

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
12306P MERCHANT SERVICES**

**THIS PROFESSIONAL SERVICES AGREEMENT**, entered into on the date of last execution, between the City of Yakima, a Washington municipal corporation ("City"), and Paymentus, ("Paymentus" or "Contractor").

**WITNESSETH:** The parties, in consideration of the terms and conditions herein, do hereby covenant and agree as follows:

**1. Scope of Services**

The minimum services (hereinafter referred to as "Services") that the Contractor will provide include services described in RFP 12306P Merchant Services, which are attached as Exhibit A hereto and incorporated herein by this reference.

**2. Compensation**

The City agrees to pay the Contractor according to Exhibit B, attached hereto and incorporated herein, which Exhibit includes the deliverables and payment schedule of itemized prices as listed in the Contractor's Proposal submittal at the time and in the manner and upon the conditions provided for the Contract.

**3. Contract Term**

The period of this Contract shall be for a period of three (3) years from the Launch date. The City may, at its option, extend the Contract for two additional one (1) year terms, for a total of five (5) years. Contract extension shall be automatic, and shall go into effect without written confirmation, unless either party provides 6 months advance notice of the intention to not renew prior to any automatic renewal. Contract pricing to remain firm for 18 months from effective date. For the purposes of this Contract, "Launch date" means the date on which City has completed all training and the program goes "live" to the public with the ability for the public to make payments.

**4. Agency Relationship between City and Contractor**

Contractor shall, at all times, be an independent Contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for, or on, behalf of City.

**5. Successors and Assigns**

- a. Neither the City, nor the Contractor, shall assign, transfer, or encumber any rights, duties, or interests accruing from this Contract without the prior written consent of the other.
- b. The Contractor for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

**6. Property Rights**

All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

**7. Inspection and Production of Records**

- a. The records relating to the Services shall, at all times, be subject to inspection by the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. Contractor's records relating to the Services will be provided to the City upon the City's request.
- b. Contractor shall promptly furnish the City with such information and records which are related to the Services of this Contract as may be requested by the City. Until the expiration of six (6) years after final payment of the compensation payable under

this Contract, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, Contractor shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services performed by Contractor under this Contract.

- c. All records relating to Contractor's services under this Contract must be made available to the City, and the records relating to the Services are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to Contractor's services under this Contract must be retained by Contractor for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- d. The terms of this section shall survive any expiration or termination of this Contract.

## **8. Work Made for Hire**

All work the Contractor performs under this Contract shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the Contractor produces in connection with this Contract. On completion or termination of the Contract, the Contractor shall deliver these materials to the City.

## **9. Compliance with Law**

Contractor agrees to perform all Services under and pursuant to this Contract in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise, including policies adopted by the City, as those laws, ordinances, rules, regulations, and policies now exist or may hereafter be amended or enacted. Contractor shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.

Contractor shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.

- a. Procurement of a City Business License. Contractor must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
- b. Contractor must provide proof of a valid Washington department of Revenue state excise tax registration number, as required in Title 85 RCW.
- c. Contractor must provide proof of a valid Washington Unified Business Identification (UBI) number. Contractor must have a current UBI number and not be disqualified from bidding on any public works contract under RCW 39.06.101 or 36.12.065(3).
- d. Contractor must provide proof of a valid Washington Employment Security Department number as required by Title 50 RCW.
- e. Foreign (Non-Washington) Corporations: Although the City does not require foreign corporate proposers to qualify in the City, County or State prior to submitting a proposal, it is specifically understood and agreed that any such corporation will promptly take all necessary measures to become authorized to conduct business in the City of Yakima, at their own expense, without regard to whether such corporation is actually awarded the contract, and in the event that the award is made, prior to conducting any business in the City.

## **10. Nondiscrimination Provision**

During the performance of this Contract, the Contractor agrees as follows:

The Contractor shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, pregnancy, veteran's status, political affiliation or belief, or the presence of any sensory, mental

or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq.).

This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of Services under this Agreement. In the event of the Contractor's noncompliance with the non-discrimination clause of this contract this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for any future City contracts.

#### **11. Pay Transparency Nondiscrimination Provision:**

The Contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

#### **12. Indemnification and Hold Harmless**

- a. Contractor shall take all necessary precautions in performing the Services to prevent injury to persons or property. The Contractor agrees to release, indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of the Contractor, or any Contractor's agent or subcontractor, in performance of this Agreement, to the extent such claim or demand alleges that the Services provided under this Agreement infringe the intellectual property rights of the third-party, except for claims caused by the City's sole negligence.
- b. City agrees to defend, hold harmless Paymentus and its directors, officers, employees, and Affiliates (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Paymentus Indemnatee arising from a claim or demand brought by a third party to the extent the claim or demand relates to the underlying relationship or obligations of Client and its Users caused by the City's sole negligence.
- c. **Industrial Insurance Act Waiver.** It is specifically and expressly understood that the Contractor waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. Contractor shall require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.
- d. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, the Contractor's liability, including the duty and cost to defend, shall be only to the extent of the Contractor's negligence.
- e. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.
- f. The terms of this Section shall survive any expiration or termination of this Contract.

### **13. Warranty Disclaimer**

EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, PAYMENTUS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.

### **14. Limitation of Liability**

NOTWITHSTANDING THE FOREGOING, PAYMENTUS WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS OR OTHER SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF THESE DAMAGES. IN NO EVENT WILL PAYMENTUS BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM THE ACTS, OMISSIONS OR ERRORS OF THIRD PARTIES OR OF CLIENT OR FOR PROVIDING AGREEMENTS, INSTRUCTIONS OR INFORMATION TO USERS AS INSTRUCTED BY CLIENT. PAYMENTUS' TOTAL LIABILITY FOR DAMAGES FOR ANY AND ALL ACTIONS ASSOCIATED WITH THE AGREEMENT OR THE SERVICES WILL IN NO EVENT EXCEED (I) FOR AN ERROR OR OTHER ACTION AFFECTING THE PROCESSING OF ONE OR MORE PAYMENTS, THE AMOUNT OF THE PAYMENTUS FEE ASSOCIATED WITH EACH PAYMENT, (II) FOR ALL OTHER CLAIMS, THE AMOUNT OF THE PAYMENTUS FEE (NET OF DIRECT PROCESSING AND OTHER FEES PAID BY PAYMENTUS) PAID TO PAYMENTUS ("NET FEES") IN THE SIX (6) MONTHS BEFORE THE EVENTS GIVING RISE TO THE CLAIM OR CLAIMS ARISING FROM THE SAME CIRCUMSTANCES; AND (III) IN NO EVENT, MORE THAN THE LESSER OF \$500,000.00 OR THE NET FEES UNDER THE AGREEMENT.

### **15. Contractor's Liability Insurance**

At all times during performance of the Services and this Contract, Contractor shall secure and maintain in effect insurance to protect the City and Contractor from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of this Contract. Contractor shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.

