

ARF-15784

**REGULAR SESSION AGENDA**

Tax Assessor/Collector

**Meeting Date:** 10/14/2014

Envision Payment Solutions Agreement

25

**Submitted By:** Carrie Surratt, Tax  
Assessor/Collector**Department:** Tax Assessor/Collector**Type of Item:** Discussion Item**Renewal Agreement/** No**Reviewed by County** Yes**Appointment:****Attorney's Office:****Multiple Originals Y/N?:** Yes

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**Information****SUMMARY OF ITEM**

Take all appropriate action on Member Service Agreement/Classic Guarantee Program between Fort Bend County and Envision Payment Solutions for assistance in recovery of funds for returned checks.

**SPECIAL HANDLING**

→ Please return signed agreements to Carrie Surratt at the Tax Office.

10/14/14 2 Originals

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**Attachments**

Envision Payment Solutions Agreement

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**MEMBER SERVICE AGREEMENT**  
**Classic Guarantee Program**

**Envision Payment Solutions**

3039 Premiere Parkway, Suite 600 ■ Duluth, GA 30097  
770.709.3000 ■ 800.290.3957 ■ 770.709.3099(Fax)

**GENERAL INFORMATION** (physical address required)

**BILLING INFORMATION** (blank if same as Gen. Info.)

Member Name Fort Bend County

DBA Fort Bend County

Phone / Fax 281-341-8608

Address 401 Jackson St.

City / ST/ Zip Richmond, TX 77469

Contact/ Title Patsy Schultz/Tax Assessor-Collector

E-mail schulpat@co.fort-bend.tx.us

Number of Locations: 4 (Attach list of all locations included in this service agreement)

This Agreement between the Parties, Fort Bend County (Member) and **Envision Payment Solutions** (EPS), describes the terms and conditions of services provided by EPS to Member made effective on **October 1, 2014**.

**A. Definitions & Declarations**

1. Business Transaction: the single payment transaction for the accompanying purchase of goods or services.
2. Returned Item: a check transaction (paper or electronic) deemed unpaid and returned by consumer's financial institution.
3. Qualified Check: returned item meeting all Guarantee Requirements (Section C).
4. Consumer: check writer or owner of returned item or customer serviced by Member.

**B. Returned Item Submission.** Member shall submit Returned Items directly from Member's financial institution. For each Member's financial institution submitting Returned Items, Member shall sign a Bank Authorization form, which EPS shall submit to financial institution. If an item is returned that Member would rather handle internally, Member may request, via phone or email, that item be sent to Member. (See Section G. with regard to requested items that have already been paid through the claims process.)

**C. Guarantee Requirements.** EPS warrants the accuracy of its information regarding returned items received from Member or Member's financial institution. EPS agrees to reimburse the principal value of one (1) returned check per Business Transaction for which the Guarantee Requirements are specifically met. Member's exclusive and sole remedy for the breach of guaranty shall be the right to require EPS to pay the principal value of such dishonored check subject to the conditions stated in this Section. EPS agrees to reimburse Member for all Qualified Checks' face value.

Reimbursement shall be presented and made payable to Member for Qualified Checks meeting the following criteria:

1. Returned Item is less than or equal to the Check Limit of \$100.
2. Returned Item is a *first party* check drawn on a demand deposit account with a U.S. financial institution and must be made payable to Member.
3. Returned Item specifies a check date that coincides with the date of the Business Transaction. (Post-dated checks are deemed non-qualified.)
4. As a valid proof of claim, checks must be routed directly from Member's financial institution to EPS after first presentation. EPS must receive checks within 20 days of the date the check was written.
5. The signature and physical description of the check writer accurately corresponds to any signature and description contained in a valid state identification. The signature on the check must correspond to the imprinted name on the check. Also, any identification used must also relate to the name printed on the check.
6. Returned Item was originally for the payment of goods and/or services but was returned by any U.S. bank, savings and loans, or similar financial institution marked or stamped for the following reasons: Insufficient Funds (NSF) or Uncollected Funds.
7. Item must include check owner's name, street address (not PO Box), and at least one (1) telephone number with area code.

