



# Staff Report

for the Board Meeting of May 26, 2021

**TO:** Board of Directors

**FROM:** Chip Close, Water Operations Manager Aurora Tipton,  
Customer Service Administrator

**DATE:** May 11, 2021

**SUBJECT: Grand Jury Report: NID Billing and Payment Fees**

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## *OPERATIONS*

### **RECOMMENDATION:**

Informational update regarding the establishment of online payment options.

### **BACKGROUND:**

On May 4, 2021, the Nevada County Grand Jury released a report questioning the reasonableness of the NID's billing and payment fees, specifically credit card transaction fees and state/county mandated fees. The report includes a list of 11 findings and 5 recommendations that the District must respond to before July 3, 2021.

Staff is presenting this item to provide information and answer questions regarding the history and establishment of online bill payment at NID.

In 2014, The District began allowing credit card payments for treated water customers only. The fee for utilization of this service was \$3.00 per transaction. Initially the program was a success; however, soon NID raw water customer began requesting the same service. Because raw water bills can be substantially higher than treated water bills, staff quickly realized that the \$3.00 service fee would not cover the merchant fees and staff time associated with larger payments.

In addition to the increasing merchant fees, the District realized a vulnerability in processing credit card data. Staff was receiving personal credit card data for these transactions but did not have the technology in place to protect the information. Furthermore, the District does not have adequate insurance should the information be hacked.

In addition to the challenges above, staff was fielding numerous calls requesting the District provide an online bill payment option. The addition of this service would

take considerable staff time and expertise from both customer service and I.T. The combination of these challenges sent staff on a hunt for a provider to assist with both credit card payment and paperless eBilling.

Staff solicited information from a number of companies that provide these services including DataProse, Water Smart, and Paymentus. After receiving presentations from all three agencies, staff quickly realized that Water Smart was not a comparable option. The services they provide include all customer service and water efficiency tasks as a package, a level of service not needed or budgeted at this time, therefore they were eliminated. DataProse and Paymentus both offered similar packages; however, DataProse had significant setup costs with similar processing charges.

Ultimately, Paymentus was selected as it provided a no cost option for the District, did not escalate costs for customers who did not use the service, is not an increase in staff time, and provided the security and indemnity for credit card data collection. Additionally, the transaction fees were comparable to those offered by DataProse. It is important to note that the District does not receive any portion of the transaction processing fee. Those fees are retained by Paymentus, and used in part to pay credit card merchant fees.

Staff kept the WHO Committee apprised of our actions throughout the process with an update at each meeting beginning September 2018. Updates were provided at the Board level on 9-11-2019 and 2-26-2020 during the General Manager's Report.

Prior to the Grand Jury report release date of May 4, 2021, staff had begun talks with Paymentus regarding a change in fees. Staff was looking to switch to a percentage rate so that the fees assessed would be proportional to the amount paid. However, Paymentus has informed us that this is not allowed per Visa Merchant Guidelines. Other payment fee options continue to be explored.

Paymentus has offered to provide a "bulk" discount to the District if the Board wishes to absorb the credit card fees as described in the Grand Jury Report. Staff supports this option; however, the legal ramifications will have to be discussed with counsel.

#### **BUDGETARY IMPACT:**

The current Paymentus contract has no budgetary impact to the District.

If the contract were changed and the District absorbed credit card fees, the fee for 2020 would have been slightly more than \$91,000.00 This total does not represent the amount that would be due if the District were utilizing the "bulk" discount offered by Payments.

Attachments: (2)

- Grand Jury Report March 9, 2021
- Paymentus Contract

# **NID Billing and Payment Fees: Are they reasonable?**

2020-21 Nevada County Grand Jury  
Report Date: March 9, 2021  
Release Date: May 4, 2021

## Summary

Prompted by a citizen complaint, the 2020-2021 Nevada County Grand Jury (Jury) began an investigation into consumer charges associated with paying Nevada County Irrigation District (NID) treated water bills via credit cards.

NID currently offers several payment methods and delivery types for their customers. Historically, credit cards used for NID payments were taken over the phone by NID representatives and customers were charged \$3 to offset the merchant costs paid by NID. In 2018, spurred by concern about consumer privacy, data retention and customers who were interested in online payment options, NID began to look for a third-party alternative that would address these concerns. An internal committee consisting of four NID employees reviewed submitted proposals. The decision was handled administratively, rather than approved by the elected NID Board of Directors.

Paymentus was selected as a third-party billing provider and a five-year contract was signed in August 2019. The Paymentus program went live for customers in February 2020. NID officials report the primary reason Paymentus was selected was because there was no cost to the district. Officials cite the lack of district expense as the reason the decision was not taken to NID's Board of Directors.

In September 2020, there were about 18,100 bills mailed by NID and approximately 2,500 customers used the Paymentus process; each customer who uses the system is charged \$3.75 per payment. The Jury surveyed other water districts in California and learned that many do not directly charge consumers for credit card payments.

In attempting to understand the difference between NID and other water districts, the Jury learned that NID staff relied on Proposition 218 to make their decision. Proposition 218 directs that only those using a service should pay associated "property-related" fees. According to the California Legislative Analyst's Office, "...there is no consensus as to which fees meet this definition. The drafters of Proposition 218 indicate that it was their intent to include most fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service, and storm water management fees." The elected NID Board of Directors did not vote on the decision to classify electronic billing as a property-related fee.

The Jury examined the paperless billing option available at no cost to NID customers. As of August 2020, less than 10% of customers have signed up for this service which is significantly below the 26% of people nationally who indicate that they prefer a paperless option.

Lastly, the Jury also reviewed the \$1.90 monthly charge levied to all water customers to cover Federal, State and County mandated fees. While the Jury does not have a reason to doubt the validity of the charges, we were unable to verify that the total collected from consumers equals the total of the regulatory charges.

The Jury recommends involvement in this process by the NID Board of Directors. Elected representatives should have a public discussion about absorbing the cost of electronic payments for their customers. The Jury further recommends NID make available to the public a detailed analysis of the \$1.90 regulatory fees and that all payment types, along with the associated fees, are posted on its website in a place that is easy for customers to view.

