

ONLINE REGISTRATION AND SERVICING AGREEMENT FOR

CITY OF CEDAR HILLS

AND

CIRILIAN, INC. dba REC1

This ONLINE REGISTRATION AND SERVICING AGREEMENT (the "Agreement") is made and entered into as of this 1st day of October, 2015 by and between Cirilian, Inc., a Georgia corporation d/b/a "Rec1" ("Rec1"), whose address is 12460 Crabapple Road, Suite 202, #111, Alpharetta, GA 30004, and City of Cedar Hills ("Customer"), whose address is 10246 N Canyon Road, Cedar Hills, Utah 84062.

WITNESSETH:

WHEREAS, Rec1 is a corporation formed pursuant to the laws of the State of Georgia and is presently in existence and in good standing; and

WHEREAS, Customer is seeking a software registration system for its Parks, Recreation, and Cultural Services Department;

WHEREAS, Customer desires to engage Rec1 for a specific term to provide a software registration system, as well as maintenance therefor, and Rec1 desires to be engaged by Customer in accordance with and subject to the terms and conditions hereafter set forth; and

WHEREAS, the parties hereto believe it to be in their best interests to create a definite and certain Online Registration and Servicing Agreement under the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The statements above are true and correct and herein incorporated into this Agreement by this reference.
2. Engagement. Customer hereby engages Rec1 to perform the services as more particularly described in the attached Exhibit "A" – Services Provided (the "Services Provided").
3. Duties of Rec1. Rec1 shall serve as the exclusive provider to Customer of the Services Provided.

4. Term. Customer and Rec1 hereby agree that this Agreement is terminable at will upon written notice by either party by regular first class mail to the address listed in Paragraph 12 below. The Agreement shall be terminated 30 days after receipt of such notice. The parties agree to continue performance thereunder until the effective date of termination unless the parties mutually agree to an earlier effective date of termination. Upon termination of this Agreement and expiration of any applicable notice period, the parties hereto shall have no further liability or obligation except as explicitly provided hereunder as surviving termination of the Agreement.

5. Payment Agreement.

a. Fee for Basic Portal Services. Customer agrees to pay Rec1 a monthly fee ("Basic Portal Services Fee") based upon usage, billed in arrears monthly in an amount equal to 1% per registration transaction fee collected by the Customer ("Customer Transactional Fee"). Rec1 shall invoice Customer the first week of each month for Basic Portal Services Fees incurred during the prior month's processing. Such Basic Portal Services Fees charged by Rec1 do not include any transactional or monthly fees assessed by Customer's credit card processor. The minimum monthly Basic Portal Services Fee shall be \$100 per unique REC1 organizational account. The Basic Portal Services Fee shall be independent of any Merchant Processing Fees described in subsection b below.

b. Rec1 Merchant Account. If Rec1 provides the merchant account for the collection of registration and other credit card monies on behalf of Customer, it shall charge a per transaction processing fees ("Merchant Processing Fee") as provided herein. Merchant Processing Fees will be calculated using a "Processing Rate" which is a percentage of each positive Charge that is captured through the system. No Processing Rate fees are credited back in the event of a refund or credit. In addition to the Processing Rate, an additional Transaction Fee will be assessed which is a fixed amount per transaction. This Transaction Fee will also only apply to positive Charges and will not apply to Refunds or Voids. Unless otherwise specified, all fees due and payable to Rec1 will be deducted from the funds collected in the merchant account prior to disbursement. Unless otherwise arranged, disbursements will occur either monthly (on or about the 1st of the next month) or semi-monthly (on or about the 1st as well as the 16th of each month).

i. Standard Merchant Processing Rates are as follows:

Processing Rate - 3% per "charge" transaction
Transaction Fee - \$.30 per transaction

ii. There are no monthly minimum fees for merchant processing. Customer simply pays for what it uses.

iii. Rec1 reserves the right, at any time, to adjust the merchant processing

rate or transaction fee to more accurately reflect the amount and type of credit card transactions being processed. Rec1 will give 30 days' notice upon such change.

iv. In addition to the Merchant Fees, Customer will also be responsible for extraordinary processing fees assessed by Rec1's merchant account beyond normal transaction fees. The most typical extraordinary fee would involve a payer reversing a charge on a credit card statement. In such case, Rec 1 shall invoice Customer the first week of each month for any such fees in excess of the funds collected in the Customer merchant account incurred during the prior month's processing. In any event, Customer shall only be responsible for payment to Rec1 of actual, additional fees charged to Rec1 by the merchant as discussed under this subsection 5.b.iv.

c. Payment. All amounts due and payable (and not collected through a merchant account, if applicable) must be remitted within 30 days of distribution of the applicable invoice. All invoices are distributed electronically and can be viewed online on the Rec1 website.

