and order management, support for item variants, weight scale support and other business management functionality. Full access to the Clover App Market. Pricing is on a tiered per-device structure. Clover Hardware is required for Register software.
- **Table Service Restaurant** means the Clover Software designed for Full-Service Restaurants with front-of-house restaurant software functionality including custom floor plan design, table and order management, bar tab pre-authorization, fire orders to kitchen, and more. Full access to the Clover App Market. Pricing is on a tiered per-device structure. Clover Hardware is required for Table Service Restaurant software.
- **Counter Service Restaurant** means the Clover Software designed for pay-at-counter establishments. This plan includes all the features and functionality in the Register plan (minus support for item variants and exchanging items) plus modifier groups and kitchen printer integration. Full access to the Clover App Market. Pricing is on a tiered per-device structure. Clover Hardware is required for Counter Service Restaurant software.

Customer means a Person who makes a purchase of goods or services from you, and the transaction is processed utilizing the Clover Service.

Customer Information means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) and other information obtained by (a) Processor or Clover in connection with your use of the Clover Service, (b) by Clover in connection with your use of the Application Marketplace, or (c) by providers of Third Party Services.

Device means a mobile or fixed piece of equipment, including a tablet or smartphone, or other device identified by Processor from time to time to be capable of supporting the Clover Service. For the avoidance of doubt, a Device is deemed to be "Equipment" or "Merchant Equipment" as defined in the Agreement.

Third Party Apps means the non-modifiable (object code) software applications that are NOT loaded on a Device at the time we provide you with the Device; you must subsequently elect to install Third Party Apps onto the Device. Third Party Apps are available through the Application Marketplace via an agreement between you and the developer of the Third Party App. For the avoidance of doubt, the Third Party Apps are not part of the Clover Service provided by Processor pursuant to this Addendum and the Agreement.

Third Party Services are the services, products, promotions or applications provided through a Third Party App. For the avoidance of doubt, the Third Party Services are not part of the Clover Service provided by Processor pursuant to this Addendum and the Agreement.

Virtual Terminal is a web-based solution that allows merchants to process credit card transactions using their internet-connected computers.

2. License Grant. During the term of this Addendum, Processor grants you a limited, non-exclusive, revocable, non-transferable sublicense, without the right to further sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with this Addendum. For purposes of this Addendum, "United States" does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Addendum does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain the sole and exclusive property of Clover, us, or our respective vendors or licensors (as applicable), and any and all right, title and interest associated with the Clover Service not expressly granted in this Addendum are deemed withheld.

3. Restrictions. You may not, nor may you permit any third party, to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended or made available for use as authorized hereunder; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in each case obtaining our advance written consent (which may be withheld for any lawful reason); (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the

proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 2.

4. Clover Service Limitations and Requirements.

- 4.1. Based on the equipment you select, the connectivity options are either wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.
- 4.2. You may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when you restore your Internet connectivity to the Clover System. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.
- 4.3. Maintenance on the Clover Service may be performed from time to time, which may result in service interruptions or delays, and the Clover Service may contain errors or "bugs" that may result in failure. Neither we nor Clover will be liable for any such interruptions, delays, errors or bugs. You agree that we or Clover may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors or bugs.
- 4.4. You shall at all times comply with any operating procedures, requirements or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you.
- 4.5. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or Clover in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, you are solely responsible for verifying that all information and data loaded onto a Device by us or Clover at your request are accurate prior to your business use of such data or such Device. We and Clover disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- 4.6. You shall comply with the following requirements in connection with your use of the Clover Service:
 - a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are **not** permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
 - b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are **not** permitted to add or modify a Customer's consent indication on his behalf.
 - c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
 - d) You are responsible to provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your Customers.
 - e) **Notwithstanding the capability of the Clover Service to collect and store Customer information and to allow your Customers to elect to receive marketing materials from you, some states' law may limit your use of such information, or your disclosure of such information to third parties, once collected, even if the Customer has provided their consent. You acknowledge and agree that (I) your use of Customer information obtained in connection with the Clover Service may be subject to local, state, and federal laws, rules, and regulations, (II) you are solely responsible for knowing such laws, rules, and regulations, (III) you will at all-time strictly comply with such laws, rules, and regulations, and (IV) upon request, you will furnish documentation sufficient for Processor to establish same in any audit or regulatory review.**