## **Glossary**

<b>ACH</b>	Automated Clearing House
<b>BOS</b>	Board of Supervisors
<b>EFT</b>	Electronic Fund Transfers
<b>IVR</b>	Interactive Voice Response
<b>JURY</b>	2020-21 Nevada County Grand Jury
<b>LAO</b>	California Legislative Analyst's Office
<b>NID</b>	Nevada Irrigation District

## **Background**

The Nevada County Grand Jury receives numerous complaints each year from residents of the County. A member of the public asked the Jury to investigate NID's \$3.75 electronic payment charges and the process that was implemented in February 2020. The Jury decided to investigate this complaint. As part of the investigation, the Jury identified a billing fee of \$1.90 that is listed on each bill as ST/CNTY MANDATED FEE. The Jury decided to review that charge as well.

## **Approach**

Prompted by a citizen complaint, the Jury began an investigation into consumer fees associated with paying NID treated water bills. While the Jury reviewed other questions about consumer billing, the investigation primarily focused on payment of treated water bills using electronic methods. The Jury requested and reviewed key documents, interviewed several NID personnel, examined documents mailed to consumers and reviewed the NID website. Additionally, the Jury researched California Consumer Protection laws, academic opinions and industry billing practices. The Jury also surveyed other water districts in California and reviewed other regular consumer bills.

## **Discussion**

The Nevada Irrigation District was formed in 1921 and is an independent special district operating primarily in Nevada and Placer Counties, though its geographic service area covers 287,000 acres. NID describes itself as a multi-faceted district, organized primarily to provide

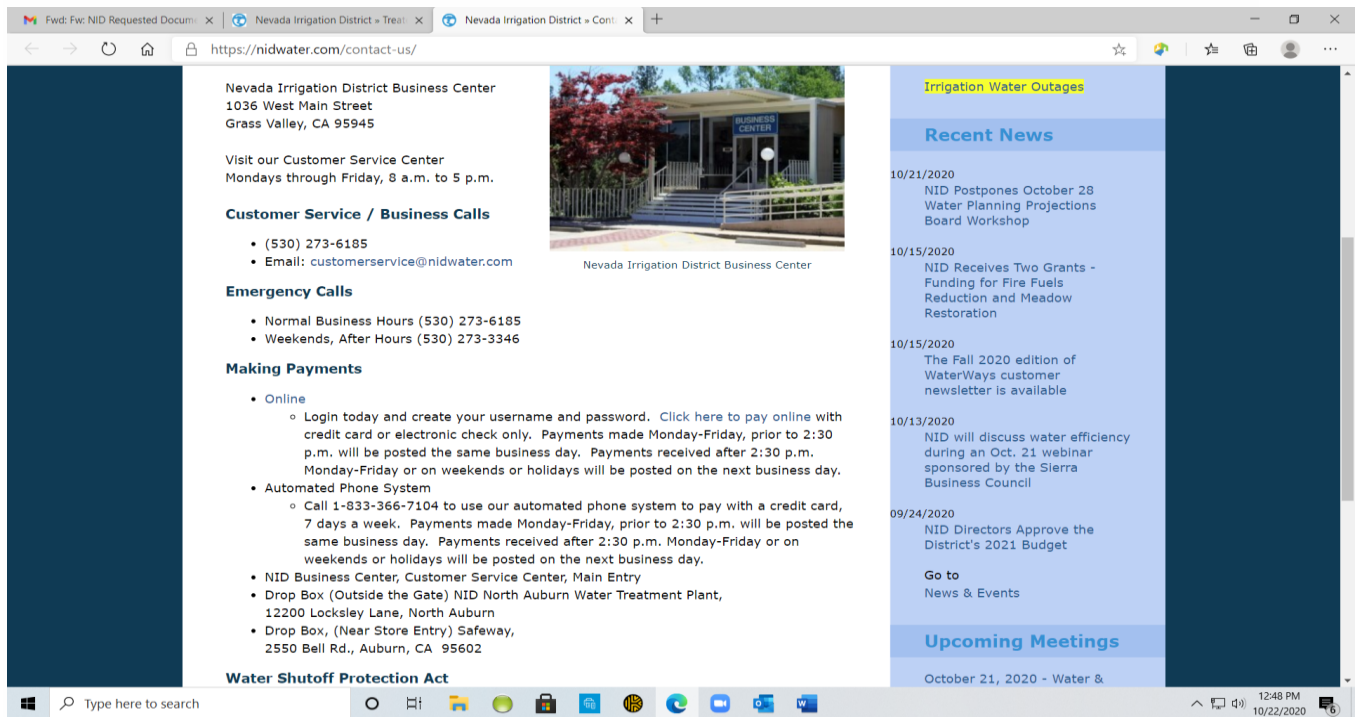
treated and raw water for irrigation, municipal, domestic, and industrial purposes. The district operates an extensive reservoir and canal system and a network of water treatment plants. Additionally, the district produces hydroelectric energy and provides outdoor public recreation.

NID officials reported that non-commercial treated water customers generated over \$17 million in revenue for the district in 2019.

This report is focused primarily on the billing and payment options for NID’s approximately 18,100 treated water customers, although the payment options are basically the same for all water customers.

