

SERVICE PROVIDER AGREEMENT

CREDIT CARD PROCESSING

THIS SERVICE PROVIDER AGREEMENT ("Agreement") is made and entered into by and between **Certified Payments No. 1, Ltd., by and through its General Partner, Certified Payments, Inc.**, a Texas Corporation, with offices at 3410 Midcourt Road, Suite 136, Carrollton, TX 75006 ("**Certified**") and **Williamson County, Texas**, a political subdivision of the State of Texas, 710 Main Street, Suite 101, Georgetown, Texas 78626 ("**Agency**").

RECITALS

WHEREAS, Agency desires to accept payments from individuals or entities ("Customers") by Credit Card and pin-less debit card ("Agency Payments").

WHEREAS, Certified is a third party service provider that performs such Credit Card and pin-less debit card payment services ("Services").

WHEREAS, Agency desires to contract with Certified to provide such Services and Certified desires to provide the Services to Agency subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and the mutual promises set forth below, the parties hereto agree as follows:

1. **DEFINITIONS** As used herein, the following terms have the meanings set forth below:

"Agency Bank" is the Depository Financial Institution where the Agency Bank Account is maintained and receives deposits from Agency's Customers or credits from the Federal Reserve Bank on behalf of the Agency.

"Agency Bank Account" is the account Agency has established with Agency Bank for credit card deposits from Agency's Customers as provided under the terms of this agreement, and identified on Page 3 of the **Bureau Credit Card Account Setup Form, Bureau Banking Information**, which is attached hereto.

"Bureau Code" is the unique seven (7) digit Agency identifier assigned to Agency by Certified.

"Card Issuing Bank" is a financial institution that issues cards and contracts with its cardholders for billing and payment of transactions.

"Card Associations" are membership corporations of financial institutions that issue cards for payments of goods and services, provide card products and establish the rules and regulations governing member participation in card programs.

"Card Holder" is an authorized user of a payment card issued by a Card Issuing Bank.

"Chargeback" is a transaction whereby the Card Issuing Bank reverses the Agency's Payment.

"Convenience Fee" means the fee charged by Certified to Customers for the convenience of using the Services in making an Agency Payment.

“Credit Card” refers to a pin-less debit card or credit card issued to a Customer for payment of goods and services.

“Customer” means both consumer and corporate, individual or company that purchases or uses the Services.

“Front-End Processor” is an authorization service through which Card Issuing Banks can approve or decline individual card transactions.

“IVR” means Integrated Voice Response system.

“Processing Facility” refers to the appropriate credit or debit network to which Certified transmits transactions.

2. CERTIFIED’S OBLIGATIONS Certified shall provide the Services as follows:

- A. Certified will provide Customers with the opportunity to make Agency Payments by Credit Card and pin-less debit card. These Agency Payments may be made through Certified’s website, the Agency’s website, through an IVR system, by contacting the Agency directly by telephone, by contacting Certified by telephone or by any other communication medium that Certified and Agency mutually agree upon.
- B. Certified shall begin providing the Services to Customers on a date mutually agreed upon by Certified and Agency.
- C. Certified shall collect and transmit Agency Payments from Customers using MasterCard, Visa and Discover. American Express may be collected and processed at the discretion of the Agency and Certified.
- D. Certified may charge each Customer a Convenience Fee for each Agency Payment processed. The Convenience Fee will be collected in addition to the corresponding Agency Payment. **Exhibit A** attached hereto details the Schedule of Convenience Fees that Certified may charge to Agency’s Customers. Certified will cause all net funds resulting from Agency Payments to be transmitted to Agency’s Bank Account; Certified shall retain all Convenience Fees collected by it hereunder.
- E. Except for the fees outlined in Exhibit A, Certified shall not charge Agency a fee in consideration for Certified’s provision of the Services to Customers as provided for in this Agreement; any fees payable by Agency in connection therewith must be mutually agreed upon by Certified and Agency.
- F. Certified will notify each Customer of the dollar amount of the payment and the corresponding Convenience Fee to be charged to the Customer and obtain Customer’s approval (electronically or otherwise) of such charges prior to initiating any charges to the Customer’s Credit Card.
- G. Certified will provide each Customer with electronic confirmation of the Agency Payment and the corresponding Convenience Fee.
- H. Certified will electronically collect and transmit all payment information to the appropriate Processing Facility in the most time critical manner that each facility can accept. Transmission of Credit Card payments will occur in real time to the appropriate Front-End Processor(s).

