



March 26, 2025

To: West Plains City Council

Re: Etix/West Plains Civic Center Ticketing Services Agreement

### **Executive Summary**

The West Plains Civic Center is seeking to accept a proposal from Etix to provide ticketing services at the Civic Center for the next three years, with a renewal term of an additional two years.

### **Discussion**

The West Plains Civic Center has received notice from our current ticketing partner, Ticketmaster, that they wish to align their business practices with larger venues. The current Ticketmaster contract will expire on June 30, 2025. Ticketmaster has agreed to allow West Plains Civic Center to choose a new ticketing partner before the expiration of the current contract to allow for a smooth transition for guests purchasing tickets for an event after the expiration of the Ticketmaster contract.

eTix, based in Morrisville, NC, has made a proposal to become West Plains Civic Center's new ticketing partner. Established in 2000, Etix is an American-owned, international web-based ticketing services provider processing more than 50 million tickets per year for 4,100+ clients in the entertainment, travel and sports industries in 40 countries. The company hosts a call center for guests where they accommodate tickets sales over the phone and inquiries concerning events or the venue.

A few of their current Missouri clients are the Missouri State Fair, Missouri Theatre, Branson Scenic Railway, and Hughes Brothers Theatre. Regional clients include Muskogee Civic Center, Freedom Hall Civic Center and Bismarck Event Center.

### **Fiscal Impact**

West Plains Civic Center will pay Etix \$0.10 per ticket sold at the physical Civic Center Box Office. This will be absorbed by the existing facility fee.

For online sales, the service fees are charged to the guest making the purchase. The proposed fees are 10% of the face value of the ticket, with a minimum of \$1.00 and a maximum of \$5.00 per ticket, which is significantly less than our current ticketing agreement.

They will provide points of sale, ticket scanners, and ticket stock at no cost.

**Timeline**

If approved, the agreement would officially go into effect on April 22, 2025.

BILL NO. 2025-05

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF WEST PLAINS, MISSOURI AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF WEST PLAINS AND ETIX FOR EVENT TICKETING SERVICES AT THE WEST PLAINS CIVIC CENTER.

WHEREAS, the West Plains Civic Center desires to partner with Etix, a leading ticketing service provider throughout the United States and around the world.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI AS FOLLOWS:

Section 1: That the city council of the City of West Plains, Missouri does authorize the city administrator of the City of West Plains, to execute the attached agreement (exhibit A) between the City of West Plains/West Plains Civic Center and Etix.

Section 2: This resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_.

CITY OF WEST PLAINS, MISSOURI

BY: \_\_\_\_\_  
MAYOR MICHAEL TOPLIFF

ATTEST:

\_\_\_\_\_  
CITY CLERK KELLIE MAYERS



909 Aviation Parkway, Suite 900  
Morrisville, NC 27560

# TICKETING SERVICES AGREEMENT

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City of West Plains, MO  
West Plains Civic Center

## Exhibit A

### Term Sheet

Dates		
<b>A1</b>	<b>Dated as of</b>	April 22, 2025
<b>A2</b>	<b>Effective Date</b>	April 22, 2025
<b>A3</b>	<b>Initial Term</b>	3 Years
<b>A4</b>	<b>Renewal Term</b>	2 Years
Deal Points		
<b>A5</b>	<b>Internet Sales</b>	10% of face value, minimum \$1.00, and maximum \$5.00 per seat for each ticket
<b>A6</b>	<b>Package Sales</b>	10% of face value, minimum \$1.00, and maximum \$5.00 per seat for each ticket
<b>A7</b>	<b>Group Sales</b>	10% of face value, minimum \$1.00, and maximum \$5.00 per seat for each ticket
<b>A8</b>	<b>Box Office Sales</b>	\$0.10 per ticket for paid tickets. No charge for complimentary (\$0 priced) Tickets.
<b>A9</b>	<b>Blank Ticket Stock (Per 1000)</b>	Etix will gladly provide generic Etix ticket stock to the Client at no cost.
<b>A10</b>	<b>Pull Ticket Sales</b>	\$0.10 per ticket for paid tickets. No charge for complimentary (\$0 priced) Tickets.
<b>A11</b>	<b>Bank Charge Card Fee</b>	3% and is subject only to actual increases in the interbank exchange rates.
<b>A12</b>	<b>Support &amp; Maintenance</b>	No Charge
<b>A13</b>	<b>Initial Set-up</b>	No Charge
<b>A14</b>	<b>Merchant Account Connection</b>	No Charge
<b>A15</b>	<b>Digital Marketing</b>	Included. Details in section 4A
<b>A16</b>	<b>Phone Center Sales</b>	10% of face value, minimum \$1.00, maximum \$5.00 per seat for each ticket, plus \$2.50 per order fee to offset our labor costs.
<b>A17</b>	<b>Mail Fulfillment</b>	USPS first class mail is \$3.50 per order and \$19.95 per order for express delivery if you choose to have Etix fulfill and mail orders