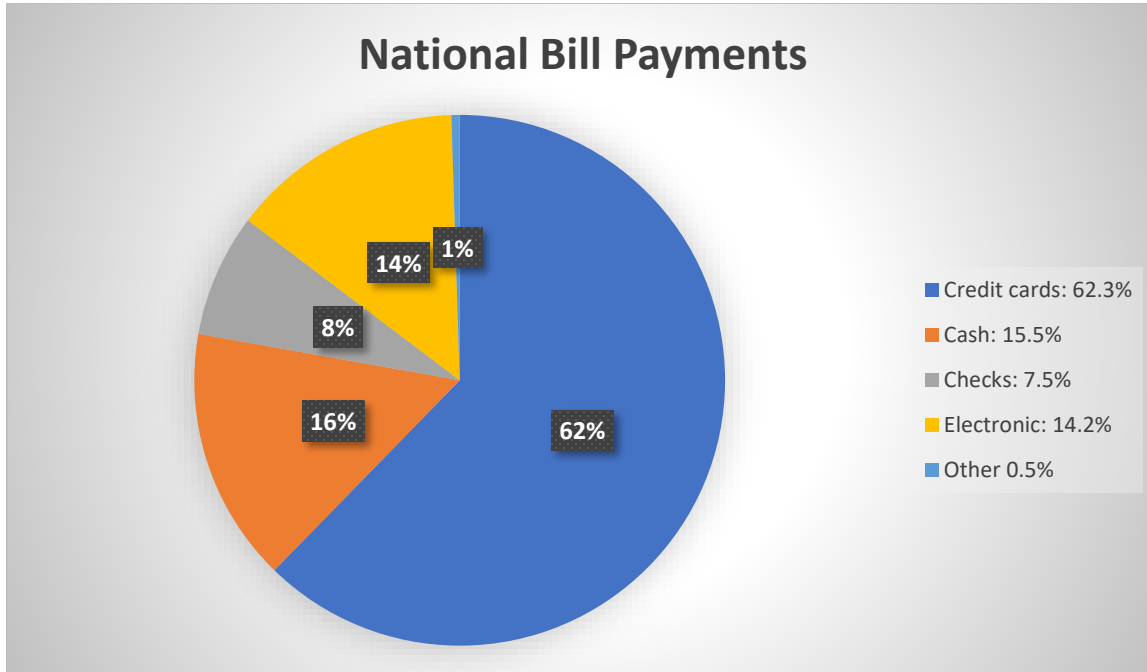
Billing processes have continued to evolve as technology has allowed increasing options for consumers. Customer focused organizations are striving to offer increased flexibility as options expand. Businesses are reviewing both payment types (cash, credit/debit card, etc.) and delivery methods (mail, phone, electronic, etc.) in the desire to allow customer flexibility and to reduce uncollectable amounts.

NID offers several payment methods and delivery types for their customers. Its website, on October 1, 2020, indicated these options for making payments:



Several officials with NID report that the district does not have a preferred payment option.

Nationally, bill payments are most often made using credit cards. According to a Wall Street Journal article published on January 11, 2019, in 2017 credit card payments accounted for 62.3% of all dollars spent, cash payments were 15.5%, electronic payments had 14.2% and checks totaled 7.5%. This chart depicts payment types nationally:

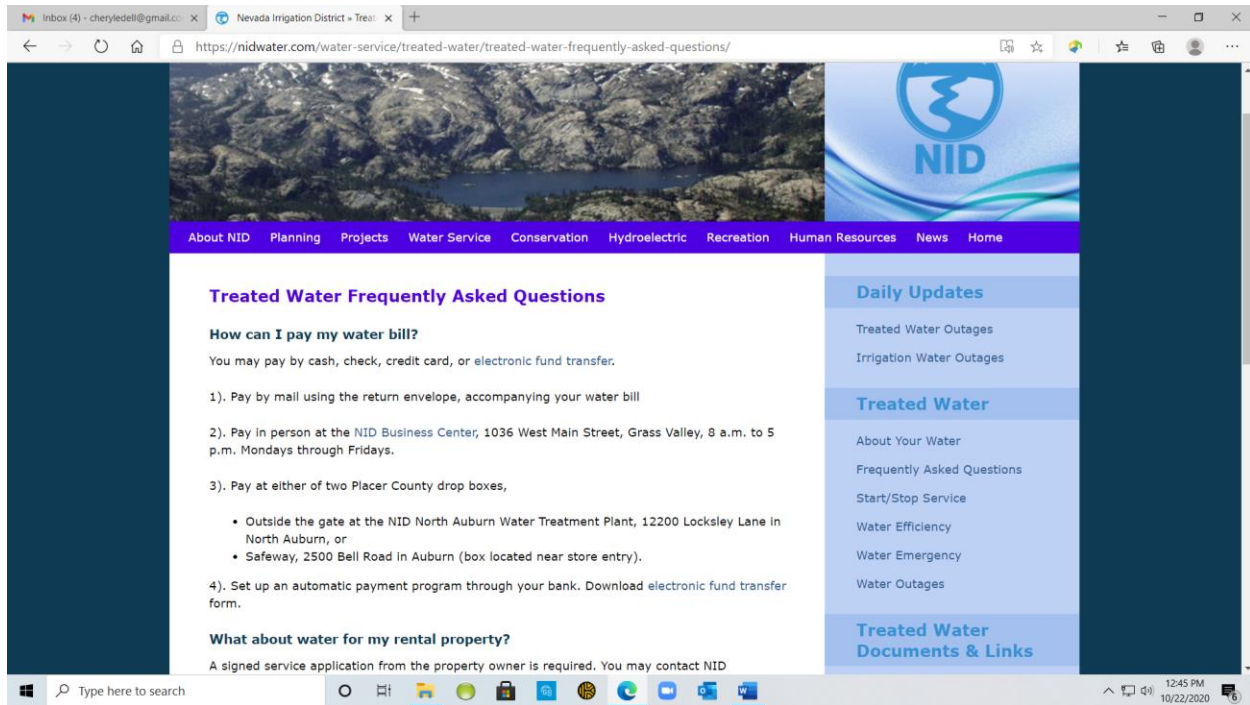


Credit card payments have processing fees associated with them, often called merchant fees. According to a PaymentDepot.com article published on Jan 24, 2020, here is the range of average costs for four major networks:

