

AGR22-930



## INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and Paymentus Corporation, a Delaware corporation ("Contractor"), to be effective for all purposes January 20, 2022.

**WHEREAS**, the County Purchasing Officer determined in writing that procurement of the Services was made in accordance with Los Alamos Procurement Code Sec. 31-144; and

**WHEREAS**, the prior agreement and Amendment No. 8 AGR16-4289-A8, dated June 30, 2021, expired on December 28, 2021 with no provision for additional extensions; and

**WHEREAS**, additional time is required to issue a Request for Proposals, complete the evaluation process, and make an award; and

**WHEREAS**, the number of customer payments processed through Contractor increased during the unforeseen COVID-19 (coronavirus) pandemic; and

**WHEREAS**, both parties wish for Contractor to temporarily provide Electronic Bill Payment services with no disruption to County customers until such a time as a new award can be made; and

**WHEREAS**, the Board of Public Utilities approved this Agreement at a public meeting held on January 19, 2022; and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

**SECTION A. SERVICES:** Contractor shall provide electronic Bill Payment services to County customers. The services shall allow for payment of utility bills and/or for purchase of other County related services using a credit card and other payment methods such as eChecks, Pin-less Debit ("Supported Payment Methods"), as deemed necessary by Contractor, and approved by County, through a link provided in the County website, Automated Phone Service or Interactive Voice Response ("IVR"), and other channels Contractor may include from time to time, and approved by County including, but not limited to, mobile payments.

### 1. Contractor Services shall include:

- a. Allow County customers to pay utility bills and/or purchase other County-related services with a credit card including, but not limited to, Master Card and Visa card payments. Contractor may offer other Supported Payment Methods as approved by County.
- b. Provide County full payment for the County services charged.

- c. Provide County with a daily electronic file which shall include each individual payment and the utility account numbers to which the payments apply in a format specified by County.
- d. Payments shall be deposited in County's bank account within two (2) business days after receipt of payment for credit cards and within the standard duration of other Supported Payment Methods.
- e. Provide a link from County's website to Contractor's website where the customer can make payment utilizing Contractor's Services.
- f. Provide an IVR system via a toll-free number where customers can call to make payments utilizing Contractor's Services.
- g. Provide County personnel access to Contractor's website to allow for research on payments.
- h. Accept payments for other County services including, but not limited to, copies of documents from the County Clerk's Office, or other purchases for County-related services.
- i. Contractor shall adjust or modify the daily electronic file, as necessary, according to specifications provided by County.
- j. Maximum credit card payments accepted in a single transaction shall be \$999.99 but multiple transactions shall be allowed. There shall not be a maximum amount to payments made with eCheck payment or payments made directly from a savings account.

## **2. County Responsibilities.**

- a. County shall follow all necessary rules and regulations of different card associations, including the chargeback rules.
- b. County shall make Contractor's Services available to its residential and commercial customers by different means of customer communication including: (1) through bills, invoices and other notices; (2) by providing IVR and Web payment details on the County's website including a "Pay Now" or similar link on a mutually agreed prominent place on the County's general website; (3) by adding an option for this payment through County's general IVR/Phone system; and (4) other channels deemed necessary by County from time to time.

**SECTION B. TERM:** The term of this Agreement shall commence January 20, 2022 and shall continue through December 31, 2022, unless sooner terminated, as provided herein.

## **SECTION C. COMPENSATION:**

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof. Total compensation shall not exceed ONE HUNDRED TWENTY THOUSAND DOLLARS(\$120,000.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
- 2. Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and shall maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** An amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. APPLICABLE LAW:** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY:** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

**SECTION N. FORCE MAJEURE:** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION O. NON-ASSIGNMENT:** Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

**SECTION P. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION Q. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION R. TERMINATION:**

1. **Generally.** County may terminate this Agreement with or without cause upon sixty (60) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION S. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Deputy Utilities Manager, Finance & Admin.  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 130  
Los Alamos, New Mexico 87544

Contractor:

Paymentus Corporation  
President and CEO  
13024 Ballantyne Corporate Place  
Charlotte, North Carolina 28277

**SECTION T. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

**SECTION U. NO IMPLIED WAIVERS:** The failure of the County to enforce any provision of this Agreement is not a waiver by the County of the provisions or of the right thereafter to enforce any provision(s).