Contractor shall provide a Certificate of Insurance to the City as evidence of coverage for each of the policies and outlined herein. A copy of the additional insured endorsement attached to the policy shall be included with the certificate. This Certificate of insurance shall be provided to the City, prior to commencement of work.

Failure of City to demand such verification of coverage with these insurance requirements or failure of City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The following insurance is required:

#### **a. Commercial Liability Insurance**

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance and additional insured endorsements as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract.

#### **b. Automobile Liability Insurance**

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of automobile liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional

insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The business auto liability shall include Hired and Non-Owned coverage if necessary.

**c. Employer's Liability (Stop Gap)**

Contractor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract. Contractor agrees to assume full liability for all claims arising from this Contract including claims resulting from negligent acts of all subcontractor(s). Contractor is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

**d. Professional Liability**

The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions. Contractor shall provide the City with a certificate of insurance as proof of professional liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per claim combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claim made basis the coverage will continue in force for an additional two years after the completion of this contract. If insurance is on a claim made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract.

Contractor's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Contract. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by Contractor's insurance.

If at any time during the life of the Contract, or any extension, Contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the Contract.

**16. Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

**17. Contract Documents**

This Contract, the Request for Proposals No. 12306P Merchant Services Scope of Services, conditions, addenda, and modifications and Contractor's proposal (to the extent consistent with Yakima City documents) constitute the Contract Documents and are complementary. Specific Federal and State laws and the terms of this Contract, in that order respectively, supersede other inconsistent provisions. These Contract Documents are on file in the Office of the Purchasing Manager, 129 No. 2<sup>nd</sup> St., Yakima, WA, 98901, and are hereby incorporated by reference into this Contract.

**18. Termination**

Termination for Cause

In the event the Contractor breaches this Contract, the City may terminate the Contract at its sole discretion in such event that it provides the Contractor with written notice of Contractor's breach and the Contractor fails to cure its breach within 90 days of this notice.

In the event of the City breaches this Contract, the Contractor may terminate the Contract at its sole discretion in such event that it provides the City with written notice of City's breach and the City fails to cure its breach of the Contract within 60 days of this notice. The following represents a non-exclusive, illustrative list of instances that shall be considered a breach by the Contractor:

- a. Defaults on an obligation under the Contract;
- b. Fails to perform any material obligation required under the Contract;
- c. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- d. Allows any final judgment not to be satisfied or a lien not to be disputed after a legally-imposed, 30-day notice;
- e. Makes an assignment for the benefit of creditors;
- f. Fails to follow the sales and use tax certification requirements of the State of Washington;
- g. Incurs a delinquent Washington tax liability;
- h. Becomes a State or Federally debarred Contractor;
- i. Is excluded from federal procurement and non-procurement Contracts;
- j. Fails to maintain and keep in force all required insurance, permits and licenses as provided in the Contract;
- k. Fails to maintain the confidentiality of the City information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information;
- l. Contractor performance threatens the health or safety of a City, County or municipal employee; or

#### Change in Funding

In addition to the above termination provisions, if the funds upon which the City relied to establish this Contract are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, Parties agree that if the funds for electronic bill presentment and payment are not appropriated during any year or part of the year, and the council decides not to offer electronic bill presentment and payment services, the City can terminate this Agreement with 90 days prior written notice ("Termination Notice"), provided however, parties first discuss other options such as offering a user pay model that will allow the User using the service to bear the entire cost of this Service rendering the entire Service be offered at no charge to the City.

#### **19. Dispute Resolution**

In the event that any dispute shall arise as to the interpretation of this agreement, or in the event of a notice of default as to whether such default does constitute a breach of the contract, and if the parties hereto cannot mutually settle such differences, then the parties shall first pursue mediation as a means to resolve the dispute. If the afore mentioned methods are either not successful then any dispute relating to this Agreement shall be governed by the laws of the state of Washington, without giving effect to any principles of conflicts of law. If venue is in issue, it shall be adjudicated in the courts of Yakima County, in accordance with the laws of Washington. If both parties consent in writing, other available means of dispute resolution may be implemented.

#### **20. Re-Award**

When the contract is terminated by the Contractor upon providing the written notice as herein required, the City, pursuant to City ordinance, may re-award the contract to the next most responsible Proposer within 120 days from original award.

When a Contractor is unable to supply goods and/or services to the City and is in breach of the contract, or when the contract is terminated by the City for cause as herein provided, the City reserves the right to re-award the contract to the next most responsible Proposer within 120 days from original award.

#### **21. Substitution**

The Contractor shall not substitute or deviate from said specifications of this Contract without a written amendment, signed by the City

Manager, or pursuant to Section 51 below entitled "Change or Notice". Any violation of this procedure by the Contractor will be considered cause for immediate cancellation of the Contract for cause by the City.

## **22. Contractor Shall Furnish**

Except as otherwise specifically provided in this Contract, Contractor shall furnish the following, all as the same may be required to perform and provide the services in accordance with the terms of this Contract: personnel, labor, products and supervision; and technical, professional and other services. All such services, products, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by Contractor under this Contract are sometime collectively referred to in this Contract as the "(Services)."

## **23. Complementary Provisions**

All provisions of this Contract are intended to be complementary, and any services required by one and not mentioned in another shall be performed to the same extent as though required by all. Details of the services that are not necessary to carry out the intent of this Contract, but that are not expressly required, shall be performed or furnished by Contractor as part of the services, without any increase in the compensation otherwise payable under this Contract.

## **24. Invoices**

The City will use its best efforts to pay each of Contractor's invoices within thirty (30) days after the City's receipt and verification thereof; provided, however, that all such payments are expressly conditioned upon Contractor providing services hereunder that are satisfactory to the City. The City will notify the Contractor promptly if any problems are noted with the invoice. To insure prompt payment, each invoice should cite purchase order number, RFP number, detailed description of work, unit and total price, discount term and include the Contractor's name and return remittance address. Invoices will be electronically sent and the city shall be able to send notification to several people. Payment will be made via direct draft from the designated city bank account.

## **25. Prime Contractor**

Contractor is the Prime Contractor hereunder. The Prime Contractor shall be the sole point of contact with regard to all contractual matters arising hereunder, including the performance of services and the payment of any and all charges resulting from its contractual obligations.

## **26. Delegation of Professional Services**

The services provided for herein shall be performed by Contractor, and no person other than regular associates or employees of Contractor shall be engaged on such work or services. Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any services to any other person or entity without the prior written consent of the City. Any such delegation or subcontracting without the City's prior written consent shall be voidable at the City's option.

No delegation of subcontracting of performance of any of the services, with or without the City's prior written consent, shall relieve Contractor of its responsibility to perform the services in accordance with this Contract. Contractor shall be fully responsible for the performance, acts and omissions of Contractor's employees, Contractor's subcontractors, and any other person who performs or furnishes any services (collectively, the "Support").