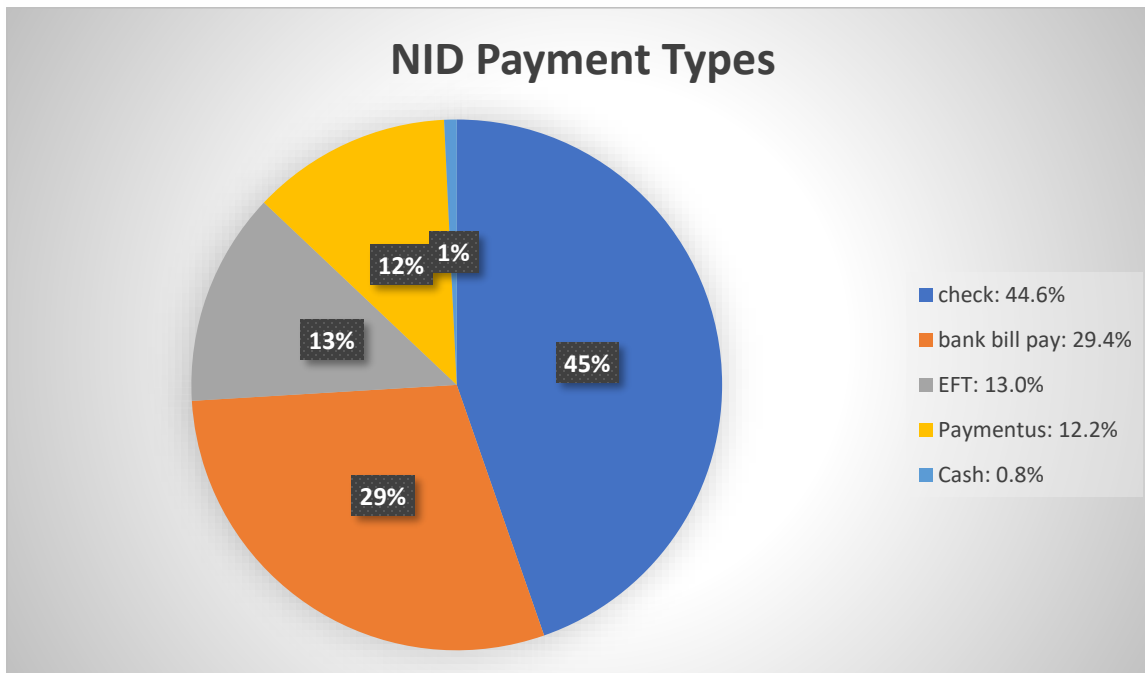
- American Express – 2.5% to 3.5%
- Discover – 1.56% to 2.3%
- Mastercard – 1.55% to 2.6%
- Visa – 1.43% to 2.4%

Other payment types - cash, check, electronic fund transfers (EFT) - typically do not have merchant fees associated with them though the Jury recognizes that some banks charge consumers for electronic payments.

NID customers may pay their bills via check, EFT, credit/debit cards, or cash. As of October 2020, the NID website indicated which payment types are accepted:



As of September 2020, NID reported that many customers pay by check. To make it easier to compare, the Jury notes that credit/debit card payments are included in the Paymentus category. Paymentus is a third party billing vendor described below in the report. Here’s a breakdown of payments by type:





Historically, credit cards used for NID payments were taken over the phone by NID representatives and customers were charged \$3 to offset the merchant costs paid by NID. In 2018, spurred by concern about consumer privacy, data retention and customers who were interested in online payment options, NID began to look for a third-party alternative to outsource credit card processing.

An internal committee consisting of four NID employees reviewed submitted proposals; a Request for Proposal process was not used. Rather, proposals were solicited from companies who provide this service.

Officials report that two companies were considered for outsourcing, DATAProse and Paymentus. DATAProse has over 900 clients in 44 States and already has a relationship with NID as their outsourced billing provider. Paymentus has over 1500 clients and has been recognized by Deloitte as being one of the fastest growing companies in North America.

A comprehensive review of the options available to NID was conducted by the Jury to better understand the selection process. Three proposals were submitted by two different companies: one was from Paymentus and the other two from DATAProse (NetBill 2014 and NetBill Powered by Invoice Cloud). The review revealed that NID would save between \$26,000 and \$26,500 in set up fees by selecting Paymentus. It also revealed that the credit and debit card fees charged to customers would be higher with the selection of Paymentus. A Jury analysis of the comparisons for setup and customer fees may be found in Appendix A.

Ultimately, Paymentus was selected as the provider and a five-year contract was signed in August 2019. Legal counsel for NID reviewed the contract prior to signing. In February 2020, the program went live for customers. The contract calls for monthly reports to be delivered to NID officials as well as an annual review of performance where Paymentus will advise NID if the fee assumptions made vary by more than 5% of expectations. The contract is clear that Paymentus may increase the service fee, if necessary, but does not state that NID may renegotiate fees based on actual experience. NID officials report that, based on conversations before the contract was signed with Paymentus, they expected to be able to renegotiate fees on behalf of customers if payments are higher than the fee assumptions made when the contract was negotiated.

NID officials report that the primary reason Paymentus was selected was that there was no cost to the district. They also cite the lack of district expense as the reason that the decision was not taken to NID's elected Board of Directors. Some NID officials added that the Paymentus program is simpler to understand and explain to customers. The press release issued in April indicates "Paymentus is a good fit for NID because it offers our customers a high degree of security, customer convenience and it did not require any District funds to develop or maintain the platform."

While the Jury has been unable to locate a document on the website or at customer service that details additional charges, it believes the following to be accurate relative to payment fees:

- credit or debit cards – additional charge of \$3.75, maximum payment \$1,000;
- customer’s bank bill pay – additional fees charged only if the customer’s bank has a fee;
- ACH – additional fees charged only if the customer’s bank has a fee or if Paymentus is used;
- IVR – additional charge of \$3.75, maximum payment \$1,000; and
- cash or personal checks – no additional customer fee.

As of September 2020, approximately 2,500 NID customers are using Paymentus (there were approximately 18,100 bills mailed that month). The Jury analyzed the report sent by Paymentus to NID to determine trends of usage and learned that these customers are paying their bills via MasterCard (credit or debit), VISA card (credit or debit), Discover card, or are paying through their checking accounts. The merchant fees paid to the credit card companies averaged just over 2% of the total bill and did not appear to vary by type of card used.