- I. Certified will provide Agency with online access to Agency payment data and reports summarizing the use of the Services by Agency's Customers. Agency will have the ability to import such payment data utilizing Microsoft Excel, Microsoft Access, a comma-delimited file ("CSV") or XML file. Access to Agency payment data and reports will be available 24/7.
- J. Certified will retain all logs and data for such period of time as required by applicable law and the regulations of the Card Associations.
- K. Prior to initiating any refunds to a Customer's Credit Card, Certified will attempt to obtain permission either orally or in writing, from the Agency's authorized representative. Unless Agency receives written authorization from Certified to the contrary, Agency may not issue refunds to the Customer by check. Certified will process such refunds in the form of a credit to the Customer's Credit Card that was initially charged and in Certified's sole discretion, may refund the corresponding Convenience Fee payment. Certified or its authorized agent will debit the Agency's Bank Account for the amount of the Agency Payment refund.
- L. Under the rules of the Card Associations, Customer's Card Issuing Bank gives Certified a limited amount of time to dispute a Chargeback or issue a refund. In the event a refund must be issued, Certified will contact Agency and Agency will immediately issue a memo authorizing Certified to refund the transaction, however, Certified and Card Issuing Bank reserve the right to debit the Agency Bank Account for the amount of the Agency Payment at any time during the Chargeback process.
- M. Agency will reimburse Certified for all chargeback actions or refunds of any kind, including but not limited to those resulting from overpayments, duplicate or misapplied payments or unauthorized charges. In the case of either a Credit Card refund or Credit Card Chargeback, where Certified is unable to collect amounts owed by Agency to Certified, Agency agrees to make amounts owed available to Certified in immediately available funds.
- N. In order to provide the Services under this Agreement, Certified will provide, at Certified sole expense, all necessary services in order to successfully interface with all Agency software, as listed below:
 - Oracle;
 - Odyssey;
 - Class;
 - Orion;
 - Quick Books;
 - Pet Point; and
 - Edoc Technology

3. AGENCY'S OBLIGATIONS

- A. In addition to this Agreement, Agency agrees to enter into any and all applicable agreements that are required to perform the Services hereunder. Such Agreements may include but are not limited to MasterCard and Visa, Discover and American Express, including the American Express Addendum attached hereto as **Exhibit B**. Agency agrees to fully comply with the rules, regulations and operating procedures of the various Card Associations, including without limitation with respect to the use of specific Card logos and marks.

- B. Certified is required to fully adhere to and operate according to the rules, regulations and operating procedures of the Card Associations, the Bank and any rules and regulations provided by American Express and Discover. Agency agrees to immediately comply with any requests by Certified regarding any Agency conduct that is outside said rules and regulations. Agency's failure to comply with such request by Certified will be grounds for immediate termination of this Agreement.
- C. Agency agrees to promote the Services to its Customers. Promotions shall include publishing the Agency's Bureau Code, relevant IVR telephone number and URL of the Agency's website or Certified's website on all applicable tax instruction booklets, tax preparer communications, taxpayer information publications, citations, notices, utility bills and any related marketing material. Agency will obtain Certified's consent prior to publishing any materials that reference the Services and/or Certified.
- D. Agency will not require as a condition to making an Agency Payment, that a Cardholder agrees in any way to waive such Cardholder's right to dispute the transaction with the Card Issuing Bank for legitimate reasons.

4. AGENCY'S RIGHT TO AUDIT

Certified agrees that Agency or its duly authorized representatives shall, until the expiration of three (3) years after termination or expiration of this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Certified, which are directly pertinent to the services to be performed or goods to be delivered hereunder to or on behalf of the Agency for the purposes of making audits, examinations, excerpts and transcriptions. Certified agrees that Agency shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Agency shall give Certified reasonable advance notice of intended audits.

5. INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CERTIFIED SHALL INDEMNIFY, DEFEND , AND HOLD HARMLESS AGENCY, AND AGENCY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE SERVICES DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF CERTIFIED OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

6. ADDITIONAL MATTERS

A. Confidentiality

Neither party will disclose to any third party or use for any purpose inconsistent with this Agreement, any confidential or proprietary, non-public information it obtains during the term of this Agreement regarding either party's business, operations, financial condition, technology, systems, know-how, products, services, suppliers, customers, marketing data, plans and models and personnel. Certified will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential Customer information it receives in connection with its performance of the Services, except that Certified may use personal information provided by Customers to establish and maintain individual user accounts requested to be established by such Customers with Certified.

B. Relationship of Parties

The performance by Certified of its duties and obligations under this Agreement shall be that of an independent contractor and nothing contained in this Agreement shall be deemed to constitute a joint venture or partnership between Certified and Agency.