Contractor shall at all times be an independent contractor and not an agent or representative of the City with regard to performance of the services. Contractor shall not represent that it is, nor hold itself out as, an agent or representative of the City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of the City. Neither the Contractor nor any employee of the Contractor is entitled to any benefits that the City provides its employees. The Contractor is solely responsible for payment of any statutory workers compensation or employer's liability insurance as required by state law. The Contractor will have an active account with the Department of Revenue, other state agencies as needed, and a separate set of books or records that reflect all items of income and expenses of the business that the Contractor is conducting.

Contractor shall perform the services in a timely manner and in accordance with the standards of the profession. At the time of performance, Contractor shall be properly licensed, equipped, organized, and financed to perform the services in accordance with this Contract. Subject to compliance with the requirements of this Contract, Contractor shall perform the services in accordance with its own methods.

## **27. Licenses**

If applicable, Contractor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

In addition, Contractors are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the bid/RFP/quote.

Contractor shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the services.

## **28. Removal of Subcontractor (N/A)**

If dissatisfied with the background, performance, and/or general methodologies of any subcontractor, the City may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work/services under this Contract.

## **29. Taxes and Assessments**

Contractor shall be solely responsible for and shall pay all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury insurance, and other deductions from income which may be required by law or assessed against either party as a result of this Contract. In the event the City is assessed a tax or assessment as a result of this Contract, Contractor shall pay the same before it becomes due.

The City and its agencies are exempt from payment of all federal excise taxes, but not sales tax (currently at 8.3%). Tax will not be considered in determining which proposal is the lowest or best, however RCW 39.30.040 allows the City to take any sales tax and B&O tax that it will receive from purchasing supplies, materials and equipment within its boundaries into consideration when determining the lowest responsible Proposer.

## **30. Contractor Tax Delinquency**

Contractors who have a delinquent Washington tax liability may have their payments offset by the State of Washington.

## **31. Inspection: Examination of Records**

The Contractor agrees to furnish the City with reasonable periodic reports and documents as it may request and in such form as the City requires pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith, and any other matter are to be covered by this Agreement.

The records relating to the services shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

## **32. Recordkeeping and Record Retention**

The Contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.

The City from time to time upon reasonable notice with minimal disruption, shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this proposal held by the Contractor. The Contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

## **33. Confidential, Proprietary and Personally Identifiable Information**

Subject to the Public Records Act, federal, state and local law, each party shall not use Confidential, Proprietary or Personally Identifiable Information of City for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken



in fulfillment of the obligations there under. Both parties shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Both parties shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.

Both parties shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the other party on any reproduction, modification, or translation of such Confidential Information. If requested by the City in writing, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the City, as directed.

Contractor shall maintain all Confidential Information as confidential for a period of three (3) years from the date of termination of this Contract, and shall return or destroy said Confidential Information as agreed upon by the parties in writing.

Contractor may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent such disclosure is required under law or a court order, provided that the City shall be given prompt written notice of such proceeding if giving such notice is legally permissible.

#### **34. Suspension of Work (Force Majeure)**

Each of the Party's will be excused from performing the Services or other non-monetary obligations to the extent such Party's performance is directly delayed, impaired or rendered impossible due to acts of God or other events that are beyond such Party's 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, floods, labor strikes, labor walk-outs, pandemics or other wide-scale health crisis unknown at the time of contracting, quarantine and related restrictions, explosions, extra-ordinary loss of utilities (including telecommunications services), or external computer "hacker" attacks and/or delays of common carrier.

The City may suspend, in writing by certified mail, all or a portion of the Service under this Agreement if unforeseen circumstances (unforeseen circumstances are as described above in the (Force Majeure) section above) beyond the City's control are interfering with normal progress of the Service. The Contractor may suspend, in writing by certified mail, all or a portion of the Service under this Agreement if unforeseen circumstances beyond Contractor's control are interfering with normal progress of the Service. The Contractor may suspend Service on the Project in the event the City does not pay invoices when due, except where otherwise provided by this Agreement. The time for completion of the Service shall be extended by the number of days the Service is suspended. If the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to renegotiation, and both parties are granted the option to terminate the Service on the suspended portion of Project in accordance with Section 16.

#### **35. Provision of Services**

The Contractor shall provide the services set forth herein with all due skill, care, and diligence, in accordance with accepted industry practices, standards and legal requirements, and to the City's satisfaction; the City decision in that regard shall be final and conclusive. The City may inspect, observe and examine the performance of the services performed on the City premises at any time. The City may inspect, observe and examine the performance of Contractor's services at reasonable times, without notice, at any other premises.

- a. If the City notifies the Contractor that any part of the services rendered are inadequate or in any way differ from the Contract requirements for any reason, other than as a result of the City's default or negligence, the Contractor shall, at its own expense, reschedule and perform the services correctly within such reasonable time as the City specifies. This remedy shall be in addition to any other remedies available to the City by law or in equity.
- b. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its subcontractors perform the services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and City work rules.

### **36. Assignment**

This Contract, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Contractor to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Contractor stated herein.

### **37. No Conflict of Interest**

Contractor represents that it or its employees do not have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Contract.

### **38. Contract Preservation**

If any provision of the Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

### **39. Promotional Advertising / News Releases**

Reference to or use of the City, any of its departments, agencies or other subunits, or any official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

### **40. Time is of the Essence**

Timely provision of the services required under this Contract shall be of the essence of the Contract, including the provision of the services within the time agreed or on a date specified herein.

### **41. Expansion clause**

Any resultant contract may be further expanded by the Purchasing Manager in writing to include any other item normally offered by the Contractor, as long as the price of such additional products is based on the same cost/profit formula as the listed item/service. At any time during the term of this contract, other City departments may be added to this contract, if both parties agree.

### **42. Patent Infringement (please also see section 12 – Contractor Indemnity)**

The contractor selling to the City the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the City (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

### **43. Warranty (please also see Section 13 – Warranty Disclaimer )**

Unless otherwise specifically stated by the Proposer, Contractor warrants that all goods and/or services furnished under this contract are warranted against defects by the Proposer for one (1) year from date of receipt, are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Contractor further warrants that no violation of any applicable federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Contractor's warranties (and any more favorable warranties, service policies, or similar undertaking of Contractor) shall survive delivery, inspection, and acceptance of the goods or services.

### **44. Access and Review of Contractor's Facilities**

The City may visit and view any of the offices, premises, facilities and vehicles of the Contractor and/or Contractor's Subcontractor upon request and reasonable notice during the term of the Contract and Contract renewals/extensions.

### **45. Facility Security**

The City may prohibit entry to any secure facility, or remove from the facility, a Contract employee who does not perform his/her duties

in a professional manner, or who violates the secure facility's security rules and procedures. The City reserves the right to search any person, property, or article entering its facilities.

