

# SOLE SOURCE PURCHASE JUSTIFICATION FORM

Date: 3/26/2019

Department: PW-UCS

**Policy:** Sole Source purchases are exempted from bidding requirements as stated in Section 252 of the Local Government Code. State law clarifies sole source as follows:

1. items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
2. films, manuscripts, or books;
3. gas, water, and other utility services;
4. captive replacement parts or components for equipment;
5. books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;

## Service/Commodity to be Purchased:

Online/IVR payment processing and bill presentment

## Identify the need and planned use for the commodity/service.

Provide a solution to support the acceptance and processing of electronic payments in a fully PCI compliant environment via web & IVR while enhancing our current customer service offerings. This includes but is not limited to bill presentment, auto-pay capabilities to include monthly changing due dates, scheduled payments, email notifications, and real-time payments, all in a hosted environment.

## What is unique about this commodity/service? Why is this necessary to meet your department's goals?

Paymentus is the only service provider that supports the fully PCI compliant solution that indemnifies the City from PCI compliance. The Paymentus solution is the only provider that is fully integrated to the Central Square (formerly Superior) technology to allow not only for IVR & web payments in a PCI compliant environment but, allows City staff to accept credit and debit cards through the existing Central Square cashiering solution in a PCI compliant manner. There are no other provider that can indemnify the City from PCI compliance and integrate completely to the Central Square solution.

## Are there competing products? If there are why will they not work? Please be very specific and identify all research into the subject. Please note if there are competing products there must be a very clear reason why they will not work to justify sole source.

There are competitors in the merchant services market; however, none of those competitors can provide a solution that accepts debit and credit cards over the counter through the Central Square cashiering solution AND provide the requisite PCI compliance for the City.

Paymentus is the only single vendor for agency wide integrations.

Paymentus is the only vendor that can indemnify the City from PCI compliance.

Paymentus is the only vendor integrated and certified with cashiering for Central Square.

Paymentus is the only vendor that can provide a migration and upgrade path for the existing system.



Department Director

Purchasing Manager

## Official Use Only:

Market Research Date:

Re-Evaluation Date:

PO No.(s):

# Paymentus

## MASTER SERVICES AGREEMENT

Client:	Grand Prairie, Texas
Client Address:	317 College Street, Grand Prairie, Texas 75050
Contact for Notices to Client:	Cora Snyder
Estimated Yearly Bills / Invoices:	624,000

This Master Services Agreement ("Master Agreement") is entered into as of the Effective Date below, by and between the Client ("Client") identified above and **Paymentus Corporation**, a Delaware Corporation ("Paymentus").

**WHEREAS** Paymentus desires to provide and the Client desires to receive certain services under the terms and conditions set forth in this Agreement. Paymentus provides electronic bill payment services to utilities, municipalities, insurance and other businesses.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of this signature page, General Terms and Conditions, and the attachments ("**Attachments**") with schedules ("**Schedules**") listed below:

### Schedule A: Paymentus Service Fee Schedule

This Agreement represents the entire understanding between the parties hereto with respect to its subject matter and supersedes all other written or oral agreements heretofore made by or on behalf of Paymentus or Client with respect to the subject matter hereof and may be changed only by agreements in writing signed by the authorized representatives of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

#### Client:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

#### Paymentus:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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## GENERAL TERMS AND CONDITIONS

### 1 Definitions:

For the purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise.

1.1 **"Agreement"** or **"Contract"** shall refer to this Agreement, as amended from time to time, which shall constitute an authorization for the term of this contract for Paymentus to be the exclusive provider of services, stated herein, to the Client

1.2 **"User"** shall mean the users of the Client's services that receive utility billing statements (a "bill") from the Client's Water Utilities division.

1.3 **"Effective Date"** shall be the last date upon which the parties signed this Agreement. The Agreement will not be effective against any party until the said date

1.4 **"Launch Date"** shall be the date on which Client launches this service to the Users

1.5 **"Payment"** shall mean tendering of funds by Users in satisfaction of amounts due as stated in utility billing statements received from Client's Water Utilities division.