**SECTION V. SEVERABILITY:** If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language enforceable; and (ii) all other provisions of this Agreement shall remain in effect.

**SECTION W. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form is attached as Exhibit "B." Contractor must submit this form with this Agreement, if applicable.

**SECTION X. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES:** Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

**SECTION Y. DUPLICATE ORIGINAL DOCUMENTS:** This document may be executed in two (2) counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

**BY:** \_\_\_\_\_  
**PHILO S. SHELTON, III, P.E.** **DATE**  
**UTILITIES MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**PAYMENTUS CORPORATION, A DELAWARE**  
**CORPORATION**

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_ **DATE**  
**TITLE:** \_\_\_\_\_

**Exhibit "A"**  
**Compensation Rate Schedule**  
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Paymentus Service Fee charged to Los Alamos County ("Customer") shall be based on the following Absorbed Fee Structure:

The Paymentus service fee shall be \$2.25 per \$350.00 increment, or portion thereof, paid for Visa, MasterCard, or Discover Card payments, or \$1.25 per \$350.00 increment paid for ACH/e-Check payments. The maximum payment amount accepted in one transaction shall be \$2,400.00.

The Paymentus Service Fee is based on the MasterCard/Visa Utility Rate Model, Cards that do not qualify under the Utility Rate Model ("Non-Qualified Cards") - generally corporate purchase cards, "incentive," "rebate" or "gift" cards, and other cards not tied to an individual consumer, shall result in "non-qualified transactions." An additional 2.95% "Non-Qualified Transaction" fee shall apply for such "non-qualified transactions," insofar as such fees exceed 5% of total Transaction Fees charged by Paymentus to Los Alamos County. Paymentus shall absorb non-qualified transaction fees up to this 5% threshold.

The table below summarizes this fee structure:

<b>Paymentus Service Fee (Absorbed Fee Model)</b>
<p>Utility Payments</p> <ul style="list-style-type: none"><li>• Average Payment Amount: \$270</li><li>• Maximum Payment Amount shall be \$999.99 (billed based upon each \$350 payment increment).</li></ul> <p>Paymentus Service Fee per qualified utility rate transaction shall be:</p> <ul style="list-style-type: none"><li>• Credit/Debit Card \$2.25 (Visa, MasterCard, Discover Utility Rate Program)</li><li>• ACH/e-Check \$1.25</li></ul> <p>Non-qualified Transaction Fee 2.95% Excess Fee</p>

Paymentus may amend this schedule upon sixty (60) days prior written notice to the Client, only if such change is required due to changes in the Visa and MasterCard regulations or changes in Credit Card interchange fees or changes in the Average Bill Amount.

**Exhibit "B"**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**  
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Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Contract"** means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

**"Family member"** means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:  
(a) a prospective contractor, if the prospective contractor is a natural person; or  
(b) an owner of a prospective contractor;.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**"Person"** means any corporation, partnership, individual, joint venture, association or any other private legal entity.



**“Prospective contractor”** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following - COUNTY COUNCILORS: Denise Derkacs; David Izraelevitz; David Reagor; James Robinson; Randal Ryti; Sara Scott; and Sean Williams.)

<b>Contribution Made By:</b>			
<b>Relation to Prospective Contractor:</b>			
<b>Name of Applicable Public Official:</b>		Governor _____	
<b>Contribution(s) Date(s)</b>	<b>Contribution Amount(s):</b>	<b>Nature of Contribution(s):</b>	<b>Purpose of Contribution(s):</b>
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

—OR—

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)