#### **46. Waiver of Breach**

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Contract, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

#### **47. Integration**

This Contract, along with the City of Yakima's RFP 12306P Merchant Services and the Contractor's response to the Request for Proposals ("RFP" delineated in EXHIBIT A and Pricing in Exhibit B, represents the entire understanding of the City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Contract may not be modified or altered except in writing signed by both parties.

#### **48. Force Majeure**

Contractor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, pandemics, war, riot, delay in transportation or railcar transport shortages, provided Contractor notifies the City immediately in writing of such pending or actual delay. Normally, in the event or any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

#### **49. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

#### **50. Venue (please also see Section 19 – Dispute Resolution)**

The venue for any judicial action to enforce or interpret this Contract shall lie in a court of competent jurisdiction in Yakima County, Washington.

#### **51. Authority**

The person executing this Contract, on behalf of Contractor, represents and warrants that he/she has been fully authorized by Contractor to execute this Contract on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Contract.

#### **52. Notice of Change in Financial Condition**

If, during the Contract Term, the Contractor experiences a change in its financial condition that may affect its ability to perform under the Contract, or experiences a change of ownership or control, the Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change of ownership or control shall be sufficient grounds for Contract termination.

#### **53. Change or Notice**

Any alterations, including changes to the nature of the service, made to the Contract shall be rendered in writing and signed by both responsible parties; no changes without such signed documentation shall be valid. No alterations outside of the general scope and intent of the original Request for Proposals or in excess of allowable and accepted price changes shall be made.

In no event shall the Contractor be paid or be entitled to payment for services that are not authorized herein or any properly executed amendment.

Notice of Business Changes: Contractor shall notify the City in writing within three (3) business days of any change in ownership of the facilities of the Contractor or of the facilities of any subcontractor. The Contractor shall notify the City in writing as soon as possible, and in no event later than three (3) business days, after any decision by the Contractor to change or discontinue service that will affect services provided to the City under this Contract.

The City shall have the right to renegotiate the terms and conditions of this Contract to the extent required to accommodate a change in governing law or policy that, in the sole discretion of the City, either substantially and unreasonably enlarges the Contractor's duties hereunder, or renders performance, enforcement or compliance with the totality of the Contract impossible, patently unreasonable, or unnecessary. Notices and demands under and related to this Contract shall be in writing and sent to the parties at their addresses as follows:

TO CITY:	COPY TO:	TO CONTRACTOR:
James Dean	Christina Payer	Paymentus Corporation
Utility Customer Service Manager	Buyer II	11605 N. Community House Road
City of Yakima	City of Yakima	Suite 300, Charlotte, NC 28277
129 North 2 <sup>nd</sup> Street	129 North 2 <sup>nd</sup> Street	ATTN: CEO with a copy to the legal department
Yakima WA, 98901	Yakima, WA 98901	at that same address

#### 54. Survival

The foregoing sections of this Contract, 1-54 inclusive, shall survive the expiration or termination of this Contract in accordance with their terms.

**IN WITNESS WHEREOF**, the parties hereto execute this Contract as of the day and year first above written.

#### CITY OF YAKIMA

#### PAYMENTUS

_____	By: _____
City Manager	
Date: _____	Date: _____

**Attest:**

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
City Clerk

Exhibit A (Intentionally omitted)  
Exhibit B Scope of Services  
Exhibit C Professional Services  
Exhibit D Service Fee Schedule  
Exhibit D-1 Statement of Work

## EXHIBIT A (intentionally omitted)

### EXHIBIT B SCOPE OF SERVICES

#### 1 Description of Services to be Performed

##### 1.1 Scope of Services

When selected on Exhibit D (Paymentus Service Fee Schedule), Paymentus will provide Users the opportunity to view and receive bills, make Payments using the payment methods provided under Exhibit D and other payment methods and wallets as offered by Paymentus from time to time. The payment methods and other services provided may be used within the channels described on Exhibit D or on other websites or mobile/web apps or chatbots or voice assistants that are part of the Instant Payment Network, (collectively referred to as the "Platform"). Paymentus will provide a mechanism by which Client may select the channels and payment methods Client wishes to offer Users. Paymentus will be the exclusive provider to Client of all electronic bill payment and related services substantially similar to the Services.

##### 1.2 Professionalism

Paymentus will perform the Services in a professional and commercially reasonable manner.

##### 1.3 New or Enhanced Services

From time to time Paymentus may offer Client new or enhanced services, such as new functionality within the IPN, the ability to accept other payment methods, methods of bill presentment, the ability to access alternative payment processors or other service providers or Paymentus Authorized Processors or otherwise modify the terms and conditions under which the Services are provided ("Service Enhancements"). Paymentus will provide Client with notice through the Agent Dashboard disclosing the terms, including any contracts or contract amendments, under which the Service Enhancements will be made available. If the Service Enhancements will result in additional fees to or impose additional material obligations on Client or Users, Client will have thirty (30) days after the date the notice is posted on the Agent Dashboard to opt-in to the Service Enhancements in the manner provided in the notice. If Client does not opt-out in a timely manner, then when the Service Enhancements are introduced they will form part of the Services and Client will be bound by the additional terms as disclosed in the notice, and the Paymentus Service Fee (Exhibit B) will be deemed amended to reflect changes in the Services and fees in connection with the Service Enhancements.

#### 2 Compensation and Payment Terms

##### 2.1 Implementation

3.1.1 Charge for Standard Implementation. Paymentus will charge the fees related to Standard Implementation that are set forth on the applicable Statement of Work.

3.1.2 Custom Implementation. If Client requests customizations during the implementation process, the SOW will contain an estimate of the amount of custom Work that will be required to be performed on a time and materials basis, which Work will be performed at a blended hourly rate set forth therein in accordance with the payment terms set forth in the SOW. If there are changes following the execution of the Statement of Work, the parties will follow the change order process detailed in the SOW. Custom implementation shall be billed as set forth in the SOW.

##### 2.2 Paymentus Fee

3.2.1 Party to be charged the Paymentus Fee. The party to be charged the Paymentus Fee is identified on **Exhibit D (Paymentus Service Fee Schedule)**.

3.2.1.1 Where the "User Box" is checked on Exhibit D, User will be charged the Paymentus Fee.

3.2.1.2 If the "User Box" is not checked on Exhibit D, Client will be charged the Paymentus Fee.

3.2.2 Third Party Payments. Paymentus will pay the corresponding processing and related fees to the applicable third parties out of the Paymentus Fee ("Third Party Fees"), except for fees related to Reversed or Chargeback Transactions.

3.2.3 Adjustments to the Paymentus Fee. The Paymentus Fee may be adjusted thirty (30) days following the date of delivery by Paymentus' of prior written notice to Client due to one of the following:

3.2.3.1 Mistake in connection with the Fee Assumptions. A mistake by either of the parties with respect to the Fee Assumptions, including but not limited to changes in (a) the average Payment Amount made by the Users, (b) the mix of payment methods utilized by the Users or (c) the interchange rates applied to transactions.

3.2.3.2 Charges for Non-qualified Transactions. Client will be billed additional Paymentus Fees equal to 2.85% of the Excess Payment Amount for each month.