5. Special Terms for Clover Flex and Clover Mini. If you use Clover Flex or Clover Mini to obtain Clover Software, then

you can choose from one of up to five plans –, Clover Payments, Clover Essentials, Register, Counter Service Restaurant and Table Service Restaurant Clover Software. However, if you use Clover Station alone or with Clover Flex or Clover Mini Device, then all your devices must use the same software plan, either Register, Counter Service Restaurant or Table Service Restaurant software (Clover Payments and Clover Essentials are not available). All of the other terms in this Addendum apply to your use of the Clover Services using a Clover Flex or Clover Mini Device.

6. **Fees.** The fees that you agree to pay to Processor for the Clover Services are described in the fee schedules that accompany the Agreement, which does not include any fees in connection with the Application Marketplace, Third Party Apps, Third Party Services or Clover Software fees. Any fees that you may agree to pay Clover or any other Third Party Services in connection with the Application Marketplace, Third Party Apps, Clover Software, or any other Third Party Services will be assessed and collected separately by Clover or the applicable third party. Clover Devices require a Clover Software plan. Certain Clover accounts through Processor come pre-installed with Clover Payments, a basic payment-only software, which may include fees that are assessed monthly per account. You may choose a more advanced version of Clover software at an additional monthly fee per device and/or account, which will be assessed by Clover directly, and will not appear on your statement. Clover Station requires a more advanced Clover Software at an additional monthly fee per device, billed directly from Clover. Clover Station will not work with the Clover Payments or with Clover Essentials software alone. All fees are subject to change. Availability of certain software plans, applications, or functionality may vary based on your selected Clover equipment, software or industry. Any fees collected separately by Clover or Third Party Services are subject to change, as determined by Clover or Third Party Services. With any of the Clover software plans, Virtual Terminal capabilities are available complimentary, and Processor will charge you the processing rates as Card-Not-Present transactions in your Agreement.
7. **Third Party Apps and Third Party Services.** The Application Marketplace enables you to obtain Third Party Services through Third Party Apps. If you decide to download Third Party Apps or use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions that apply to each Third Party App and each Third Party Service (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). You understand that your access or use of Third Party Apps or Third Party Services is at your own risk. You expressly acknowledge and agree that Third Party Apps and Third Party Services are not governed by the terms and conditions of this Addendum or the Agreement. You will have no recourse against Processor, Clover or Bank for such Third Party Services or Third Party Apps; your only recourse, if any, will be against the providers of the Third Party Apps and Third Party Services. **Any content downloaded or otherwise obtained through the use of the Application Marketplace, Third Party Apps, or Third Party Services is downloaded at your own risk. Neither Processor, nor Clover, nor Bank will be responsible for any actions, or any failures to act, of any third party with the respect to the Third Party Apps, the Third Party Service, or otherwise, and Processor, Clover and Bank expressly disclaim any liability related to all Third Party Apps and Third Party Services. Neither Processor, nor Clover, nor Bank warrants, endorses, guarantees, or assumes responsibility for any provide of a Third Party App, a Third Party Service, or any product that is advertised or offered by a Third Party through the Clover Service, the Clover website, or the Application Marketplace (including any website or service that is hyper-linked or featured in any banner or other advertising), and neither Processor, nor Clover, nor Bank will be a party to or in any way monitor any transaction between you and providers of Third Party Apps, Third Party Services, or any product advertised or offered by a third party.**
8. **Privacy and Data Use.** All data collected from you at www.clover.com or in connection with your use of the Clover Service, including Customer Information and information about your business and employees used with or stored in or by the Clover Service (collectively, “Account Data”), is collected by Clover and not by Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Privacy Policy (available at https://www.clover.com/privacy_policy). **Please note that the Clover Privacy Policy is not the same as the Processor or Bank Privacy Policies, and you must review the Clover Privacy Policy to ensure it meets your needs and is consistent with the agreement you have with your Customers, as discussed in greater detail in Section 9 below. You acknowledge and agree that we may access your Account Data upon our request to Clover, and our use of your Account Data is**