i. Any payment not received from Customer by Rec1 within 60 days of distribution of the applicable statement shall be subject to an administrative fee in an amount equal to 1.5% per month of any outstanding and unpaid amount.

d. Optional Training. Rec1 will provide optional on-site training at a rate of \$1,000 per day plus travel costs and expenses. Such on-site training includes 8 hours of training for as many Customer users as is reasonably necessary.

e. Custom Development. Rec1 will provide customized development at a rate of \$100 per hour. All work will be estimated and agreed upon with Customer prior to work start.

f. Fully-Earned. All amounts owed to Rec1 hereunder are fully-earned upon provision of the Services Provided or other charged amounts hereunder, are not subject to withholding or off-set in any manner whatsoever, and are non-refundable upon payment subject only to a clear demonstration of an accounting error. Customer expressly acknowledges and agrees that Customer is familiar with the proposed Services Provided and Rec1's billing process. Unless otherwise expressly herein provided, if Customer is not satisfied with the Services Provided or the performance of Rec1 hereunder for any reason or no reason whatsoever, Customer's sole and exclusive remedy shall be to terminate this Agreement as herein provided, and Customer expressly waives any claim to a refund or other compensation.

6. Indemnification. Rec1 agrees to indemnify, defend and hold harmless Customer and its

respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability, injury, or loss that Customer suffers in connection with the negligence or willful misconduct of Rec1 in performance of Rec1's obligations under this Agreement. Customer agrees to indemnify, defend and hold harmless Rec1 and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability, injury, or loss that Rec1 suffers in connection with the negligence or willful misconduct of Customer in connection with this Agreement. Further, Customer represents and warrants that any changes, customizations, added functions or options and any other related items to the Software (defined below) requested by Customer, if any, are not the proprietary work of a third party or owned by a third party, and Customer agrees to indemnify, defend and hold harmless Rec1 and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability that Rec1 suffers in connection with implementing such changes, customizations, functions, options or other items at the Customer's request. If any party hereto receives notice of an event or possible event that would give rise to indemnification as required hereunder, such party shall provide immediate notice to the other party of such event. Further, if either party that is to be indemnified and held harmless hereunder receives payment or other compensation from a third party, any such amount received shall be applied to any amounts owed by the indemnifying party to the indemnified party or to a third party. Finally, the indemnifying party shall have the right to choose counsel to defend the indemnified party, to be accepted or rejected in the indemnified party's reasonable judgment. If the parties cannot come to agreement as to a choice of legal representation, the indemnifying party shall have the sole, final determination. Neither party shall be responsible for payment of any amount or any damages in excess of such amount actually incurred or suffered by the indemnified party.

7. Relationship of Parties. The Customer and Rec1 agree that Rec1 is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. The Customer shall not be obligated to pay to Rec1, and Rec1 shall not be entitled to, any benefits accorded to Customer employees by virtue of the services provided under this Agreement. The Customer shall not be responsible for withholding or otherwise deducting federal income tax or social security or any other tax, for contributing to the state industrial insurance program or otherwise assuming the duties of an employer with respect to Rec1.
8. Waiver of Breach. The waiver by either party of a breach of any of the provisions of this Agreement shall not be construed as a waiver by such waiving party of any subsequent breach by the offending party.

9. Binding Effect; Assignment. The rights and obligations as provided under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of each party hereto.
10. Entire Agreement. This Agreement contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Agreement may be changed only by an agreement in writing signed by the party against whom any waiver, change, amendment, modification or discharge is sought.
11. Governing Law and Venue. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS. THE VENUE FOR ANY LITIGATION UNDER THIS AGREEMENT SHALL BE IN SALT LAKE COUNTY, UTAH.**
12. Notice. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by certified or registered mail, first class, return receipt requested to the parties at the following addresses:

To Customer:

10246 N Canyon Road
Cedar Hills, UT 84062
Attn: Greg Gordon
e-mail: ggordon@cedarhills.org

To Rec1:

12460 Crabapple Rd
Suite 202, #111
Alpharetta, GA 30004
Attn: Landon Schenck
e-mail: lschenck@rec1.com

13. Strict Construction. The language used in this Agreement shall be deemed to be in the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied for or against any party by reason of such party being deemed the draftsman hereof.
14. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
15. Severability. If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and

enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
17. Litigation and Attorneys' Fees. If it shall be necessary for either party to this Agreement to bring suit to enforce any provisions hereof or for damages on account of any breach of this Agreement, the substantially prevailing party on any issue in any such litigation and any appeals therefrom shall be entitled to recover from the other party, in addition to any damages or other relief granted as a result of such litigation, all costs and expenses of such litigation and a reasonable attorneys' fee as fixed by the court.
18. Insurance. During the term of this Agreement, Rec1 shall procure and maintain, at Rec1's sole cost and expense, the following insurance coverages:

Technology Liability - \$1,000,000 Per Claim/\$1,000,000 Aggregate
General Liability/Auto - \$1,000,000 Per Claim/\$2,000,000 Aggregate

19. Ownership of Software, Website, and Portal and Remedies Related Thereto. Customer agrees that it has no right, title, interest or ownership in, or to, the software, website, or portal utilized by Rec1 to provide the Services Provided, or any of its components, programming code or data structures, images or functions or any copies or modifications of the software, User Manuals, or any components, code or data structures thereof or in the software (collectively, the "Software") except to the extent that Rec1 grants the right to use the Software. The Software shall remain at all times Rec1's sole and exclusive property. The definition of "Software" shall also include any changes, customizations, added functions, or options and any other related items requested by the Customer and implemented by Rec1, it being hereby expressly acknowledged and agreed that such changes, customizations, functions, options, and items are and shall be the sole and exclusive property of Rec1 and the Customer shall have no right or claim to such changes, customizations, functions, options, or items or any compensation whatsoever related thereto. Customer shall not reproduce or copy any Software or portion thereof without Rec1's prior written consent. The obligations set forth in this Paragraph shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever. Customer agrees that, in the event of a breach or threatened breach by Customer of the provisions of this Agreement, Rec1 shall be entitled to both a temporary and permanent restraining order and a preliminary injunction, or other similar remedy, restraining Customer or any affiliate, officer, agent or assignee from violating the terms of this Agreement. Customer specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damage that would be suffered and incurred by Rec1 as a result of a breach of any of the provisions of this Paragraph. Such

remedy with respect to the provisions of this Paragraph is non-exclusive and shall be in addition to any other remedy available to Rec1 at law or in equity.

20. Warranty. If the Customer determines that some functions/capabilities within REC1 are not performing up to required specifications, Rec1 will take commercially reasonable measures to remedy such situation during the term of this Agreement at no additional charge to the Customer. Rec1 does not guarantee that Rec1 will implement any and all new enhancement and module requests but will take commercially reasonable efforts to provide features that perform as designed.

[Remainder of page intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CUSTOMER

Customer Signatory

Name: DAVID H. BUNKER Signature: 

Title: CITY MANAGER Date: 9/28/15

CIRILIAN, INC. (d/b/a Recl)

Name: Landon Schenck Signature:

Title: President Date:

Exhibit "A"

Services Provided

Services provided by Rec1 to the Customer under this agreement include the following:

- Access – Rec1 hereby grants a non-exclusive license during the term of the Agreement for the Customer and patrons of the Customer recreational programming to access, use and display Rec1's online registration service (the "Portal"). Excluding occasional maintenance, the Software shall be available 24 hours per day, seven days per week with a guaranteed uptime of 99%. The Portal is accessible via the public Internet from any PC with an Internet connection. There is no limit to the number of organization users and participants that can enroll using the Portal.
- Online Registration – The Rec1 registration engine through which the Portal is accessed can be integrated with Customer's website. Rec1 will format a registration page to match the colors and theme of the rest of Customer's website. Customer would then display a link on its own page that would seamlessly redirect the user to a secure page on the Rec1 server.
- Documentation - All Rec1 startup and user's guides are maintained electronically in the system and can be accessed through the "Help Center" from within Rec1. Rec1 does not provide paper copies of its guides and help files.
- Data Backups – Rec1 currently performs backups daily of all of its data (6:00 AM). In case of emergency, Rec1 may restore data to the point of the previous backup.
- Enhancements – New features will be added to Rec1 throughout the term of this Agreement. Customer will have full access to all of these new features without additional charge. Customer is also encouraged to submit change requests as they see opportunities for improvement. Rec1 will attempt to implement any and all changes that improve the value of Rec1 to all of our customers at no charge. Thereafter, Customer will be charged a development fee at a \$100 hourly rate for custom requests. All work will be estimated and agreed upon in writing by the parties hereto prior to work start.
- Customer Support – Rec1 shall provide an online utility for problem reports and change requests. Customer may also reach Rec1 by phone at 1-800-335-1863 between the hours of 9:00 AM and 6:00 PM Eastern Standard Time, Monday through Friday and excluding national holidays. E-mail support is also available at support@rec1.com. After-hours support is often available but is not guaranteed. Emergencies will be handled as soon as possible. Enhancement requests will be queued based on priority and implemented on a schedule. Rec1 shall have sole and absolute discretion as to whether support requests exceed reasonable use or exceed the scope of services outlined in this Agreement. If the parties hereto cannot agree on levels or limits of acceptable support use, then each party hereto has the option to terminate this Agreement as outlined in Paragraph 4.
- Data – In the event Customer no longer wishes to use Rec1, Rec1 will export Customer data based on a requested format (in most cases). If the data exporting request is initiated by Customer, development will be charged at a \$100 hourly rate. All work will be estimated and agreed upon in writing by the parties hereto prior to work start.
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