3.2.3.3 Changes in Third Party Fees. Changes in the card or payment system rules, changes in payment processing fees or other changes in Third Party Fees that are outside of Paymentus' control that increase Paymentus' cost of processing transactions.

3.2.3.4 Changes due to increases in the Consumer Price Index. Beginning on the first anniversary of the Launch Date, and continuing on each anniversary of the Launch Date thereafter during the initial term and any renewal terms, the Paymentus Fee may be increased annually by a percentage equal to the increase in the Consumer Price Index, "U.S. City Average/All Items for All Urban Consumers (CPI-U) (1982-84 = 100)".

### **3.3 Payment Terms.**

3.3.1 User Paid Invoices. When User pays the Paymentus Fees (as designated on Exhibit D SERVICE FEE SCHEDULE), User will pay the Paymentus Fees together with the corresponding Payment at the time of the transaction.

3.3.2 Client Paid Invoices. When Client is obligated to pay the Paymentus Fee (as shown on Exhibit D), Paymentus will invoice Client promptly following the end of each full or partial calendar month during the Term and Client's bank account will be debited for Paymentus Fees. In addition, Client will be billed for applicable Professional Services Fees as described in the SOW in accordance with the terms set forth therein. Client shall notify Paymentus in writing of any alleged errors or discrepancies detected by Client in Paymentus' calculation of the Paymentus Fees, or Professional Services Fees contained in the applicable invoice(s) within thirty (30) days from the invoice date ("Due Date"). To the extent that any portion of an invoice is disputed in good faith ("Disputed Amount"), Client shall timely pay on or prior to the Due Date the undisputed portion of any invoice, and promptly notify Paymentus in writing of the Disputed Amount, providing a reasonably detailed explanation for such Disputed Amount ("Invoice Dispute Notice"). The parties shall work together in good faith to resolve all issues identified in the Invoice Dispute Notice within ten (10) days of Paymentus' receipt thereof. Charges on invoices which are not disputed within thirty (30) days of the invoice date shall be deemed accepted and Paymentus shall have no obligation to correct any calculation errors identified after such period. Invoices that are not timely paid shall be subject to interest from the Due Date at the higher of 18% per annum or the then current legal rate of interest.

## **3 Payment Processing**

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

Paymentus will provide implementation services to Client in accordance with the terms of **Exhibit C (Professional Services for Standard Implementation and Custom Integration)** and **Exhibit D-1(Statement of Work)** which is attached hereto and incorporated herein by reference.

### **3.2 PCI Compliance**

To the extent that either party receives payment card information subject to the Payment Card Industry Data Security Standards ("PCI-DSS") in connection with providing the Services, such party will comply with all requirements of the PCI-DSS with respect to storage, transmission and disclosure of payment card information.

### **3.3 Explicit User Confirmation**

Paymentus will electronically confirm to the User the dollar amount of all Payments, and when paid by the User, the corresponding Paymentus Fee to be charged for the transaction, and electronically obtain the User's approval of the charges prior to initiating payment authorizations transaction.

### **3.4 Merchant Account**

If described as part of implementation services in the applicable SOW, Paymentus will assist Client in setting up a merchant account directly with the Paymentus Authorized Processor for processing and settlement of transactions.

### **3.5 Payment Authorization**

For authorization purposes, Paymentus will electronically transmit all card or other payment transactions to the appropriate processing center, in real time as the transactions occur or as provided in applicable rules. In its sole discretion, Paymentus may refuse to process any transaction that it reasonably believes is (i) submitted in violation of its terms of use or (ii) necessary to protect Client, Users, itself or others from actual or potentially illegal, fraudulent or harmful activity.

### **3.6 Settlement**

Paymentus together with a Paymentus Authorized Processor will forward the payment transactions, to the appropriate organizations for settlement directly to Client's depository bank account previously designated by Client ("Client Bank Account") as a positive amount of payment processing funds, net of any User paid Paymentus Fee and any Reversed or

Chargeback Transactions (described below). When Client pays the Paymentus Fee, Paymentus will invoice Client and debit the fees from the Client Bank Account on a monthly basis.

Paymentus together with the Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Client and Paymentus agree to fully co-operate with each other if Paymentus were to change its settlement and invoicing processes.

### **3.7 Reversed or Chargeback Transactions**

With respect to all Reversed or Chargeback Transactions, Client authorizes Paymentus and Paymentus Authorized Processor (and/or the respective payment organizations) to debit the Client Bank Account for the Payment Amount and/or offset the Payment Amount against future payouts and Paymentus will refund the applicable amount to the payment organization for credit back to the User the corresponding Paymentus Fee, if any.

Paymentus together with Paymentus Authorized Processor will continuously review its processes for Reversed or Chargeback Transactions for simplicity and efficiencies. Client and Paymentus agree to fully cooperate with each other if Paymentus requires any change to its settlement and invoicing processes for these transactions.

## **4 General Conditions of Services**

### **4.1 Service Reports**

Paymentus will provide Client with reports summarizing use of the Services by Users for a given reporting period, which period shall be designated by Client during the Standard Implementation process. Such standard reports are available through the Agent Dashboard.

### **4.2 User Adoption Communication by Client**

Client will use its best efforts to prominently communicate the Services as a primary payment option to its customers wherever Client usually communicates its other payment options.

Client will use its best efforts make the Services known or available to its customers by different means of customer communication. Such efforts may include making services known (i) on the face of bills, invoices and other notices; (ii) on any marketing or advertising materials that include payment options; (iii) if direct payments have been activated, by providing Interactive Voice Response ("IVR") and Web payment details prominently on Client's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; (iv) if IVR payments have been activated, through Client's general IVR/Phone system; and (v) other channels or means available to Client or reasonably suggested by Paymentus.

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

### **4.3 Independent Contractor**

Paymentus is an independent contractor. Paymentus is not acting as an agent or fiduciary of the Client or its Users.

### **4.4 Client's Responsibilities**

In order for Paymentus to provide the Services, Client will fully cooperate with Paymentus by:

- (i) Entering into (and authorizing Paymentus to do so on its behalf) all applicable merchant processing, cash management, ACH origination, or kiosk agreements, provided that Client is given notice of and approves any additional fees associated with those agreements, and providing information and consents reasonably requested in connection with the agreements.
- (ii) Maintaining throughout the duration of the Agreement during which direct payments via the web is activated, a bill payment link connecting to the Paymentus Platform at a prominent and mutually agreed location on Client's website. If the IVR channel is activated, the phone number for IVR payments will also be added to the web site and as an option as part of Client's general phone system.
- (iii) Sharing User Adoption Communication as described in Section 5.2 (User Adoption Communication by Client).
- (iv) Providing Customer Information to Paymentus. As part of the information transfer required for implementation, Client will provide Paymentus with CIF on all Client customers serviced by Client. The CIF shall also identify customers by payment type.
- (v) Launching the Service within 30 days of System Availability. Paymentus will notify Client in writing of System Availability. Client will have five (5) days following such notification to confirm that there are no material defects in the System ("Testing Period"). If material defects in the System are identified, Client shall provide reasonable detail to Paymentus about such defects, and the System Availability date will be extended until Paymentus notifies Client again

of System Availability, and following an additional Testing Period, Client confirms there are no material defects in the System. If the Launch Date does not occur by the earlier of (i) thirty (30) days following final System Availability or (ii) 120 days following the Effective Date (as adjusted for any time required for Paymentus to cure applicable defects), Client shall be obligated to pay seventy-five percent (75%) of the Minimum Monthly Commitment Fees commencing the following month.