A18	<b>On-site Technical Support (Optional)</b>	\$1500 per agent per day plus reimbursement for actual travel expenses. Etix will work with the Client and provide cost estimates for pre-approval when requested.
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- A. Client Merchant Account Process.** Client shall process all credit card transactions through its merchant account unless Etix elects, when this Agreement grants it the right to so elect, to process credit card transactions on its own merchant account. For any period during which credit card transactions are processed through Client’s merchant account, Etix shall periodically invoice Client amounts due Etix from Client hereunder. Payments not received within 30 days of receipt of invoice will accrue interest at a rate of 1.5% per month (or, if less, the maximum amount permitted by applicable law). If payments are not received within 90 days of receipt of invoice, Etix may, upon delivering notice to Client, begin, and continue for the remainder of the term of this Agreement, collecting receipts on its own merchant account, in which event the process set forth in Section B will apply.
- B. Etix Merchant Account Process.** The process set forth in this Section B is applicable for all credit card transactions processed by Etix. Etix shall collect the Total Receipts for any period it elects to collect such Total Receipts as permitted under this Agreement. Etix may keep funds arising from the sale of Tickets in an account containing funds connected with other unrelated ticket servicing agreements (sometimes called “commingling” funds). Etix shall remit to Client the Total Receipts (exclusive of any Convenience Fee and any other amounts due to Etix hereunder, applicable taxes, and, at Etix’s discretion, chargebacks and other bank fees (for which Etix may separately invoice rather than deduct)) of all Attractions transpiring the previous Monday through Sunday between Monday and Thursday of the following week by check or ACH. At the time payment is made, Etix shall also furnish Client an event settlement report setting forth the Total Receipts for the applicable Attraction, the deductions therefrom, and the net amount due to Client. Such event settlement report in each case shall be conclusive unless within seven days of providing the applicable event settlement report, Client notifies Etix in writing in reasonable detail the respects in which Client believes in good faith the event settlement report to be incorrect; provided, however, that the parties promptly shall negotiate in good faith to resolve any such dispute.
- C. Chargebacks.** Client shall be responsible for the payment of all chargebacks associated with Ticket sales arising during the term of this Agreement. For purposes of this Agreement, a “chargeback” is any amount a merchant bank is charged back by a cardholder or a card issuer under the card organization’s rules (e.g., cardholder dispute, fraud, declined transactions, etc.) for a cardholder-specific issue, and does not apply to Attraction-wide issues such as a partial or complete cancellation of, or rescheduling of, an Attraction or a change in an Attraction’s performers, which will be governed by Section D. Client acknowledges that, due to credit card association rules, standard chargebacks may occur up to 18 months from the date on which a customer has purchased a Ticket, and chargebacks resulting from fraud claims may occur without time limit, and accordingly the parties agree that the provisions of this Section C shall survive the termination or expiration of this Agreement.
- i. Client Processing.** For any period during which credit card transactions are processed through Client’s merchant account, Client agrees to directly pay all such credit card chargebacks.
  - ii. Etix Processing.** For any period during which credit card transactions are processed through Etix’s merchant account, Etix will invoice Client for the payment of all chargebacks and other bank fees it does not deduct from Total Receipts it pays to Client pursuant to Section B. Payments not received within 30 days of receipt of

invoice will accrue interest at a rate of 1.5% per month (or, if less, the maximum amount permitted by applicable law).