The Jury learned that NID officials relied on Proposition 218 when determining that the cost of using electronic payments should be paid by the customers who use the service rather than absorbed by the district as a cost of doing business. NID officials report that they see it as more transparent to pass along fees for credit card usage to consumers, for example, than to absorb the fee charged into the overall cost of NID operations.

Proposition 218, passed by California voters in 1996, states that residents of California shall have the power to repeal or reduce any local tax, assessment, or fee. According to California Legislative Analyst’s Office (LAO), it “restricts property-related fees, defined as fees imposed as an incident of property ownership.” The LAO goes on to say “At this time, there is no consensus as to which fees meet this definition. The drafters of Proposition 218 indicate that it was their intent to include most fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service, and storm water management fees. Other analysts of Proposition 218 contend that fees that vary by level of service (for example, a fee for metered water usage) should not be considered a property-related fee, because it is based on service usage, rather than property ownership. Because Proposition 218 does not restrict non-property-related fees [sic], the definition of this term will be an important and sensitive issue for the Legislature and courts.” The management of NID made the decision and did not ask the elected NID Board of Directors to vote on the decision to classify electronic billing as a property-related fee.

Proposition 218 also directs that only those using the service should pay the fee. The LAO states that Proposition 218 requires the local government to “set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis.”

NID officials who cited Proposition 218 have determined that customers who do not use electronic payments should not cover the costs of customers who use electronic payments. But they have not made the same determination that customers who use electronic payments should be billed proportionally. The September Paymentus report analyzed by the Jury revealed 508

cases where the customer bill exceeded \$177, which means that the merchant fees exceed the \$3.75 collected for the transaction by Paymentus. In those cases, the additional merchant fee must be subsidized by other customers who use the Paymentus system. Said differently, fees paid by approximately 80% of NID's customers using Paymentus offset the costs for the other 20% who use the service.

There is one other law that could be relevant in the future. As of November 1, 2020, the California Attorney General's website notes that "California has a law, California Civil Code section 1748.1, that prohibits retailers from adding a surcharge when a consumer chooses to use a credit card instead of paying by cash. In March 2015, a federal court found the statute unconstitutional and prohibited the Attorney General from enforcing it. The Office of the Attorney General believes that this decision is incorrect and has appealed that order. However, as of now, the Attorney General cannot enforce the statute."

### **Other Water Districts**

Through interviews with NID officials, the Jury was able to determine a list of other water districts that NID uses to help it determine best practices. In surveying those districts, and others, the Jury learned that many other districts do not separately charge consumers for credit card payments. Specifically, we found:

-The Placer County Water Agency (PCWA) does not charge an additional fee for customers to use credit cards and uses Paymentus to process some of their payments. According to its website: "There are several ways that you can pay your PCWA water bill. Our electronic and automated options are *secure, free and easy to use!*"

-The Modesto Irrigation District offers several ways for consumers to pay their bills. According to its website, bills may be paid by phone, online, in person, by mail or dropped off at any of the seven payment kiosks located throughout the community. Credit cards may be used when paying by phone or on-line, at no charge to consumers as long as they have registered accounts.

- The Turlock Irrigation District does not charge consumers for any of the payment types it offers. The Turlock Irrigation District website indicates that it offers automated bill pay and that the only consumer charge might "come from your bank." They have an interactive voice response system which may be used 24/7 and consumers may pay their bills in person or by mail.

-The City of Napa, which also uses Paymentus for its water bills, does not charge consumers for any payment types. Customer service representatives report that the City absorbs the Paymentus fees, not the customers.

-Yuba City, which offers water to residential customers, charges \$1.60 to customers using either a credit or debit card. Other payment options do not result in additional fees to the customer.

-Sutter Community Services District accepts credit card payments for water bills with a customer charge of \$1 for payments up to \$35 and 3% for payments over \$35.

### **Other Comparisons**

Consumers often use credit cards without paying additional fees. Most grocers, health care providers and retailers absorb the fees.

According to their websites, AT&T and Verizon do not charge additional fees for credit card payments.

Comcast does not charge additional fees to their customers for credit card payments unless they pay by calling a customer service representative.

PG&E payments may be made via credit card and require a \$1 convenience fee.

Waste Management customers may pay their bills using credit cards without incurring additional fees.

According to the mynevadacounty.com website, property owners in Nevada County may pay their tax bill online and will be charged a 2.38% convenience fee, e-check payments are free of charge.

DMV customers paying with a credit card online, at a DMV kiosk or through the automated telephone system will be charged an additional 2.1% and those paying with a debit or credit card at a field office will be charged a 2.3% service fee. Customers paying with cash, a check or money order will not be charged a service fee.

### **Paperless Billing**

In January 2019, Consumer Action reported the results of a survey asking consumers about paperless billing. They said that “the vast majority of respondents noted that they prefer to receive all types of bills by mail—even when they opt to pay the bill online.” Depending on the account category, 45-74% of respondents said that they choose paper over electronic notifications for insurance, utilities, medical, mortgages, credit cards and property taxes. The results suggest that as many as 26% of consumers may be willing to convert to electronic bills for water services.

Electronic bills are offered at no cost to NID customers, offering convenience to customers and cost savings to the district.

According to NID, there are almost 23,000 water customers:

- approximately 18,100 customers receive treated water bills each month;

- approximately 3,500 customers receive irrigated water bills in March, May and July; and
- approximately 1,300 standby customers receive bills in January and July.