- (vi) Dedicating sufficient properly trained and fully engaged personnel to support the implementation process and its use of the Services in compliance with all laws applicable to its use of the Services.
- (vii) Providing Paymentus with the file format specification currently used to post payments to the billing system to allow Paymentus to provide Client with a posting file for posting to Client's billing system.
- (viii) Fully cooperating with Paymentus and securing the cooperation of its software and service providers and providing the information required to integrate with Clients' billing system.
- (viii) Fully cooperating with Paymentus to integrate its systems with the Paymentus Platform through the use of Paymentus' APIs to enable Client's access to the IPN, if selected.
- (ix) Promptly provide Paymentus notice within a reasonable time (not to exceed 48 hours) if Client encounters a cyber-incident or a data security breach which could reasonably be expected to compromise Paymentus data.



## EXHIBIT C PROFESSIONAL SERVICES (Confidential and Proprietary)

### Exhibit C Professional Services For Standard Implementation And Custom Integration

1. **Standard Implementation.** The parties agree that the Services are provided on a “platform as a service” basis, and not as a result of custom software development. Client will accept Paymentus’ proposed reasonable alternatives to achieve Client’s functional objectives within the limits of the Paymentus platform. Paymentus will charge no fees related to Standard Implementation.

- 1.1. **Integration Approach.** Standard Implementation of the Paymentus Platform may be achieved in one of two standard ways:

- 1.1.1 **Standalone System.** 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 for providing 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. As such, the Paymentus platform does and can function independent of any billing system integration. A payment-posting file can be emailed or downloaded from the Paymentus Agent Dashboard.

- 1.1.2 **Standard Integration with Client’s Billing System.** Alternatively, if Client chooses to have the Paymentus platform integrated with its billing system, Paymentus can provide standard integration services that Client can use to integrate its billing systems with the Paymentus platform (“Standard Integration”). Promptly following the execution of this Agreement, Paymentus will provide the standard specifications for integration to Client.

2. **Custom Implementation.** Upon request by Client, Paymentus can provide additional professional services to:

- 2.1.1 Customize the Platform to create Custom Enhancements) as clarified and agreed to in Exhibit B - Statement of Work

- 2.1.2 Provide Custom Integration.

3. **Required Integration Points.** Based on Client’s use of the Platform and its respective modules selected under the Agreement, Paymentus will require the following integration points for both Standard and Custom Integrations:

MODULE	INTEGRATION POINT
One-time payment	Customer Information: Text File or Real Time Payment Posting: Text File or Real Time
Scheduled Payment	Text File
E-billing for Billing Data	Text File or Real-time link to billing data
Outbound Notification- Audience File	Text File for customer engagement messages

4. **Statement of Work.** In the event that the Parties agree that Paymentus will provide professional services (“Professional Services”), to Client in connection with Custom Enhancement(s) and or Custom Integration(s), collectively “Custom Implementation”, the Parties will enter into a Statement of Work substantially in the form attached as Exhibit C which

will govern the terms of such Professional Services, including scope, initial project timelines and a process for change orders which may be necessary to address changes in the description of the Professional Services and or the timing and expense connected with the delivery of the Professional Services. The Parties will fully cooperate to ensure that the requirements with respect to Enhancement(s) and or Custom Integration(s) are clarified as needed. Paymentus will take commercially reasonable steps to deliver the Custom Implementation in accordance with the timeline provided for in the Statement of Work.

5. **Ownership of the Work Product resulting from Custom Implementation.** The Custom Implementation work product ("Work Product") created by Paymentus under the terms of this Exhibit AB and Exhibit C shall not be considered as "Work for Hire", and Paymentus shall own all Work Product. Client shall have no rights in or ownership of the Work Product or any other property of Paymentus.
6. **Cooperation from Client and its Vendors.** Paymentus agrees to participate in meetings with Client's third party vendors/service providers (collectively "Vendors") to provide any information or clarifications needed for such vendor to understand the integration. Client agrees to fully cooperate with Paymentus and to cause its Vendors to fully cooperate with Paymentus in connection with the provision of (a) Client and Vendor specifications, within thirty (30) days of the Effective Date (b) professional services required for the integration and testing of the integration, irrespective of the integration approach.
7. **Impact of Non-Cooperation.** Client acknowledges that if it does not fully cooperate and require their vendors and other service providers to fully cooperate with Paymentus, the implementation and integration will be delayed and may result in the commencement of charges in connection with the Minimum Monthly Commitment charges.
8. **Standard Implementation Cost Recovery.** The professional services provided as part of the Standard Integration has a fair market value of \$20,000.00 ("Standard Implementation Value"). Should Client terminate the MSA prior to Launch or fail to Launch the Service within 180 days of Launch date, as defined in Section 3: Contract Term, of the Agreement, for any reason (other than Paymentus' failure to perform material terms) Paymentus may, in its sole discretion, invoice Client the Standard Implementation Value and Client shall pay such invoice within thirty (30) days of receipt of Paymentus' final invoice for its professional services in connection therewith.
9. **Custom Implementation Rates.** Paymentus will provide the professional services required for Custom Implementation, and will charge for such professional services at blended hourly rate of **250.00** per hour. [As an incentive to enter into this Agreement, Paymentus will provide a credit equal to **Twenty Thousand Dollars (\$20,000)** to be credited against balance due on invoices for professional services in connection with the Custom Implementation.] Should Client fail to timely Launch the Services, or terminate the MSA for any reason (other than Paymentus' failure to perform material terms) Client shall be responsible for paying all fees incurred in connection with Custom Implementation within thirty (30) days of receipt of Paymentus' final invoice for its professional services in connection therewith.

<b>CLIENT HAS SELECTED THE FOLLOWING OPTION (To be checked as applicable):</b>	
<b>Standard Implementation</b>	<b>X</b>
<b>Custom Implementation</b>	

## EXHIBIT D (Confidential and Proprietary)

### SERVICE FEE SCHEDULE

#### Exhibit D – Paymentus Service Fee Schedule

The Services will initially consist of the Services indicated by a check box on the following table. The Paymentus Fee will be as specified below, and will be paid by the Client, unless designated as a User paid fee.