**D. Refunds; Rescheduled or Changed Attractions; Resolution of Customer Inquiries:**

- i. Client agrees to assume all responsibilities regarding refunds, exchanges, and resolution of customer inquiries or issues. Etix agrees to exchange Tickets as directed by the Client. Client shall indemnify and hold Etix harmless from any loss, liability, cost or expense arising from claims regarding refunds, Ticket exchanges, partial or complete cancellation of, or rescheduling of, an Attraction, or a change in an Attraction's performers. Etix will adhere to Client's refund, exchange, cancellation, rescheduling, and Attraction change policies, except that Client shall comply with Etix's reasonable business practices concerning the return or exchange of Tickets.
- ii. If Etix is processing transactions through its merchant account, Etix agrees to assist Client in distributing refunds and to provide exchanges of Tickets. Specific refund procedures will be mutually agreed in each case. If any such refunds are related to an Attraction-wide event, Etix will provide such assistance for at least 30 days after the earlier of the date Etix is notified of an Attraction-wide refund and the originally scheduled date of such Attraction. After the 30-day period expires, Etix may, at its sole discretion, remit to Client any amounts remaining from the Total Receipts held by Etix for the canceled Attraction (less all amounts due to Etix), after which Client shall be solely responsible for making further refunds or any other reimbursement to customers of Tickets to the canceled Attraction. Client agrees to reimburse Etix any bank fees it incurs related to the processing of refunds. Etix may, in its sole discretion, either deduct any such amounts from other funds held by Etix otherwise payable to Client or invoice Client for such amounts. If Etix elects to invoice Client for such amounts, any payments not received within 30 days of receipt of invoice will accrue interest at a rate of 1.5% per month (or, if less, the maximum amount permitted by applicable law).
- iii. Client agrees to inform customers of this refund policy.

X

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City of West Plains

X

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Etix, Inc.

## TICKETING SERVICES AGREEMENT

by and between

**City of West Plains  
West Plains Civic Center  
110 St Louis St  
West Plains, MO 65775**

**Etix, Inc.  
909 Aviation Parkway, Suite 900  
Morrisville, NC 27560**

**(the "Client")**

**("Etix")**

The Client and Etix agree as follows:

- 1. The Deal.** The Client grants to Etix the exclusive right and authority to sell on the Client's behalf all available Tickets through the System for all Attractions, including but not limited to online, point-of-sale or box office sales, phone orders, Group Sales, all season tickets, and mini-plans. No third-party ticketing companies or brokers may sell any portion of the Ticket inventory for any Attraction unless there is an exclusive written agreement in place between the Client and any such companies or brokers that took effect prior to the Effective Date and the Client has notified Etix of such agreement in writing prior to the Effective Date. Without limiting the foregoing, all online Ticket sales shall transpire through Etix pursuant to this Agreement. Etix makes no guarantees with respect to Ticket sales in connection with this Agreement, including without limitation any guarantees that a minimum or fixed number of Tickets will be sold through the System for the Attraction. In no event shall the Client have any right, title, or interest in or to the System or any portion or component thereof.

  - A. Fan Club Exemption.** Etix understands that from time to time, the Client may have to allow a portion of Tickets to be sold through an Artist's fan club. Etix will grant an exception to exclusivity in those circumstances and allow the Client to allocate Tickets to the artist's fan club, but only under the following conditions:

    - i.** The fan club allotment will never exceed 10% of the sellable capacity of the Attraction, with "sellable capacity" meaning the total number of Tickets to be sold through the System and the fan club;
    - ii.** For non-general admission shows, the fan club allotment shall not include tickets in consecutive rows;
    - iii.** The fan club sales will end within thirty (30) days prior to the show; and
    - iv.** All unsold fan club Tickets will be immediately returned to the Etix inventory.
- 2. Term.** The term shall be for the period specified in Exhibit A, Box A3.