1.6 **"Payment Amount"** shall mean the amount of a bill User elects to pay to the Client.

1.7 **"Services"** shall include the performance of the Services outlined in section 2 of this Agreement

1.8 **"Paymentus Authorized Processor"** shall mean a Paymentus authorized merchant account provider and payment processing gateway

1.9 **"Average Bill Amount"** shall mean the total amount of Payments collected through the Paymentus system in a given month divided by the number of the Payments for the same month.

1.10 **"Utility Billing Statement"** shall mean the statement issued by Client's Water Utilities division to Users for charges reflected thereon, including but not limited to charges for water, wastewater, stormwater drainage fees, and trash and recycling services,

### 2 Description of Services to be performed

#### 2.1 **Scope of Services**

Paymentus shall provide Users the opportunity to make Payments by Visa, MasterCard, Discover, E-check and other payment methods as agreed upon by Paymentus and the Client. Payments may be made by Interactive Telephone Voice Response System ("IVR") or secure Internet interface provided at the Paymentus Corporation's web site or other websites part of Paymentus' Instant Payment Network ("WebSites"), collectively referred to as the ("System" or "Platform").

#### 2.2 **Professionalism**

Paymentus shall perform all Services required to be performed under this Agreement in a professional manner.

### 3 Compensation

#### 3.1 **No Cost Installation**

Paymentus will charge no fees related to the initial setup and personalization of its standard service for both Web and IVR interfaces.

### 4 Payment Processing

#### 4.1 **Integration with Client's Billing System**

At no cost to Client, Paymentus will develop one (1) file format interface with Client's billing system using Client's existing text file format currently used to post payments to Client's billing system. Client will be responsible to provide Paymentus with the one file format specification and will fully cooperate with Paymentus during the development of the said interface. If Client chooses to create an automated file integration process to download the posting file, due to Paymentus security requirements, Client will use Paymentus specified integration process. Paymentus platform is an independent full service fully hosted platform per PCI-DSS requirements for a fully hosted solution. As such, Paymentus platform does and can function independent of any billing system integration. A payment posting file can be emailed or downloaded from Paymentus Agent Dashboard. If Client chooses

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to have Paymentus platform integrated with its billing system, Paymentus offers two options:

(i) Paymentus standard integration specification that Client can use to integrate its billing systems with Paymentus platform ("Standard Integration"); (or)

(ii) Paymentus to either customize or configure its platform to integrate with Client using file specification or APIs supported by Client's billing system ("Client Specific Integration")

If Client chooses Standard Integration, Paymentus agrees to fully cooperate with Client and provide its specification to Client. Paymentus also agrees to participate in meetings with Client's software vendor to provide any information or clarifications needed to understand Standard Integration.

If Client chooses Client Specific Integration, Paymentus agrees to develop such integration at no cost to Client, provided however, Client agrees to reasonably cooperate with Paymentus and request its software vendors to fully cooperate with Paymentus. Client agrees to provide all specification required for Client specific integration. Client further agrees to participate in testing with Paymentus and if needed, request its billing software vendors to participate in testing.

Based on Client's use of Paymentus platform and respective modules selected under this Agreement, Paymentus will require the following integration points:

- (i) For one time Payment Module:
  - a. Customer Information – Text File or Real-time
  - b. Payment Posting – Text File or Real-time
- (ii) For Recurring Payment Module
  - a. Text File
- (iii) For E-billing Module
  - a. Billing Data - Text File or Real-time link to billing data
- (iv) For ECM Module
  - a. Audience File – Text File for customer engagement messages

Each of these can be based on Standard Integration or Client Specific Integration.