**D. Non-qualified Checks.** Upon full collection of all non-qualified checks, EPS shall reimburse 100% of the check's face value. *Non-qualified* checks are items that do not meet criteria in Section C. Furthermore, the return items meeting the following criteria are also non-qualified.

1. Checks exceeding Member's Check Limit. (No portion of an "Over-the-Limit" check will be paid in claims until the check balance is collected.)
2. Any more than two (2) outstanding checks from the same person or checking account number per location.
3. The goods and/or services for which the check was issued have been returned to the Member, have not been delivered by the Member, or are claimed by the consumer to have been unsatisfactory or in a dispute.
4. Checks on which payment has been stopped due to a dispute over goods or services between Member and Consumer.
5. Multiple checks made for a single Business Transaction.
6. Member has received a (full or partial) payment or security of any form as a means to secure payment of the returned item, or the goods or service for which the check was issued were initially delivered on credit or under a lease.
7. The Business Transaction for which the check was tendered is for any reason illegal, void, invalid, or for which a court of law determines that the check is in whole or in part not due or payable by the consumer.
8. The check, specifically the consumer's name or address or the MICR encoding on the check, has been altered or defaced.
9. Starter check or incomplete check missing signature or check date.

**E. Consumer Service Fees.** Member agrees that EPS or any of its attorneys or agents shall be entitled to collect from the consumer any and all fees or service charges (up to the maximum amount(s) mandated by state laws) and/or exemplary damages in addition to the check amount. EPS shall retain any and all service fees and/or exemplary damages. Member agrees to follow EPS procedures and post EPS notices, which may be required (per federal and/or state guidelines) to collect amounts arising from returned or dishonored checks.

**F. Claims Payment Cycle.** Unless notified by EPS of a change in schedule, EPS shall pay Member Guarantee Claims on the first day of the month (or next business day) for guaranteed items received during the first and fifteenth of the prior month. EPS shall pay Member Guarantee Claims on the 15<sup>th</sup> day of the month (or next business day) for items received after the fifteenth of the prior month. When collected, claims payment for non-guaranteed items will be included on either payment cycle.