  - A. Auto-Renew.** At the expiration of the initial term or subsequent renewal terms, the term shall automatically renew for subsequent periods specified in Exhibit A, Box A4 unless written notice is received by a party more than 30 days prior to the end of such initial term or then-current renewal term indicating the other party's intent to not renew the Agreement.
  - B. Auto-Extension.** If the initial term or then-current renewal term is measured as a period of time, the applicable term shall be automatically extended by the number of days any venues controlled by the Client or any Attractions are not Operating in the Ordinary Course for any reason.
  - C. Early Termination by Etix due to Failure to Operate in the Ordinary Course.** If any venues operated by the Client or any Attractions fail to Operate in the Ordinary Course for any reason for a period of 30 or more days, then from the 30<sup>th</sup> such day until the date all venues operated by the Client and all Attractions begin to Operate in the Ordinary Course, Etix shall have the right to terminate this Agreement immediately upon delivery of notice to the Client.

3. **Payment & Fees.** Etix shall be entitled to receive from the Client, and the Client shall pay to Etix, compensation for Etix's services as follows:
- A. For **Internet Sales**, Etix will receive a Convenience Fee as specified in Exhibit A, Box A5.
    - i. For **Package Sales**, Etix will receive a Convenience Fee as specified in Exhibit A, Box A6.
    - ii. For **Group Sales**, Etix will receive a Convenience Fee as specified in Exhibit A, Box A7.
  - B. For **Box Office Sales**, Etix will receive a Convenience Fee as specified in Exhibit A, Box A8. Additional charges may apply for custom ticket stock. Blank Etix stock is available for the fee specified in Exhibit A, Box A9.
  - C. For **Pull Ticket Sales**, Etix will receive a Convenience Fee as specified in Exhibit A, Box A10.
  - D. **Bank Charge Card Fees.** The Client shall pay any fees charged by its merchant bank for all transactions processed through the Client's merchant account. For the purpose of billing Ticket purchasers, the Client may add any such fees, and any additional fees to be collected for the Client's benefit and paid by the Ticket purchaser, to the applicable Convenience Fee to be paid to Etix for the type of transaction, with the actual amounts due to each party settled via settlement. For any period during which Etix collects Total Receipts as permitted under this Agreement, Etix will be responsible for paying its merchant bank, and will charge purchasers the Bank Charge Card Fee.
  - E. **Shipping and Handling.**<sup>1</sup> The Client shall pay all shipping and handling charges associated with the delivery of direct pull tickets and the delivery and return of any rental equipment. To the extent Etix ships Tickets, the Client will collect and remit to Etix a mutually agreed postage and handling fee from consenting purchasers who select the mail delivery method.
  - F. **Additional Fees.** In addition to the fees established above, the Client agrees to pay to Etix the following amounts:
    - i. **Support and Maintenance.** An annual fee for email/phone support and maintenance as specified in Exhibit A, Box A12, due upon execution of this Agreement and upon the anniversary of that date each year for the term of the Agreement.
    - ii. **Initial Set-up Fee.** An initial, one-time, set-up fee as specified in Exhibit A, Box A13, due upon execution of this Agreement.
    - iii. **Merchant Account Connection Fee.** An initial, one-time, merchant account connection set-up fee as specified in Exhibit A, Box A14, due upon successful connection of the Client and Etix's merchant accounts.
  - G. **Other Costs.** All other costs associated with an Attraction, including but not limited to expenses associated with box office, labor, and staffing, shall be the sole responsibility of the Client.
4. **Optional Services and Fees.** The Client may use any of the following optional services by notifying Etix and paying to Etix the fees described below:
- A. **Digital Marketing Services**, services listed here are available for the price listed in Exhibit A, Box A15.
    - One (1) custom website included, one (1) onboarding marketing call to review Etix marketing infrastructure set-up including advertising pixel placement, Google Analytics ecommerce integration with Etix, and cross-domain tracking set-up with your organization's website. Annual marketing strategy consultation calls upon request, one (1) custom reporting dashboard, upon request. Hive email marketing set-up/onboarding, upon request.
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- B. For **Phone Center Sales**, Etix will receive the Convenience Fee specified in Exhibit A, Box A16 as compensation for effecting sales of Tickets through a phone center. This Convenience Fee includes standard mail, will call, or electronic delivery.
- C. For **Mail Fulfillment**, Etix will receive, with respect to purchasers who select mail delivery, a postage and handling fee as specified in Exhibit A, Box 17. Etix will print thermal tickets and mail said tickets to purchasers via First Class US Mail or other reasonably similar method.
- D. **Rental Equipment.** Scanners and ticket printers may be rented by the Client according to the prices set forth in Exhibit B (price may be adjusted annually for inflation or to reflect other increases in Etix's costs). The Client must comply with the Rental Equipment Terms and Conditions attached hereto. The Client must give Etix a minimum of three weeks' notice on all equipment requests. Scanners and thermal ticket printers may also be purchased through Etix at a to-be-negotiated price.
- E. **Technical Support.** Etix will provide complimentary technical support via phone and email. On-site support is available at the rate specified in Exhibit A, Box A18. This price includes Etix-arranged transportation, commercially reasonable accommodations, and meals. The Client agrees to reimburse Etix for any additional expenses incurred.