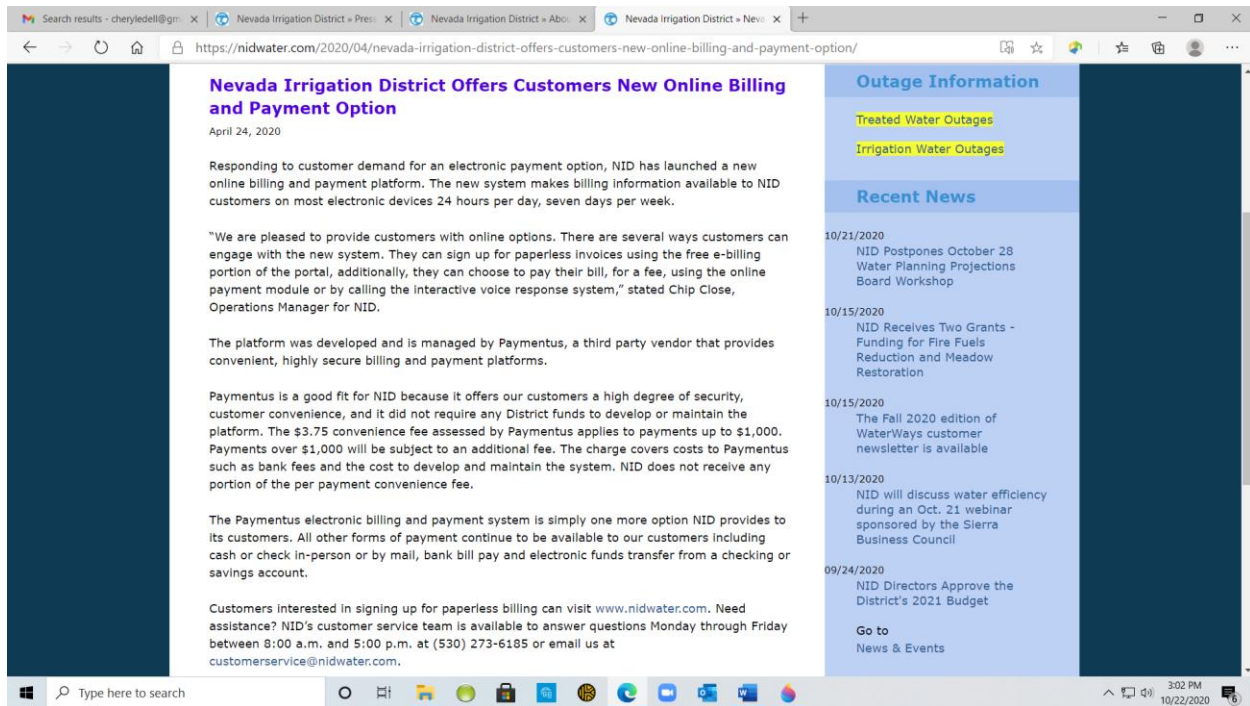
NID reports that it spends an average of \$8,423 per month in bulk postage (over \$100,000 per year) to mail invoices and also spends \$0.12 to print and stuff each mailed statement.

Using the above numbers, it appears that NID saves approximately \$0.55 per bill when a customer converts to paperless billing.

As of August 2020, 2,088 customers have signed up for the paperless billing service which is approximately 9% of bills. If NID could improve this number to the 26% mentioned above, it would save over \$14,000 annually, less marketing costs.

## Marketing


After the decision was made to select Paymentus, NID distributed a one-time insert in the monthly billing that explained the new process. It also produced this press release, which remains archived on its website:



NID includes a statement on some bills that notifies customers of electronic options. The Jury found the statement “Pay your bill online at [nidwater.com](http://nidwater.com) or by phone at 833-366-7104. Payments subject to a \$3.75 charge. Maximum payments \$1,000 per transaction.” on the bills for customers who pay by cash or check, but not on those who are set up for automatic bank drafts.

Electronic newsletters are sent to NID customers quarterly and the Jury found that information about paying a water bill online was included in two of the newsletters issued in 2020. Neither explained the \$3.75 charge for using Paymentus services nor specifically mentioned a paperless billing option for customers. Here is the article from the Spring edition:

## NID News Briefs



**Get your toilet rebates today**

NID has launched a toilet rebate program so customers can reduce water consumption and save money. The program will offer up to \$100 when eligible customers replace their older inefficient toilets with high-efficient WaterSense-labeled toilets.

Older, inefficient toilets can use as much as six gallons per flush. An efficient toilet, rated at 1.28 gallons per flush or less, can save water by 20 to 60 percent. That's nearly 13,000 gallons of annual water savings per household.

**Need to pay a water bill?**

Customers are encouraged to sign up for online billing. Click [here](#).

NID also provides drop boxes for payments:

- Grass Valley – outside the front door of the main business office at 1036 West Main Street in Grass Valley
- Placer County – outside the gate at the NID North Auburn Water Treatment Plant, 12200 Locksley Lane in North Auburn, or Safeway, 2500 Bell Road in Auburn (box located near store entry).

**Raw Water Master Plan update: we want to hear from you! Take a short survey**

NID is moving ahead with the update to its Raw Water Master Plan (RWMP), a comprehensive plan that will address our community's water future. Our aim is to maximize public input during the update process .

We invite you to take the survey to help us plan the public process. and provide input. Click [here](#).

**Fire fuel reduction work - Scotts Flat**

More than 1000 Acres of District-owned lands have been cleared of hazardous trees and dense

No other marketing has been done although customer service representatives are available to explain options to consumers.

It is important to note that the Jury found no evidence that NID is trying to hide the additional charges or to deceive the public in any way. In fact, NID officials were forthcoming with information and calls to customer service were handled professionally and competently. NID recently received a Transparency Certificate of Excellence from the Special District Leadership Foundation in recognition of its “outstanding efforts to promote transparency and good governance.”

### **Additional information**

There is one additional fee applied to NID customer invoices regardless of the method of payment chosen by each treated water customer. That fee is the State/County Mandated Fee of \$1.90 listed as a line item on each customer bill just prior to the Total Amount Due. The customer service department of NID stated that “the State/County Mandated fee of \$1.90 is to offset the cost of mandatory reporting compliance for the State of California.” Simple math reveals that the approximately 20,000 total treated water customers who pay \$1.90 fee/month per customer generate \$38,000/month or \$456,000/year.