## 4.2 PCI Compliance

For PCI Compliance, Client has two options for using Paymentus platform:

- (i) Paymentus Fully Hosted Solution ;or
- (ii) Any other configuration

To substantially reduce or eliminate any PCI compliance risks and to render all Client systems out of scope from PCI compliance requirements, Client agrees to use Paymentus' fully hosted service where Paymentus uses its own platform to capture Payments and to manage the entire (end to end) user experience from all channels for Payment acceptance: Web, Mobile, IVR, recurring payments, Ebill Presentment ("Paymentus Fully Hosted Solution"). If Client chooses any other integration such as third party web pages integrated with Paymentus APIs, third party gateway pages, or its own IVR systems or POS solution not provided by Paymentus, or a cashiering module from third party, Client expressly agrees that Client shall not be exempt from PCI requirements and shall be liable for any data breaches occurring at its own systems as Client's recognizes that Client systems are participating in the transactions and are in scope for PCI compliance. Under such circumstances, Paymentus shall not be responsible for any PCI obligations outside of Paymentus own Platform and Paymentus expressly disclaims any PCI or security obligations related to Client systems or any third party systems that participate in the payment transactions.

Paymentus highly recommends that Client uses Paymentus Fully Hosted Solution to substantially reduce its PCI compliance and data breach risks.

If Client chooses to use any other option other than Paymentus Fully Hosted Solution, Client agrees and warrants that Client shall remain PCI compliant throughout the term of this Agreement. For clarity, just because Client uses PCI compliant applications such as its billing software, it does not eliminate the need for Client to be PCI compliant.

For clarity, if Client systems are participating in payment transactions in any form, Client systems fall within PCI compliance scope.

## 4.3 Explicit User Confirmation

Paymentus shall confirm the dollar amount of all Payments to be charged to a Card and electronically obtain the User approval of such charges prior to initiating Card authorizations transaction. Paymentus will provide User with electronic confirmation of all transactions.

## 4.4 Merchant Account

Paymentus will arrange for the Client to have a merchant account with the Paymentus Authorized

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Processor for processing and settlement of the credit card transactions.

## 4.5 Card Authorization

For authorization purposes, Paymentus will electronically transmit all Card transactions to the appropriate card associations in real time as the transactions occur.

## 4.6 Settlement

Paymentus together with its authorized Card processor shall forward the payment transactions to the appropriate card organizations for settlement directly to the Client's depository bank account previously designated by the Client (hereinafter the "Client Bank Account").

Paymentus will debit the Paymentus Service Fees from Client's account on a monthly basis. Paymentus together with Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Client and Paymentus agree to co-operate with each other if changes are needed to its settlement and invoicing processes.

## 5 General Conditions of Services

### 5.1 Service Reports

Paymentus shall provide Client with reports summarizing use of the Services by Users for a given reporting period.

### 5.2 User Adoption Communication by Client

Client will make Paymentus' Services available to its residential and commercial Clients by different means of Client communication including a) through bills, invoices and other notices; b) by providing IVR and Web payment details on the Client's website including a "Pay Now" or similar link on a prominent place on the web site; c) through Client's general IVR/Phone system; and d) other channels deemed appropriate by the Client.

Paymentus shall provide Client with logos, graphics and other marketing materials for Client's use in its communications with its users regarding the Services and/or Paymentus.

Both parties agree that Paymentus will be presented as a payment method option. Client will communicate Paymentus option to its end residential and

commercial Clients wherever Client usually communicates its other payment methods.

## 5.3 Independent Contractor

Client and Paymentus agree and understand that the relationship between both parties is that of an independent contractor.

## 5.4 Client's Responsibilities

In order for Paymentus to provide Services outlined in this Agreement, the Client shall co-operate with Paymentus by:

- (i) Client will enter into all applicable merchant Card or cash management agreements.
- (ii) For the duration of this Agreement, Client will keep a bill payment link connecting to Paymentus System at a prominent location on the Client website. The phone number for the IVR payment will also be added to the web site. Client will also add the IVR payment option as part of the Client's general phone system.
- (iii) User Adoption marketing as described in 5.2.
- (iv) Within 30 days of the merchant account setup, Client will launch the service to the Users.
- (v) For the purpose of providing Client a posting file for posting to Client's billing system, Client will provide the file format specification currently used to post its payments to the billing system. Client will reasonably cooperate with Paymentus and provide the information required to integrate with Client's billing system.

## 6 Governing Laws

This Agreement shall be governed by the laws of the state of Texas.