5. **Client's Additional Obligations.** The Client shall:

- A. Honor or cause to be honored all Tickets properly issued by Etix;
- B. Allow the sale of all Tickets to an Attraction available for sale to the public;
- C. Inspect all the data in the System for accuracy before the on-sale date. Etix is not responsible or liable for any typos or mistakes pertaining to Ticket price, spelling, date, time, seating chart, or any other data entered into the System;
- D. No later than five business days prior to the on-sale date, provide Etix with the necessary information regarding the Attraction, including but not limited to seating layout, Ticket structure, permissible discounts, and any tax information;
- E. Reserve one image space (size 101 x 375 pixels) on the print-at-home ticket for Etix to use at its discretion, including licensing the space to a third party; and
- F. Give Etix permission to offer Tickets for sale at Etix.com, unless directed otherwise by the Client. The Client shall, whenever commercially reasonable, feature the Etix.com logo and instructions as to where customers can purchase Tickets online at the Client's website, in advertising, or other promotional material which it creates or controls.

6. **Early Termination.** This Agreement shall automatically terminate if either party suffers the appointment of a receiver for all or a substantial part of its assets or business, or otherwise takes advantage of or is subject to any other law relating to bankruptcy, insolvency, or relief from the claims of creditors. Either party may terminate this Agreement in any of the following situations:

- A. **Payment.** If the other party fails to account and make payment hereunder, and such failure is not cured within 14 days after written notice of the failure is sent to the other party; or
- B. **Other Default.** If the other party fails to perform any other required obligation hereunder, and such failure is not cured within 30 days after written notice of the failure is sent to the other party.
- C. **Other Specific Provision.** If any other provision of this Agreement grants a party the right to terminate this Agreement.
- D. **Effect.** Termination pursuant to Section 6A or Section 6B shall be effective upon the notifying party mailing a notice to the other party declaring its election to terminate. Termination pursuant to Section 6C shall be effective as provided in the specific provision of this Agreement granting the termination right. No termination of the Agreement shall affect any right of either party accruing prior to such termination, whether such right is conferred by the terms of the Agreement or arises under general principles of law or equity.