In the 2019 COST OF SERVICE STUDY conducted by NID, the \$1.90 is only mentioned at the top of page 23 in a single sentence which reads “It should be noted that an additional charge of \$1.90 applies to each treated water customer to pay for regulatory fees.” Nowhere does the study indicate how NID arrived at the \$1.90 figure. When the Jury requested documents detailing the items that make up the regulatory fees, we were pointed to the operating budgets available to the public on the NID website. In 2009, those reports indicate that Federal/State/County Fees for Water Operations were \$399,200. Again, using simple math, if these fees are a complete listing NID collected over \$450,000 in 2019 to cover less than \$400,000 in regulatory fees.

While the Jury does not have a reason to doubt the validity of the charges, the Jury was unable to verify that the total collected from consumers matches the total of the regulatory charges.

During the course of this investigation, the Jury became aware that there is not a formal complaint process for customers. There doesn't appear to be a complaint form, log or a tally of historical complaints to review or present to management or the NID Board. Complaints are generally made verbally to customer service, the department involved or directly to a member of the NID Board. NID however can be contacted via email.

### **Findings**

F1. Many customers use checks or bank drafts to pay their NID bills instead of credit or debit cards, in part because of the additional charges NID passes on to its customers.

F2. It is difficult to find complete information about payment types and fees on the NID website.

F3. NID charges to consumers for using credit/debit cards are unusual among water districts surveyed and among other non-water utilities. For-profit businesses generally do not pass along the fees of electronic payments either.

F4. Many water districts view the use of electronic payments as a cost of doing business, rather than classifying them as a property-related fee as described by Proposition 218.

F5. While NID relies on Proposition 218 as the rationale for charging electronic processing fees to customers, it does not fully implement the spirit of proportional charges. As implemented, electronic payment fees paid by approximately 80% of NID's treated water customers offset the costs for the other 20% who use the service.

F6. The Jury was unable to find a NID Board-level discussion or approval to charge customers for electronic payments.

F7. There was no public discussion at the Board level about the consumer fees being charged by Paymentus. Rather, the decision was made by non-elected NID officials.

F8. The decision to select Paymentus was primarily focused on the cost to the district, rather than the cost to the consumers.

F9. Many consumers are unaware that they can switch to paperless billing.

F10. There is no easy-to-access detail that supports the additional \$1.90 reporting fee charged to water customers each month by NID. While the Jury doesn't have a reason to doubt its validity, it also couldn't verify the details that led to the charge.

F11. There is no documented formal customer complaint process in place that allows for complaints to be monitored, resolved, and collectively reported to NID Management or the elected Board of Directors.

## **Recommendations**

The Nevada County Grand Jury recommends the NID Board of Directors implement the following recommendations.

R1. NID should list all payment types, along with the associated fees, on its website in a place that is easy for customers to view. (F2)

R2. The elected NID board members should have a public discussion about absorbing the cost of electronic payments for their customers, allowing usage of credit or debit cards without an additional fee to customers. (F3, F6, F7)

R3. NID should provide frequent, detailed communication to customers about their ability to convert to paperless billing, both on its website and in paper bills. (F9)

R4. NID should include a complete listing of the \$1.90 regulatory fees that are included in the amount charged to customers in the COST-OF-SERVICE STUDY. The public should be able to



see the individual fee by type, the total of all the fees, and the number of customers estimated to share the responsibility for the fee. (F10)

R5. NID should adopt a formal documented process for collecting, resolving and reporting customer complaints. (F11)

## **Request for Responses**

Pursuant to Penal Code section 933.05, the Nevada County Civil Grand Jury requests responses from the following:

- NID Board of Directors to R1, R2, R3, R4 and R5 by 3 July 2021

**Appendix A: Jury Review of Third-Party Vendor Proposals**

Initial Setup and Maintenance Fee Analysis:

Review of the three program options available to NID revealed a minimum of \$26,000 and a maximum of \$26,500 savings to NID on Setup and Maintenance Fees over the life of a five-year contract by choosing Paymentus over the two DATAProse options presented. Setup and maintenance fees would be absorbed by NID and not applicable to NID customers. Actual amounts delineated in the chart below:

<b>Items Billable to NID</b>	<b>Paymentus</b>	<b>DATAProse NetBill 2014</b>	<b>DATAProse NetBill Powered by Invoice Cloud</b>
<b>Initial Setup Development Fee</b>	\$ -	\$ 2,000.00	\$ 2,000.00
<b>Credit Card / ACH Processing Setup Fee</b>	\$ -	\$ 500.00	waived
<b>Monthly Maintenance Fee – Annualized</b>	\$ -	\$ 4,800.00	\$ 4,800.00
<b>First Year of 5 Year Contract</b>	\$ -	\$ 7,300.00	\$ 6,800.00
<b>Subsequent 4 Years of Contract</b>	\$ -	\$19,200.00	\$ 19,200.00
<b>Total Cost to NID for Setup/Maintenance Fees Over 5 Contractual Years</b>	\$ -	\$26,500.00	\$ 26,000.00

Fees for various payment types:

Credit Card Payments: Visa, Mastercard, and Discover payments are available for all three options considered by NID:

- Paymentus utilizes a fee of \$3.75 for credit card payments made through their portal which does not discriminate between treated and raw/irrigation water. A

maximum amount per payment is \$1,000. Invoices greater than \$1,000 require additional payments with the associated fees.

- DATAProse (both programs), using the convenience fee model with fees being paid by the payer, charges \$2.95 per transaction up to \$300 for treated water. The fee increases to \$3.95 per transaction above \$300 up to a maximum of \$500 for treated water. While not specifically stated in documentation obtained by the Jury, it is assumed that invoice amounts above \$500 would require additional payments with associated fees. DATAProse charges raw/irrigation water rates of 2.95% with a \$1.95 minimum to a maximum invoice amount of \$125,000.

E-Checks: This type of payment is available for all three options considered by NID:

- Paymentus charges \$3.75 for e-check payments through their portal for both treated and raw/irrigation water. The \$1,000 per payment limit with additional payments required for invoices above \$1,000 with associated fees remain in effect.
- DATAProse (both programs) charge \$0.95 fee for e-check transactions through its portal with no listed maximum amount per payment.