governed by the terms set forth in the Agreement. Certain data collected by Clover or us in connection with the Clover Service may be shared with third parties, and may be used by us, Clover, or third parties for purposes of providing additional products and services to you, other merchants, or other third parties. **Account Data is separate from any data collected by third parties through Third Party Apps or Third Party Services; you will be able to review the Privacy Policies related to Third Party Apps and Third Party Services prior to using the Third Party Apps and Third Party Services.**

9. **Protecting Your Information.** You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service (collectively, "**Security Information**") are kept safe and confidential, for preventing unauthorized access to and use of your Security Information, and for any liability arising from your failure to fulfill these responsibilities. You must also prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to us or to Clover containing Account Data and for all users of the Service in association with your Account Data and Security Information. You agree to monitor your Account Data and Security Information, and actively remove any user profiles that are no longer active or authorized to access your Clover Service. When we receive communications containing Account Data, we assume you sent it to us, and when Clover receives communications containing Account Data, Clover assumes you sent it to them. Clover has the right to rely on user names, password and other signor credentials, access controls for the Service or any software provided or approved by Clover to authenticate access to, and use of, the Service and any software. You must immediately notify us if you become aware of any loss, theft, or unauthorized use of any Account Data (see Clover Service support center contact, 800-451-5817). You should not send Account Data or other confidential information to us through unsecure channels outside of the Clover Service. We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

10. **Clover Service Disclaimer.** Use of the Clover Service and Clover Hardware is at your own risk. To the maximum extent permitted by applicable law, the Clover Service is provided "as is," and neither Processor nor Clover makes any representations or warranties of any kind (express or implied) with regard to the Clover Service, including, without limitation, warranties of accuracy, merchant ability, fitness for a particular purpose or non-infringement, or that the Clover Service will function uninterrupted or error-free.

11. **Indemnity.** Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- a) Your failure to comply with all terms and conditions in this Addendum;
- b) Your use, sharing or disclosure of any Customer Information obtained in connection with your use of the Clover Service in violation of this Addendum;
- c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- d) Any other party's access and/or use of the Clover Service with your unique username, password, or other appropriate security code.

12. **Notices.** We may provide notices and other information regarding the Clover Service to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below. Your notices to us regarding the Clover Service shall be delivered via the method(s) described in the Agreement.

13. **E-sign Consent Agreement for notification of disclosures related to the Clover Service and the Agreement**

A. Consent

By signing this Addendum, you consent and agree that:

- i. Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.

- ii. Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover Service has the same effect as if you signed them in ink.
- iii. Processor can send all communications, billing statements, amendments to this Addendum, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or in connection with this Agreement, including but not limited to any Card Association notices (collectively defined as "Disclosures") to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- iv. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- v. This consent applies to all future Disclosures sent to you in connection with this Addendum, the Agreement, or your use of the Clover Service or the Services as defined in the Agreement.

B. Legal Effect

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Processor provided paper Disclosures to you. When Processor sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Processor provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

This service agreement has been executed by Processor (without wet signature). By signing below, you separately consent to the E-Sign Consent Agreement above, which you acknowledge is required for your acceptance of the Clover Service and Processor's acceptance of this Addendum.

PROCESSOR: Wells Fargo Merchant Services, L.L.C.

IRS Legal Filing Name: _____

Principal Name: Dawn M. Rowe

Principal Name: _____

Title: Chair, Board of Directors

Title: _____

Signature: *Dawn M. Rowe*

Signature: _____

Date: MAR 14 2023

Date: _____

**SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Secretary**

By *[Signature]*
 Deputy