## 7. Terms and Conditions.

- A. **Notice.** All notices, approvals, or requests in connection with this Agreement must be in writing and shall be deemed given when deposited in the US mail, certified, return receipt requested, with postage prepaid, or when sent by fax or email if a party provides a fax or email notice address. Notices shall be sent to the parties at their respective addresses set forth in the preamble to this Agreement. Either party may hereafter change the address to which notices are to be sent by written notice compliant with this Section 7A to the other party.
- B. **Indemnity.** Each party (in such capacity, an "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and the employees, officers, directors, and agents of the other party (each an "Indemnified Party") from and against all claims, actions, demands, costs, damages, losses, liabilities or expenses (including reasonable attorneys' fees) of any kind asserted by a third party against an Indemnified Party and arising out of the Indemnifying Party's (or the Indemnifying Party's employees', officers', directors', or agents') negligence, willful misconduct, or negligent performance of, or failure to perform, any of the Indemnifying Party's covenants or obligations under this Agreement. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- C. **Assignment.** This Agreement may not be assigned, directly or indirectly, by either party without the prior written consent of the other, except to a successor (by merger, purchase of assets or stock, consolidation, etc.) to all or substantially all of the assets of the assigning party. To the extent that an assignment is so permitted, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of either party. Any other assignment or purported assignment of this Agreement shall be null and void.
- D. **Construction.** This is not an agreement of lease, partnership, or employment of Etix or any of Etix's employees by the Client. Etix shall not order any merchandise or equipment, incur any indebtedness, enter into any undertaking or make any commitment in the Client's name or purporting to be on the Client's behalf, except as required to advertise, publicize, sell or do all things pursuant or incidental to the purposes and intents of this Agreement. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of North Carolina without resort to any conflict of law principles thereof.
- E. **Conflicts.** In the event Etix shall have a separate agreement similar hereto with the owner or management of the facility at which an Attraction is to be performed, such separate agreement shall apply to such Attraction unless Etix is otherwise directed in writing by the owner or management of such facility.
- F. **Force majeure.** Neither party shall be responsible for any delay or failure of performance resulting from fire, strike, flood, labor dispute, domestic or international unrest, delay in receipt of supplies, energy shortage, power failure, Internet failure, epidemic, act of governmental entity, or any other cause beyond its reasonable control. Nothing in this Section 7F shall limit Etix's rights pursuant to Section 2C.
- G. **Legal compliance.** The parties hereto shall each comply with all laws and regulations respectively applicable to each party in connection with the operations contemplated hereunder. Without limiting the foregoing, Each party acknowledges and agrees that if, in connection with its obligations hereunder, it has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other Ticket user or purchaser information, it shall at all times comply with all applicable laws regarding such information and the Payment Card Industry Data Security Standards (PCI DSS) requirements in connection therewith.
- H. **Severability of Provisions.** In the event that any provision hereof shall be deemed in violation of any law or held to be invalid by any court in which this Agreement shall be interpreted, the violation or invalidity of any particular provision shall not be deemed to affect any other provision hereof this Agreement shall be thereafter interpreted as though the particular provision so held to be in violation or invalid were not contained herein.

- I. **Records.** Etix shall keep adequate records reflecting Ticket transactions to allow the Client to make a meaningful Ticket audit. The Client shall have the right at all reasonable times to examine and audit the records of Etix insofar as they relate to an Attraction.
- J. **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of North Carolina, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina.
- K. **Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in any United States federal court or state court located in North Carolina in the City of Raleigh and Wake County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by certified mail in accordance with Section 7A] shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum
- L. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- M. **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- N. **Relationship of the Parties.** Nothing herein shall be construed to create a joint venture or partnership between the parties or an employee/employer or agency relationship.
- O. **Confidentiality.** The parties agree the terms of this agreement are strictly confidential and Client will not disclose such terms to any other person, except its legal counsel, personal managers, and accountants and except as required by law.
- P. **Entire Agreement; Amendments.** This Agreement, including all exhibits attached hereto, contains all the terms agreed to between the parties with respect to the subject matter hereof, and supersedes and written or oral prior or contemporaneous statements. No modifications or amendments of any of the terms hereof shall be valid or binding unless made in writing and signed by both parties.
- Q. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA AND THE LIKE) FOR ANY MATTER ARISING FROM, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE SERVICES OR PRODUCTS PROVIDED HEREUNDER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY DUE FROM ETIX IN CONNECTION WITH THIS AGREEMENT EXCEED THE AGGREGATE COMPENSATION RECEIVED BY ETIX HEREUNDER.
- R. **Disclaimer of Warranties.** THE ETIX SERVICES, SYSTEM, EQUIPMENT AND ANY DELIVERABLES PROVIDED IN CONNECTION THEREWITH ARE PROVIDED "AS IS" "WHERE IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND ETIX DISCLAIMS AND CLIENT HEREBY WAIVES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING

WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF THE SYSTEM, EQUIPMENT, OR SOFTWARE WILL BE ERROR-FREE.