## Member Service Agreement Terms & Conditions (Continued)

- G. Payment Acceptance.** Member agrees not to accept payment for returned items processed through EPS. Member agrees that if payment is accepted by Member's personnel for any returned item already processed through EPS, Member will be responsible for all fees assigned and due EPS. Such fees may be debited against a claims payment. If the item for which payment was collected had already been paid through a previous claims payment cycle or if Member requests the return of an item already paid through a claims cycle, Member shall reimburse EPS via a deduction from an upcoming claims payment. If no claims payment is due, EPS reserves the right to debit Member's bank account through ACH upon written notice to Member. Similarly, any other reimbursements or special payments to EPS shall be handled via claims deductions or ACH.
- H. ACH Authorization.** In signing Agreement, Member hereby authorizes EPS to initiate debit entries to Member's bank account via electronic funds transfer. This authorization remains in full force from this Agreement's effective date and until Member notifies, in writing, EPS of cancellation, such that EPS and member's financial institution can reasonably act upon it on a timely manner. **A voided check or bank statement containing ABA and account numbers for the account on which the ACH is transacted is required and attached to Agreement.**
- I. Assignment.** By the execution of this Agreement, Member assigns, transfers, and conveys to EPS all Member's rights, title, and interest in any check submitted to EPS under this Agreement and agrees to endorse such checks and to take any further action reasonably deemed necessary by EPS to aid in the enforcement of such rights.
- J. Term, Termination, and Amendment.** Agreement expires on the first anniversary of this Agreement's effective date. EPS will initially provide check services for 12 months prior to the expiration. Thereafter, this Agreement shall automatically renew month-to-month unless terminated by either party. Either party may terminate this Agreement with or without cause at any time after the initial 12 months upon written notice. The party terminating Agreement must present a **written notice of cancellation** (via fax, postal mail, or email) to the other party **30 days prior to cancellation**. These conditions, plus any addenda, including rates and fees, may be amended from time to time by EPS by providing the Member written notice. Except as provided herein, this Agreement may not be altered, amended or otherwise varied except by written mutual agreement of the Parties. Also upon termination of Agreement, all Member's outstanding checks remain sole property of EPS.
- K. Notice and Opportunity to Cure.** Prior to a notice of cancellation due to a deficiency in service or breach of Agreement, Member shall provide EPS written notice (via postal mail, fax, or email) detailing the alleged deficiency. Upon receipt of notice, EPS shall have at least 30 days to cure any alleged deficiency. If deficiency is not cured to the satisfaction of Member, termination of Agreement may proceed as stipulated under Section J.
- L. Indemnification.** Member agrees to promptly inform EPS of the collection or dispute of any returned item and to hold EPS harmless from any liability arising from Member's failure to do so. Member agrees that a decision to reject any check shall be solely Member's own responsibility. Member shall defend, save and hold harmless EPS from all liability resulting directly or indirectly from any disclosure or act forbidden by this Agreement or applicable law. In no event shall either Party be liable to the other Party or to any other person for any loss or injury to earnings, profits or goodwill, or for incidental or consequential damages. EPS shall not be held responsible for any failure, delays, or suspension of service caused by power or mechanical failure, fire, strikes, labor difficulties, inability to operate or obtain service for its equipment, acts of God, unusual delay in transportation, or other causes reasonably beyond the control of EPS. In no event shall EPS's liability under this Agreement exceed the total amount of fees paid to EPS by Member pursuant to this Agreement during the preceding 12-month period.
- M. Compliance.** Member acknowledges and understands that it has certain obligations and responsibilities under the Federal Fair Credit Reporting Act (FCRA). Member qualifies as a *User of Information* and *Furnisher of Information* as defined by the *Federal Trade Commission* (FTC) and agrees to comply fully with these requirements and with the FCRA. Member certifies that it has a legitimate business need, in connection with a business transaction involving the check writer, to receive the information provided by EPS and that such information will be used for permissible purposes in accordance with the FCRA and applicable state laws. Member agrees that the information will not be used for employment purposes and will not be used for any purposes other than the Business Transaction between Member and Consumer. Member agrees that neither it nor its agents or employees will disclose the results of an inquiry made to EPS to any party outside Member's organization except to the person for whom the inquiry is made. If the Member decides to reject any check, either wholly or partly because of information obtained from EPS, Member agrees to provide the consumer with all information required by the FCRA and EPS.
- N. Legal Responsibility.** In the event of Member's violation of any of the terms of this Agreement or its addenda, EPS shall take the necessary steps to preserve, defend, or enforce its rights under the court of law. In the event of any legal action with third parties, consumers, businesses, or regulatory agencies concerning any transaction or event arising under this Agreement, Member agrees to (a) immediately notify EPS of any claim or legal action; (b) cooperate with EPS in the making of any claims or defenses; (c) provide any information deemed important or relevant by EPS or its attorneys; (d) make available at least one employee or agent who can testify regarding said claims or defenses; and (e) assist in the full resolution of the claim. EPS and Member shall each be responsible for its own attorney fees and court costs except as set forth herein. EPS makes no guaranty, expressed or implied, and it is agreed that no implied law guaranty shall arise from performance by EPS or from this Agreement.
- O. Governing Law and Integration.** This Agreement plus any addenda attached hereto concerning its subject matter is the entire Agreement between Member and EPS. Agreement supersedes all previous representations, understanding and agreements in relation to its subject matter. This Agreement shall be governed by and construed in accordance with the laws of the state of Georgia.
- P. Severability.** Provisions contained in Agreement which are contrary to, prohibited by, or invalid under applicable laws or regulation shall be deemed omitted from this document or substituted with revised provisions. All other provisions shall remain valid and fully enforceable.
- Q. Survivability.** All representations, covenants, and indemnities made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.
- R. Waiver.** All rights and duties within this Agreement are material, relevant and important. No waiver of any rights hereunder shall be deemed effective unless specifically in writing and executed by the waiving party. Parties agree that delay or failure to exercise any right hereunder on the part of either Party shall not operate as a waiver to further exercise such right. Parties agree that no single or partial exercise of any right hereunder shall preclude its further exercise.

Authorized representatives of each party signing below agree to all terms and conditions stipulated herein and any attached sides.