Channel	Channels	Services	Payment Methods & Channels	Paymentus Fee per transaction  Utility Payments-Absorb Fee Model	User Paid Fee
<input checked="" type="checkbox"/>	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit, Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants, Mobile Apps and others as offered by Payments from time to time	Full pass through of all interchange and assessments from Visa, Mastercard, Discover and American Express plus <b>\$0.57</b> authorization per transaction. <b>\$0.45</b> per eCheck/ACH transaction	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Direct Payments (Web, IVR, Recurring)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH	Full pass through of all interchange and assessments from Visa, Mastercard, Discover and American Express plus <b>\$0.57</b> authorization per transaction. <b>\$0.45</b> per eCheck/ACH transaction	<input type="checkbox"/>

Note: The parties have agreed to the following:

- A. Average Bill Amount: \$170.00
- B. Maximum Amount per Payment is \$500.00. Multiple payments may be made.
- C. Chargebacks and returned checks will be billed at \$9.95 per item.
- D. Outbound notifications include 5000 phone, email and text notifications per month; additional usage is invoiced at \$0.20 per message.

**Exhibit D-1**

**Statement of Work**

**STATEMENT OF WORK No. [ 1 ]**

This Statement of Work No. \_\_\_\_ issued pursuant to and in accordance with all of the terms of the Master Services Agreement ("Agreement" or "MSA") between Paymentus Corporation, a Delaware Corporation with a principal place of business located at 11605 N. Community House Road, Suite 300, Charlotte, North Carolina 28277 ("Paymentus") and the City of Yakima Utility Services Division ("Client") a Municipality with a principal place of business located at 129 N 2<sup>nd</sup> Street, Yakima WA 98901 (collectively the "Parties") is hereby entered into between the Parties and is effective as of the date that the last of the Parties signed this SOW as indicated below the signature line below ("SOW Effective Date"). Capitalized terms in this SOW shall have the same meanings ascribed to them in the Agreement. In the event of a conflict between the terms of this SOW and those of the Agreement, the terms in the Agreement shall prevail unless otherwise stated below.

**1. PROJECT CONTACTS.**

- a. **Client Authorized Representative.** The Primary contact for Client ("Client Project Manager") that is responsible for Acceptance/rejection of the project deliverables is:

NAME:	James Dean
TITLE:	Utility Customer Services Manager
TELEPHONE NO.	509-576-6615
EMAIL ADDRESS:	james.dean@yakimawa.gov
ADDRESS:	129 N 2 <sup>nd</sup> Street, Yakima WA 98901

- b. **Paymentus Authorized Representative.** The Primary contact for Paymentus that is responsible for the Services to be performed under this SOW, and to receive notices from Paymentus under this SOW ("Paymentus Project Manager"):

NAME:	
TITLE:	
TELEPHONE NO.	
EMAIL ADDRESS:	
ADDRESS:	

2. **DESCRIPTION OF THE SCOPE OF SERVICES.** Paymentus resources shall complete the following objectives:

Item	Detail	Amount
	Standard Implementation	Waived
<b>Total Due</b>		

3. **ASSUMPTIONS:** The parties recognize that the following restraints and assumptions are applied to this SOW:

- 3.1 Staffing issues will be resolved between Client and the Paymentus Project Managers. Both Parties will make every reasonable effort to maintain stable project staffing for the life of the project and minimize disruption to the project;
- 3.2 Client will strive to make a reasonable effort to minimize the impact of competing initiatives within the organization that may have a negative impact to the project. If this cannot occur, then:
  - 3.2.1 Client will define an escalation path which defines who can resolve resource allocation conflicts, determine the priority of the conflicting work, and communicate with the affected Parties, including the Project Managers of both Parties;
  - 3.2.2 Paymentus will make every effort to work around any conflicting priorities. Depending on the length of time the resource is not available and task the conflict occurs on, this could result in a delay in the project schedule;
  - 3.2.3 Impacts and/or changes to project resources by either party are the responsibility of that same party to replace and provide knowledge transfer that will mitigate the risk of the resource loss.
- 3.3 Prompt decision-making and problem resolution will be required to achieve an on-time project completion. It is expected that most decisions ad/r problems will be resolved within five (5) business days (or to a mutually agreed to timeframe). Reasonable efforts will be made to meet the resource loss.
- 3.4 Both parties will ensure Project Team members are available for meetings, workshops, discussions and conference calls upon request with reasonable notice. Project Team members will respond to information requests, within a reasonable time, not to exceed five (5) business days unless agreed by the parties, in order to minimize delays in the project.

4. **RESPONSIBILITIES OF THE PARTIES.** Each of the Parties will have the responsibilities set forth below:

- 4.1 **Client Responsibilities** The following must be performed by Client in order for Paymentus to perform the Work. Client shall:
  - 4.1.1 Establish a Project Team that contains representatives inclusive of both the business and IT resources and that have the time, resources, and expertise to carry out their respective tasks and responsibilities;
  - 4.1.2 Designate a Project Manager who will manage the efforts of Client's Project Team and/or staff and coordinate activities with the Paymentus Project manager;
  - 4.1.3 Cause Client's Project Manager or designee to participate in scheduled (e.g. weekly or as required) status meetings with the Paymentus Project Manager;
  - 4.1.4 Review current business practices, and consider and/or adopt new business practices as needed;
  - 4.1.5 Provide timely responses to critical issues raised by the Paymentus Project Manager;
  - 4.1.6 Provide requested information and complete the forms required to establish a merchant account for funds settlement within five (5) business days of Paymentus' request;
  - 4.1.7 Timely perform testing as required including functional testing, CIS integration testing and user acceptance testing and promptly provide the documented test results to Paymentus;
  - 4.1.8. Provide the URLS of CIS for both a UAT environment and production environment and whitelist IPs as requested by Paymentus;
  - 4.1.9 Extract data from Clients' CIS and provide Paymentus with the required data in Paymentus' Customer Information File standard format, where CIF is used;
  - 4.1.10 Take the lead in coordinating support from Client's CIS vendor and any other third-party vendor where Client holds the primary relationship (e.g. bill print). This includes the application-programming interface

("API") and all exchanges of data. Any related fees charged by the CIS or third party vendor are the responsibility of Client;

4.1.11 Provide access to PDFs for each individual bill, or alternatively assess to the bill print provider's API, where Client requires a bill image display to be accessible from the Paymentus solution. Any API related fees are the responsibility of Client;

4.1.12 Cause Client representatives to attend scheduled training sessions; and

4.1.13 Provide signoff on UAT and GO LIVE confirming Client has completed all testing activities.

4.2 **Paymentus Responsibilities:** Paymentus will do the following:

4.2.1.1 Maintain project communications with Client's Project Manager;

4.2.2 Manage the efforts of the Paymentus staff and coordinate Paymentus activities with Client's Project Manager;

4.2.3 Conduct regular (e.g. weekly or as required) telephone status report conversations with the Client's Project Manager;