**8. Glossary.** As used throughout this Agreement:

- A. “Attraction” means all theatrical productions, sporting events, permanent or temporary exhibits or other entertainment features produced or presented, in whole or in part, by the Client or Owner at any venue controlled by Client or Owner for which Tickets are sold.
- B. “Bank Charge Card Fee” means the fee specified in Exhibit A, Box A11 for transactions processed by Etix’s merchant account.
- C. “Convenience Fee” means monies charged to Ticket purchasers to be paid to Etix for such purchaser’s convenience of utilizing the System.
- D. “Effective Date” means the date provided in Exhibit A, Box A2.
- E. “Final Ticket” means a Ticket for which a per-ticket Convenience Fee is paid and for which no refund of such fee is issued by Etix.
- F. “Group Sales” are Tickets purchased from a group price code.
- G. “Operating in the Ordinary Course” means:
  - i. With respect to venues, the venue is selling a substantially similar number of Final Tickets to a substantially similar number of Attractions with acts of substantially similar notoriety and at substantially similar prices (adjusted for inflation) as compared to past practices.
  - ii. With respect to Attractions, the Attraction is booking acts of substantially similar notoriety and selling a substantially similar number of Final Tickets at substantially similar prices (adjusted for inflation) as compared to past practices.
- H. “Package Sales” are bundled, single transaction purchases of Tickets to multiple Attractions purchased at one time and labeled as a “package”.
- I. “System” means the system developed, maintained, and owned solely and exclusively by Etix, as modified from time to time, for the sale of Tickets via the Internet and permitting remote printing by purchasers.
- J. “Ticket” means (i) evidence of the right to occupy space or obtain entry to the Attraction, (ii) the right to park at an Attraction, (iii) the right to VIP services at an Attraction or (iv) the sale of a pre-purchased item to be delivered by Client at an Attraction, in each case, when distributed through the System.
- K. “Total Receipts” means all monies processed through Etix’s merchant account (Etix will collect the proceeds) or the Client’s merchant account (Client collects proceeds) in connection with the sale of Tickets.

**(continued on next page)**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first listed above.

**City of West Plains**  
**West Plains Civic Center**  
**110 St Louis St**  
**West Plains, MO 65775**

**Etix, Inc.**  
**909 Aviation Parkway, Suite 900**  
**Morrisville, NC 27560**

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

Name: Sam Anselm

Title: City Administrator

Date: \_\_\_\_\_

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

Name: Dennis Scanlon

Title: Vice President

Date: \_\_\_\_\_

**Exhibit B  
Rental Equipment**

<b>Item</b>	<b>Quantity</b>	<b>Price/Term</b>
<b>The following equipment is included in the deal</b>		
Laptop	2	No Charge
Ticket Printer	2	No Charge
Magnetic Credit Card Swiper (Client May be Required to Purchase their own EMV Devices; Etix has devices available for purchase if required).	2	No Charge for Magnetix cc readers. EMV devices available for purchase if required.
Ticket Scanner (Android hand held scanners + chargers)	4	No Charge
<b>Additional equipment can be rented for the following rates</b>		
Laptop – as part of point of sale solution inclusive	1	\$200.00/month
Ticket Printer - as part of point of sale solution inclusive	1	\$200.00/month
Magnetic Credit Card Swiper - as part of point of sale solution inclusive (emv devices are available for rent)	1	\$200.00/month for magnetic cc swipe or an additional \$175.00 per month for each emv device if required)
Ticket Scanner	1	\$125.00/month

Client must comply with the Rental Equipment Terms and Conditions.

**RENTAL EQUIPMENT TERMS AND CONDITIONS**

In addition to the terms and conditions contained in the ticketing services agreement between Etix and the Client (hereinafter, the "Agreement"), of which this Rental Equipment Terms and Conditions (this "Addendum") is a part, the following terms and conditions apply with respect to the rental of the equipment. In the event of any inconsistency between the Agreement and this Addendum, this Addendum shall control.