Robert Hebert, County Judge

Member Name/Title

Chuck Hobbs

EPS Account Representative

Chuck Hobbs/Sr. VP of Business Development

EPS Management Name/Title

Member Signature/Date

Charles R. Hobbs

EPS Account Representative Signature/Date

Charles R. Hobbs

EPS Management Signature/Date

10-14-2014





PO Box 157 ■ Suwanee, GA 30024-9998  
770.709.3000 ■ 800.763.4059 ■ 770.709.3007(Fax)

### ADDENDUM TO SERVICE AGREEMENT

The following is an addendum to the service agreement (Agreement) between *Envision Payment Solutions, Inc.* (EPS) and Fort Bend County Tax Assessor (Member) made effective 10/1/2014.

- i. If a non-qualified Returned Item remains unpaid after 60 days of EPS receiving the item, Member may opt to have EPS mail or deliver the outstanding item to Member. In returning the uncollected items, EPS surrenders its authority to recover these unpaid items. Thereafter, EPS shall direct Consumers to the Tax Collector's office regarding further collection activity.

- ii. Article C.7. of Agreement shall be adjusted and executed as follows:

Returned Item must include check owner's name, street address (not PO Box), and at least one (1) telephone number with area code. For a Returned Item without a complete telephone number, the item may be guaranteed if a telephone number (with area code) is provided within seven (7) calendar days from when EPS receives Returned Item. Member is responsible for monitoring its returned checks and informing EPS's Client Services Department of the telephone number. However, Returned Item remains non-guaranteed if one or more criteria in Article C are not met or if any item in Article D applies.

- iii. Article H. (*ACH Authorization*) shall be **removed** from agreement. Debit entries will not be made against Member's bank account.

- iv. EPS and Member agree to **replace** and execute Article L (Indemnification) of agreement as follows:

Operational Responsibility. Member agrees to promptly inform EPS of the collection or dispute of any returned item. *To the extent provided by federal and state (Texas) laws*, Member shall hold EPS harmless from any liability arising from Member's failure to do so. Member agrees that a decision to reject any check shall be solely Member's own responsibility. In no event shall either Party be liable to the other Party or to any other person for any loss or injury to earnings, profits or goodwill or for incidental or consequential damages to the extent allowable by law. EPS shall not be held responsible for any failure, delays, or suspension of service caused by power or mechanical failure, fire, strikes, labor difficulties, inability to operate or obtain service for its equipment, acts of God, unusual delay in transportation, or other causes reasonably beyond the control of EPS.

- v. Article M. (*Compliance*) shall be amended and executed as follows:

In compliance to specifications under the Fair Debt Collections Practices Act (FDCPA), Member agrees to promptly inform EPS of the collection or dispute of any returned item. In accordance with guidelines set by the National American Clearing House Association (NACHA), Member must post or relay notifications to the Consumer regarding check acceptance (per Article E of Agreement). As a *User of Information and Furnisher of Information*, per Federal Fair Credit Reporting Act (FCRA), Member agrees to comply with FCRA requirements to the extent required by law. Member certifies that it has a legitimate business need, in connection with a business transaction involving the check writer, to receive the information provided by EPS and that such information will be used



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for permissible purposes in accordance with the FCRA and applicable state laws. Member agrees that the information will not be used for employment purposes and will not be used for any purposes other than the Business Transaction between Member and Consumer. Member agrees that neither it nor its agents or employees will disclose the results of an inquiry made to EPS to any party outside Member's organization except to the person for whom the inquiry is made or as required by law. Member agrees that a decision to reject any check shall be solely the member's responsibility. If the Member decides to reject any check, either wholly or partly because of information obtained from EPS, Member agrees to provide the consumer with all information required by the FCRA and EPS to the extent required by law.

- vi. EPS and Member agree to **replace** and execute Article O (*Governing Law and Integration*) of agreement as follows:

Governing Law and Integration. This Agreement plus any addenda attached hereto concerning its subject matter is the entire Agreement between Member and EPS. Agreement supersedes all previous representations, understanding and agreements in relation to its subject matter. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, County of Fort Bend.

In signing below, EPS and Member understand and agree to the above added terms of Agreement.

Robert Hebert, County Judge

10-14-2014

Date

Envision Payments Representative

10/1/14

Date

Envision Sales Manager

10/1/14

Date

Attest:

Dianne Wilson, County Clerk







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