## 7 Communications

### 7.1 Authorized Representative

Each party shall designate an individual to act as a representative for the respective party, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

### 7.2 Notices

# Paymentus

All notices of any type hereunder shall be in writing and shall be given by Certified Mail, return receipt requested, or by a national courier or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

## **To Client**

C/O: Cora Snyder  
Address: 317 College Street, Grand Prairie, Texas 75050  
Email: [Csnyder@GPTX.org](mailto:Csnyder@GPTX.org)

## **To Paymentus**

C/O: President and CEO  
Address: 13024 Ballantyne Corporate Place Suite 450  
Charlotte, NC 28277  
Email: [ceo@paymentus.com](mailto:ceo@paymentus.com)

Notices shall be deemed to have been given or received on the date the notice is physically received if given by hand delivery, or if notice is given by certified mail, then notice shall be deemed to have been given upon on date said notice was deposited in the mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received, but no such change shall be effective until actually received by the other party.

## **7.3 Interpretation**

It is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.

## **7.4 Amendment of Agreement**

Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

## **7.5 Severability**

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

## **7.6 Attorney's Fees**

Should any litigation arise concerning this Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

## **7.7 Confidentiality**

Except as otherwise required by law, Client will not knowingly disclose to any third party or use for any purpose inconsistent with this Agreement any confidential or proprietary non-public information (designated or marked as such by Paymentus) it obtains during the term of this Agreement about Paymentus' business, operations, financial condition, technology, systems, know-how, products, services, suppliers, Clients, marketing data, plans, and models, and personnel. Paymentus will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential User information it receives in connection with its performance of the services. This Agreement is not considered confidential or proprietary non-public information.

## **7.8 Intellectual Property**

In order that the Client may promote the Services and Paymentus' role in providing the Services, Paymentus grants to Client a revocable, non-exclusive, royalty-free, license to use Paymentus' logo and other service marks (the "Paymentus Marks") for such purpose only. Client does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Paymentus on the IVR or the WebSite) or other intellectual property right of Paymentus ("Paymentus Intellectual Property"). All Paymentus Marks, Paymentus Intellectual Property, and the System and all rights therein (other than rights expressly granted herein) and goodwill pertain thereto belong exclusively to Paymentus.

## **7.9 Force Majeure**

Paymentus will be excused from performing the Services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Paymentus' reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including

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telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

## 7.10 Time of the Essence

Paymentus and Client acknowledge and agree that time is of the essence for the completion of the Services to be performed and each parties respective obligations under this Agreement.

## 8 Indemnification

### 8.1 Paymentus Indemnification and Hold Harmless

Paymentus agrees to the fullest extent permitted by law, to indemnify and hold harmless the Client and its governing officials, agents, employees, and attorneys (collectively, the "Client Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Client Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Paymentus in performing the Services or (ii) a material breach by Paymentus of its covenants.

### 8.2 Client Indemnification and Hold Harmless

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless Paymentus, its affiliates, officers, directors, stockholders, agents, employees, and representatives, (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including without limitation reasonable attorney's fees and expenses) incurred by any Paymentus Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Client related to the Services or (ii) a material breach of Client's covenants.

### 8.3 Warranty Disclaimer

Except as expressly set forth in this Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to the Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement.

### 8.4 Limitation of Liability

Notwithstanding the foregoing, the parties agree that neither party shall be liable to the other for any lost profits, lost savings or other special, indirect or consequential damages, even if the party has been advised of or could have foreseen the possibility of such damages. Paymentus' total liability for damages for any and all actions associated with this Agreement or the Services shall in no event exceed the specific dollar amount of the Paymentus Service Fee paid to Paymentus for the particular payment transaction which is the subject matter of the claim of damage. The preceding dollar limit does not apply to Paymentus' indemnification obligations for which the liability shall not exceed \$2,000,000.

## 9 Term and Termination

### 9.1 Term

The term of this Agreement shall commence on the effective date of this Agreement and continue for a period of 3 (three) years ("Initial Term") from the Launch Date. Services under this Agreement shall begin within 30 days of the merchant account setup.