1. **Price.** The Client agrees that any rental fees as well as shipping and handling costs for rental equipment will be deducted from settlement payments in accordance with the payment terms set forth in the Agreement.
2. **Term.** The term for this Addendum shall commence on the date any equipment is shipped to the Client and shall continue thereafter for the period set forth in the Agreement (the "Rental Equipment Term"). After the expiration of the Rental Equipment Term, the Client shall return the equipment to Etix using the original shipping packaging provided by Etix. If the equipment has not been returned within fifteen business days of the expiration of the Rental Equipment Term, the Client agrees to pay \$25 per business day until the earlier of (a) the rental equipment being returned or (b) twenty business days following the expiration of the Rental Equipment Term. After twenty business days following the expiration of the Rental Equipment Term, the Client agrees to pay the full retail value of the equipment in addition to the amounts owed pursuant to the previous sentence.
3. **Disclaimers; Warranties.** The Client rents the equipment as is and, not being the manufacturer of the equipment, the manufacturer's agent or the seller's agent, except as set forth in Section 5C, ETIX MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE EQUIPMENT, OR INTELLECTUAL PROPERTY RIGHTS (INCLUDING WITHOUT LIMITATION ANY PATENT, COPYRIGHT AND TRADEMARK RIGHTS, OF ANY THIRD PARTY WITH RESPECT TO THE EQUIPMENT, WHETHER RELATING TO INFRINGEMENT OR OTHERWISE) WITH RESPECT TO THE EQUIPMENT. ETIX SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM POSSESSION OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR BUSINESS REVENUE, LOST BUSINESS, WHETHER SUCH DAMAGES ARE FORESEEABLE AND WHETHER ETIX, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The Client agrees that Etix shall not be liable for any delay in delivery or installation of, or any failure to deliver or install, any equipment. Notwithstanding the foregoing, in no event shall Etix liability (whether in tort, negligence or otherwise) to the Client with respect to the equipment under this Addendum exceed an amount equal to the aggregate charges or fees actually paid by the Client with respect to the equipment for the one-month period immediately preceding the month during which the event giving rise to Etix's liability occurs.
4. **Use of Equipment.** The Client agrees that this Addendum shall not grant the Client any property rights in any of the equipment. The Client shall use the equipment solely in the manner contemplated by the Agreement, in a manner and for the use contemplated by the manufacturer thereof. Etix shall be entitled to inspect the equipment at reasonable times. Etix may require markings to be fixed to the equipment. The Client shall keep the equipment free of any markings or labeling which might be interpreted as a claim of ownership thereof by the Client. Without the prior written consent of Etix, the Client shall not assign, lend, pledge, transfer, or sublease the equipment or permit to exist any security interest, lien or encumbrance with respect to any of the equipment. The Client authorizes Etix to file precautionary UCC financing statements and other similar filings and recordings with respect thereto to protect Etix's ownership interest in the equipment. The Client agrees not to file any corrective or termination statements or partial releases with respect to any UCC financial statements or other similar filings or recordings filed by Etix in connection with any equipment except (i) if Etix fails to file a corrective or termination statement or release on request from the Client after the equipment has been returned to Etix or (ii) if not permitted by clause (i), with Etix's consent. The Client shall bear the risk of any loss, theft, damage or destruction to the equipment during the Rental Equipment Term. The Client shall obtain and maintain at its own expense, naming Etix as an additional insured, insurance against the loss of or damage to the equipment.
5. **Maintenance of Equipment.** Etix shall provide routine maintenance services.
  - A. If the Client experiences a problem with the equipment, the Client must call Etix., who shall respond to the Client's request via telephone or email within a commercially reasonable time.

- B.** Etix shall use all commercially reasonable efforts to identify and correct the problem with the equipment. Maintenance does not include upgrading software versions or fixing or arranging to have the equipment repaired. If the equipment cannot be fixed, then Etix shall replace the defective equipment in a commercially reasonable time.
- C.** Etix warrants that the maintenance to be provided under this rental equipment agreement will be performed in a timely and workmanlike manner, using only qualified technicians familiar with the equipment and its operation.
- D.** If persons other than those employed by Etix repair, modify or perform any maintenance service on any equipment rented under this Addendum, or if the Client fails to maintain the equipment in accordance with the manufacturer's requirements, and as a result of either of the foregoing, further maintenance services by Etix are required to restore the equipment to good operating condition or the equipment needs to be replaced, such further maintenance services or replacement costs shall be billed to the Client.

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