C. Capacity to Contract

Each party hereby certifies that the person executing this Agreement on its behalf is fully authorized with complete legal capacity and approval to do so.

D. Intellectual Property

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

E. Force Majeure

Certified will be excused from performing the Services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Certified's reasonable control and that do not involve either fault or judgment of Certified.

F. Notice

Any notice to be given hereunder shall be in writing and may be affected by personal delivery, in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

AGENCY:	WILLIAMSON COUNTY c/o: Dan A. Gattis, County Judge 710 Main Street, Suite 101 Georgetown, Texas 78626
CERTIFIED PAYMENTS:	CERTIFIED PAYMENTS, INC. Attn: Pamela Stewart, President 3410 Midcourt Rd., Suite 136 Carrollton, TX 75006 <u>pamela.stewart@certifiedpayments.net</u>

G. Term of Arrangement

The initial term of the Agreement will be for a period of twelve (12) months, beginning on the date of the last party's execution of this Agreement and ending twelve (12) months thereafter.

H. Contract Extensions

By mutual agreement of both parties, this Agreement may be extended in twelve (12) month increments for up to an additional thirty-six (36) months, with the terms and conditions remaining the same.

I. Termination

Certified's performance of this Agreement is subject to the rules and regulations of the Card Associations, federal, state and local laws or regulations applicable to the Services. Receipt of a written directive from banking regulators, a member bank, Visa, MasterCard or other credit or debit card company or association to terminate shall be immediate upon such event.

J. Agency's Right to Terminate

Agency may terminate this Agreement for convenience and without cause or further liability, upon thirty (30) calendar day's written notice to Certified. In the event Agency exercises its right to terminate without cause, it is understood and agreed that only the amounts due to Certified for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Agency's termination for convenience.

K. Venue and Governing Law

Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

L. Compliance with Laws

Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

M. No Waiver of Immunities

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Agency, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Agency does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

N. Texas Public Information Act

To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Agency, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Agency as to whether or not the same are available to the public. It is further understood that Agency's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Agency, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Agency by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

O. Non-Exclusive Agreement

This Agreement is not exclusive. Accordingly, either party shall have the right to enter into one or more agreements relating to the same or similar matters as are covered by this certain Agreement, and execution by either party of such agreements shall not constitute a breach of this Agreement.

P. Assignment

This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, however, the obligations of Certified under this Agreement may be provided or fulfilled by any parent, subsidiary, affiliate, successor corporation or subcontractor of Certified so long as Certified assumes full responsibility for such obligations. This Agreement shall be binding upon and inure to the benefit of parties hereto and their permitted successors and assigns.

Q. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

R. Entire Agreement; Modifications

This Agreement, together with the specifications of Williamson County RFP# 13RFP00112, the exhibits and schedules attached hereto constitutes the entire agreement between Certified and Agency with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such matter. This Agreement, including the specifications of RFP#13RFP00112, the exhibits and schedules attached hereto may be modified or amended only by an instrument in writing executed by the parties or their permitted assignees.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the date of the last party's execution hereof.

AGENCY'S ACCEPTANCE:
WILLIAMSON COUNTY

By: _____
Dan A. Gattis, County Judge

Date

CERTIFIED'S ACCEPTANCE:

CERTIFIED PAYMENTS NO. 1, LTD.
BY: CERTIFIED PAYMENTS, INC., GENERAL PARTNER

By: *Pamela Stewart*
Pamela Stewart, President

11-20-2013
Date

Refunds:

Refunds will be processed through the Williamson County agency's standard refund processes. The specific refund policy for each Williamson County agency will be posted on the Williamson County agency's web site. American Express will accept proof of the refund via the Williamson County agency's posted refund process in the event of a Dispute, and not allow the Chargeback.

Limitation of Liability:

In no event will Cardtranz or American Express be responsible hereunder for damages to Williamson County arising from delays or problems caused by any telecommunications carrier or banking system or Internet Services Provider ("ISP"); provided, however, that the foregoing shall have no effect upon American Express' rights of Full Recourse, as used in the Agreement. Except as specifically indicated above, all terms and conditions of the Williamson County Agreement and the CARDTRANZ Agreement shall remain in full force and effect.

Authority to Sign:

Each party represents that the individual who signs this Addendum has authority to do so and to bind it to the terms and conditions of this Addendum. Each party further represents that they are authorized to sign and enter into this Addendum on behalf of their subsidiaries, affiliates and licensees that accept the Card.

AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.

WILLIAMSON COUNTY

By: _____

By: _____

Date: _____

Date: _____

CARDTRANZ, INC.

By: 
Pamela Stewart, President

Date: 11-20-2013