At the end of the Initial Term, this Agreement will automatically renew for successive one (1) year periods unless either Client or Paymentus provide the other party with not less than 60 (sixty) days prior written notice before such automatic renewal date that such party elects not to automatically renew the term of this Agreement.

Should the Client migrate to a new Customer Information System during the initial term of this agreement, Paymentus agrees to integrate to the new CIS at no cost to the Client. Should Paymentus be unable to complete an integration to the new Customer Information System in a manner suitable to the Client, acting reasonably, it will be considered a material breach of this agreement and subject to the terms of section 9.2.

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## 9.2 Material Breach

In the event a material breach of this Agreement has not been cured within ninety (90) days (the "Cure Period") of receipt of notice of such breach from the non-breaching party, the non-breaching party can terminate this Agreement by providing the other party with thirty (30) days notice.

## 9.3 Upon Termination

Upon termination of this Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Paymentus shall cease all Services being provided hereunder unless otherwise directed by the Client in writing.

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## Schedule A – Paymentus Service Fee Schedule

Paymentus Service Fee charged to the Client will be based on the following model:

Absorbed Fee Model	
<ul style="list-style-type: none"><li>Absorbed Model</li><li>Average Bill Amount: \$150.00</li><li>Paymentus Service Fee per utility rate transaction<ul style="list-style-type: none"><li>Credit / Debit Card \$1.63 (Visa, MasterCard, Discover)</li><li><b>2.65%</b> Volume of sales per Non-Qualified Credit/Debit Cards (Visa, MasterCard, Discover)</li><li>ACH/eCheck \$0.30</li></ul></li></ul>	

Note: The Paymentus Service fee per utility rate transaction for Visa, MasterCard and Discover will be charged per \$500 increment up to a Maximum Amount per Payment of \$25,000.00. The Maximum Payment Amount for ACH/eCheck will be \$25,000.00. Multiple payments can be made.

\$225.00 per encrypted card reader; the first three (3) encrypted card reader fees are waived.

Chargebacks will be billed at \$9.95 each

Includes 9,000 outbound notifications per month; additional outbound notifications will be billed at \$0.12 per call / text or \$0.05 per email.

Client and Paymentus may agree to different limits per transactions for user adoption or to mitigate risks.

Kimberly Montoya, Senior Buyer  
City of Grand Prairie  
326 Main Street  
Grand Prairie, Texas 75050

Ms. Montoya:

As you are aware, Paymentus (formerly Tele-Works, Inc.) currently provides a premise based technological solution for web and IVR access for city utility customers for account access and payments. Paymentus is the only vendor that can support the migration and upgrade path of the existing system; including the migration of all existing registered user profiles and accounts.

For this project, the primary identified need as we have discussed is the provision of a technological solution to support the acceptance and processing of electronic payments in a fully PCI compliant environment; PCI compliance is the driving factor in pursuing the migration project.

Further, the unique features of this service are that Paymentus is the ONLY service provider that supports the fully PCI compliant solution that indemnifies the City from PCI compliance. Further, the Paymentus solution is the ONLY provider that is fully integrated to the Central Square technology to allow not only for the upgrade of the existing IVR Phone Payments and Web payments in a PCI compliant environment but, allows City staff to accept credit and debit cards through the existing Central Square cashiering solution while being indemnified by Paymentus from PCI compliance; there are no other providers that can indemnify the City from PCI compliance and integrate completely to the Central Square solution.

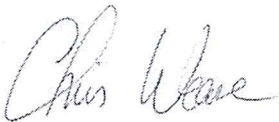
There are competitors in the merchant services market; however, none of those competitors can provide a solution that accepts debit and credit cards over the counter with a product that is built into the Central Square cashiering solution AND provide the requisite PCI compliance for the City.

So, to review:

- Paymentus is the only single vendor for agency wide integrations
- Paymentus is the only vendor that can indemnify the City from PCI compliance
- Paymentus is the only vendor with a built-in, integrated payment product certified with cashiering for Superion
- Paymentus is the only vendor that can provide a migration and upgrade path for the existing system.

Please let me know if you have any questions.

Kindest Regards,



Chris Wease  
Regional Account Executive