

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** 201400076
Project Description: Customer credit card payment processing for water bills

Item Description:

- Agreement Professional Service Contract Amendment Change Order
 BCD NYSDOT Agreement Contract Documents Addendum
 Recommendation for Award of Contract Recommendation to Reject Bids
 Request for Proposals
 Other _____

Action Requested:

- Board Authorization to Execute Legal Approval
 Board Authorization to Award Execution by the Chairman
 Board Authorization to Advertise for Bids Execution by the Secretary to the Authority
 Board Authorization to Solicit Request for Proposals
 Other Authorization to allow continuation of existing contract

Approvals Needed:

APPROVED AS TO CONTENT:

- Other (if Applicable) _____ Date: _____
 Chief Operating Officer *Russell F. Hall* _____ Date: 9/15/2020
 Executive Engineer _____ Date: _____
 Director of Administration *Savanya Lester* _____ Date: 09/14/2020
 Risk Manager *Molly Jo Musarra* _____ Date: 09/14/2020
 Chief Financial Officer *Karen A. Pendugast* _____ Date: 09/14/2020
 Legal *Margaret A. Murphy* _____ Date: 09/04/2020
- APPROVED FOR BOARD RESOLUTION:**
- Secretary to the Authority *[Signature]* _____ Date: 09/16/2020

Remarks: _____

Resolution Date: _____ **Item No:** _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

September 14, 2020

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
Peggy A. LaGree, Treasurer

From: Karen A. Prendergast, Chief Financial Officer

Subject: Payment Processing Contract with Paymentus Corporation

At the August 27, 2020 meeting, I recommended an extension of the Authority's contract with Paymentus Corporation. Paymentus processes water bill payments for Authority customers for a reasonable transaction fee. I have included the staff memo from the August 27th meeting for your review.

The contract, as executed, will automatically renew for successive three-year terms without a three-month written notice of termination. All fees are collected from Authority customers directly by Paymentus. There has been no increase in the \$1.75 transaction fee during the contract period.

I am recommending the Authority allow the existing contract with Paymentus renew for the upcoming three-year period and one optional three-year period. A resolution approving the renewal is included for your consideration at the September 24, 2020 board meeting.

cc T. McCracken
M. Murphy
R. Stoll



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

August 18, 2020

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
Peggy A. LaGree, Treasurer

From: Karen A. Prendergast, Chief Financial Officer

Subject: Payment Processing Contract with Paymentus Corporation

After an extensive RFP process, the Board awarded a professional service contract to Paymentus to process credit card payments by phone and online at its meeting of August 7, 2014. The contract was awarded with a three-year term and one three-year renewal option ending in December of 2020.

The contract, as executed, will automatically renew for successive three-year terms without a three-month written notice of termination. All fees are collected from Authority customers directly by Paymentus. There has been no increase in the \$1.75 transaction fee during the contract period.

Paymentus has been a valuable partner to the Authority and its customers – there have been no issues with Paymentus' customer service. Since the Authority began taking credit card payments in 2015, there have been modest increases in the number of payments processed each year. In 2019, 30,443 credit card payments were processed compared to 22,300 in 2015.

I have reviewed payment processing rates offered under NYS contracts awarded in December of 2019 and the rates offered by Paymentus are lower based on the average credit card payment amount. Paymentus has a payment maximum of \$300 – 96% of all credit card payments processed are less than \$300 – but will process multiple transactions. A comparison of the per transaction rates is attached. Additionally, there would be hourly set up charges billed by a new processor and our IT support contractor.

I am recommending the Authority allow the existing contract with Paymentus renew for the upcoming three-year period and one optional three-year period. A resolution approving the renewal will be included for your consideration at the September 10, 2020 board meeting.

cc T. McCracken
M. Murphy
R. Stoll

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MASTER SERVICES AGREEMENT

Client:	Erie County Water Authority
Client Address:	295 Main St Rm 350 Buffalo, NY 14203-2415
Contact for Notices to Client:	Robert J. Lichtenthal, Deputy Director
Estimated Yearly Bills / Invoices:	780,000

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

Schedule B: Request for Proposal for Credit Card & Electronic Payment Acceptance and Response from Paymentus

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: Francis G. Warthling
Name: Francis G. Warthling
Title: Chairman
Date: 8/7/14

Paymentus: _____
By: Jerry Portocarrus
Name: JERRY PORTOCARRUS
Title: SVP
Date: 8-7-14

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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
- 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 Users to make payments for Client's services or Client's bills
- 1.6 "Payment Amount" shall mean the bill amount User wants 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 "Reversed or Charged-back Transactions" shall mean cancelled transactions due to User error, or a User's challenge to Payment authenticity.
- 1.10 "Average Bill Amount" shall mean the total amount of Payments collected through Paymentus system in a given month divided by the number of the Payments for the same month.

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 deemed necessary by Paymentus. 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").

2.2 Professionalism

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

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.

3.2 Paymentus Service Fee

System will charge each User a Service fee for each transaction processed (hereinafter called "Paymentus Service Fee"). Such Paymentus Service Fee is to be collected in addition to the corresponding Payment as part of the transaction.

For each payment, the Paymentus Service Fee collected will be used to pay the corresponding Credit Card transaction fees or transaction fees associated with Debit Cards or eChecks (hereinafter called "Transaction Fees") except for the return items (eCheck returns or Credit/Debit Card chargebacks).

A schedule of Paymentus Service Fee is attached hereto as Schedule A. The Paymentus Service Fee is based on the Average Bill Amount, current payment method mix (credit vs debit vs e-check) and on the assumption that the total number

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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 cooperate 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 and mutually agreed 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 fully 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 Delaware.

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

All notices of any type hereunder shall be in writing and shall be given by Certified Post or 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: Cash Manager
Address: 295 Main St Rm 350
Phone: Buffalo, NY 14203
Fax: 716-849-8422
716-849-8467

To Paymentus

C/O: President and CEO
Address: 13024 Ballantyne Corporate Place
Suite 450
Charlotte, NC 28277
Phone: 888-212-2027
Fax: 704-322-3776

Notices shall be declared to have been given or received on the date the notice is physically received if given by hand delivery, or if notices given by US Post, 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.

7.3 Interpretation

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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's liability for any loss or damage arising out of or related to this Agreement (whether arising out of third-party claims, breach of warranty, or otherwise) regardless of the form of action, shall be limited to actual damages resulting from Paymentus's negligence or misconduct in providing services.

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 three (3) year periods unless either Client or Paymentus provide the other party with not less than 3 (three) months prior written notice before such automatic renewal date that such party elects not to automatically renew the term of this Agreement.

9.2 Material Breach

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