4.2.4 Participate in weekly reviews with Client's project team. Participation can be waived by mutual agreement;

4.2.5 Provide timely responses to critical issues raised by Client's Project Manager;

4.2.6 Prepare and submit a status report that includes activities planned for the current month and an update to both the Project Schedule and the action item list;

4.2.7 Resolve deviations from the Project Schedule;

4.2.8 Monitor the project to ensure that support resources are available as scheduled;

4.2.9 Coordinate and perform the configuration of the Paymentus solution;

4.2.10 Provide Client with one (1) production and one (1) UAT (User Acceptance Testing) environment;

4.2.11 Establish a SFTP site for file transfer, where applicable; and

4.2.12 Train Client representatives on the Paymentus solution.

5. **COMPENSATION AND PAYMENT TERMS FOR IMPLEMENTATION SERVICES:**

5.1 **Compensation.** The rates for Professional Services in connection with this SOW shall be charged at a blended rate of \$250.00 per hour and the project is estimated to cost a total of [\$20,000.00] ("SOW Fees"). [Client will receive a credit to be applied towards the final payment for Implementation Fees in the amount of \$20,000.00 ("SOW Credit"). To the extent that there is an SOW Credit remaining upon the completion of the work required to be performed under this SOW ("Work"), such SOW Credit shall expire, as it is the intent of the parties that it only apply to this SOW].

5.2 **Payment Terms.** Client shall be invoiced for 50% (fifty percent) of the SOW Fees upon execution of this SOW. The balance of the SOW Fees, less the SOW Credit (plus any additional amounts agreed to be paid under the Change Management Process described in Section 5 below) shall be invoiced by Paymentus upon Acceptance of the completed Work, and shall be due thirty (30) days following the invoice date.

6. **CHANGE MANAGEMENT.** Either Party may desire to change the scope of the Services following execution of an SOW. If so, the Party will submit a written change order request in the form of Exhibit A-1 to the other Party describing such change in appropriate detail (a "Change Order Request"). At that time one of the following will occur:

6.1 **No material changes in cost or delivery dates.** If the Work described on a Change Order Request does not require either Party to incur any additional material costs or expenses and will not cause a delay in the delivery of the Work, then the Parties will sign the Change Order Request accepting the modification to the description of the Work within ten (10) business days of the Party's receipt of the Change Order Request, and the resulting document which has been signed by the authorized representative of each of the Parties shall then become a "Change Order" which acts as an enforceable modification of this SOW.

6.2 **Delivery of an estimate of impact if Costs or Delivery Dates will be impacted.** If the requested changes described on a Change Order Request will result in additional material costs or expenses, or will impact the delivery dates for the Deliverables or completion of the Work, then Paymentus shall in good faith provide Client with a written, high-level, non-binding assessment of such costs, expenses and the time that will be required to perform the modifications required by the Change Order (“Estimate” or “Proposed Change Order”), which Estimate shall be delivered within ten (10) days of Paymentus’ receipt of the Change Order Request. Client will notify Paymentus within ten (10) days of receipt of the Estimate whether Client desires to proceed, and if so, Client will document this decision by signing the Proposed Change Order which shall be in the form of Exhibit A-1 to this SOW. Paymentus’ implementation of a Change Order shall not delay the performance of Services and/or the delivery of Deliverables not reasonably affected by the Change Order Request.

## 7. **ACCEPTANCE OF WORK.**

Upon completion of the Work, Paymentus will notify Client (“Completion Notice”) that Client can commence acceptance testing to verify that the relevant Work complies with the Work description and specifications set forth or referenced in this Statement of Work. Client shall test the Work and shall provide written notice to the Paymentus Project Manager within ten (10) business days of the date of the “Completion Notice” (“Testing Period”) either that (i) Client has accepted the Work (“Acceptance”), or (ii) that Client has identified defects or bugs in the Work that need to be corrected (“Correction Notice”). Following Paymentus’ receipt of a Correction Notice, the Parties will promptly work together to correct all identified defects in the Work, including having the Client demonstrate the defect to Paymentus upon request. Once the identified defects in the Work have been corrected, Paymentus will issue a second Completion Notice to Client and above process shall be repeated until the Work is Accepted. If no notice is provided by Client following the applicable Testing Period, the Work shall be deemed to be accepted.

8. **TERM OF THIS SOW:** The term of this SOW shall begin on the SOW Effective Date and shall continue through Acceptance of the Services and Paymentus’ receipt of final payment. This SOW shall not be amended except through a fully executed Change Order pursuant to Section 6 above.

9. **LOCATION OF PERFORMANCE OF THE WORK.** Paymentus will perform the Work remotely.

10. **ESCALATION APPROACH FOR DISPUTES UNDER THIS SOW.** In the event there is a dispute by the Parties in connection with the Work, or one of the parties believes that the other party is not cooperating in a timely manner in connection with this SOW (either a “Dispute”); the Parties agree to take the following steps:

### 10.1 **Process for Escalations:**

10.1.1 **Escalation Level 1.** The complaining party must first address the issue by having a meeting within two (2) business days of request by either party between the representatives of each of the parties identified as Escalation Level 1 below;

10.1.2 **Escalation Level 2.** If the Dispute is not resolved to the reasonable satisfaction of the complaining party as the result of Escalation Level 1, then such party may request a meeting within two (2) more business days, which meeting shall be attended by the representatives of each Party identified as Escalation Level 2 below.

10.1.3 **Escalation Level 3.** Finally, if either party believes that the Dispute has still failed to be properly resolved upon the completion of Escalation Level 2, such Party may request a meeting with the representatives of each the Parties identified in the below Escalation Chart as Escalation Level 3 below. At the conclusion of the third meeting, if the Dispute has not been resolved and the complaining Party believes that it results in a material breach, then the complaining Party must give notice of material breach as required by the terms of the MSA.

10.2 **Escalation Participants.** The designees for each of the Parties that will participate in the above-described escalation process are as follows:

#### **Paymentus:**

Escalation Level 1	Escalation Level 2	Escalation Level 3
<Insert Name> Project Manager Email: <Insert Email> Phone: <Insert Phone>	<b>Pantelis Mamouzellos</b> Senior Manager, Client Services Email: <a href="mailto:pmamouzellos@paymentus.com">pmamouzellos@paymentus.com</a> Phone: 980-206-9091	<b>Lori Hogg</b> Vice President, Email: <a href="mailto:lhogg@paymentus.com">lhogg@paymentus.com</a>

**Client:**

Escalation Level 1	Escalation Level 2	Escalation Level 3
James Dean Utility Services Manager <a href="mailto:James.Dean@yakimawa.gov">James.Dean@yakimawa.gov</a> 509-576-6615	Jen Paxton Financial Services Officer <a href="mailto:Jen.Paxton@yakimawa.gov">Jen.Paxton@yakimawa.gov</a> 509-575-6024	Colleen Bailey IT Service Senior Application Analyst <a href="mailto:Colleen.Bailey@yakimawa.gov">Colleen.Bailey@yakimawa.gov</a> 509-575-6787