Bank Draft: This type of payment is available for all three options considered by NID:

- Paymentus is not involved in the bank draft taken on the due date of each invoice. Therefore, bank drafts have no charges associated with them.
- DATAProse:
  - NetBill 2014 would not be involved in the bank draft process and, like Paymentus, would have no fees associated with it.
  - NetBill Powered by Invoice Cloud applies an Online Bank Direct Fee per transaction of \$0.25 with no mention of maximum transaction amounts.

ACH (Automated Clearing House): This type of payment is available for all three options considered by NID:

- The Paymentus contract does not specifically address ACH payments. If, however, ACH payments are made through the Paymentus portal then the \$3.75 fee would be applicable to the transaction. Also, there is no mention of a payment amount limit imposed on ACH transactions.
- DATAProse has two different fees associated with ACH transactions based on which program NID would have chosen:

- NetBill 2014 - ACH transactions would apply a \$0.60 or 1.25% of invoice amount, whichever is higher, with no mention of a maximum transaction amount.
- NetBill Powered by Invoice Cloud - ACH transactions would apply a \$0.85 fee to all transactions with no mention of a maximum transaction amount.

IVR (Interactive Voice Response): This type of transaction is available through all three options considered by NID:

- The Paymentus contract does not mention additional fees for IVR transactions, though the Jury was able to determine that any payment entered via the online system receives an additional charge of \$3.75.
- NetBill 2014 and NetBill Powered by Invoice Cloud apply a \$1.00 surcharge to all transactions made via IVR. If multiple transactions were required, then multiple \$1.00 charges would apply.

Cash or Personal Checks:

- Paymentus makes no reference to cash payments outside of its portal.
- DATAProse details a PayNearMe fee per cash transactions at local retail locations of \$1.99 per transaction with no mention of maximum transaction amounts.

## MASTER SERVICES AGREEMENT

Client:	Nevada Irrigation District CA
Client Address:	1036 West Main Street Grass Valley CA 95945
Contact for Notices to Client:	Aurora Tipton
Estimated Yearly Bills / Invoices:	245,000

This Master Services Agreement ("Master Agreement") is entered into as of the Effective Date below, by and between the Client ("Client") identified above and **Paymentus Corporation**, a Delaware Corporation ("Paymentus").

**WHEREAS** Paymentus desires to provide and the Client desires to receive certain services under the terms and conditions set forth in this Agreement. Paymentus provides electronic bill payment services to utilities, municipalities, insurance and other businesses.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of this signature page, General Terms and Conditions, and the attachments ("**Attachments**") with schedules ("**Schedules**") listed below:

### Schedule A: Paymentus Service Fee Schedule

This Agreement represents the entire understanding between the parties hereto with respect to its subject matter and supersedes all other written or oral agreements heretofore made by or on behalf of Paymentus or Client with respect to the subject matter hereof and may be changed only by agreements in writing signed by the authorized representatives of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

**Client:**

By: 

Name: Keith Schermer

Title: GM

Date: 8/8/19

**Paymentus:**

By: 

Name: Jerry Portocalis

Title: Senior Vice President

Date: August 5, 2019

# Paymentus

## GENERAL TERMS AND CONDITIONS

### 1 Definitions:

For the purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise.

1.1 **"Agreement"** or **"Contract"** shall refer to this Agreement, as amended from time to time, which shall constitute an authorization for the term of this contract for Paymentus to be the exclusive provider of services, stated herein, to the Client

1.2 **"User"** shall mean an NID customer who voluntarily elects to utilize the payment services described in this Agreement.

1.3 **"Effective Date"** shall be the last date upon which the parties signed this Agreement. The Agreement will not be effective against any party until the said date

1.4 **"Launch Date"** shall be the date on which Client launches this service to the Users

1.5 **"Payment"** shall mean Users payments for Client's services or Client's bills

1.6 **"Payment Amount"** shall mean the bill amount User wants to pay to the Client.

1.7 **"Services"** shall include the performance of the Services outlined in section 2 of this Agreement

1.8 **"Paymentus Authorized Processor"** shall mean a Paymentus authorized merchant account provider and payment processing gateway

1.9 **"Average Bill Amount"** shall mean the total amount of Payments collected through Paymentus system in a given month divided by the number of the Payments for the same month.

1.10 **"Paymentus Fully Hosted Solution"** shall mean the embodiment of transaction processing where Paymentus and only Paymentus platform is responsible for storing, processing and transmitting cardholder data.

1.11 **PCI Compliance** shall mean Payment Card Industry Data Security Standards

### 2 Description of Services to be performed

#### 2.1 **Scope of Services**

Paymentus shall provide Users the opportunity to make Payments by Visa, MasterCard, Discover, E-check and other payment methods as deemed necessary by Paymentus. Payments may be made by Interactive Telephone Voice Response System ("IVR") or secure Internet interface provided at the Paymentus Corporation's web site or other websites part of Paymentus' Instant Payment Network ("WebSites"), collectively referred to as the ("System" or "Platform").

#### 2.2 **Professionalism**

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

### 3 Compensation

#### 3.1 **No Cost Installation**

Paymentus will charge no fees related to the initial setup and personalization of its standard service for both Web and IVR interfaces.

#### 3.2 **Paymentus Service Fee**

For each payment, Paymentus will charge a Paymentus Service Fee as per Schedule A (hereinafter called "Paymentus Service Fee"). The Paymentus Service Fee is to be assessed upon Client's ratepayers as an additional charge upon all amounts due and payable by ratepayers to Client.

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

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

# Paymentus

collected each month from the use of non-consumer cards shall be under 5% of the total per month ("Fee Assumptions").

Once every 12 months, on the anniversary of the Effective Date, Paymentus shall have the opportunity to advise Client if the Fee Assumptions vary by more than 5% of the total per month ("Fee Assumption Variance"). In the event of a Fee Assumption Variance that increases Paymentus' costs to perform this Agreement, Paymentus shall be entitled to increase the Service Fee by a proportional amount – existing Service Fee, to be assessed over the remaining term of the Agreement, unless another Fee Assumption Variance shall occur, in which case additional adjustments may be permitted.

In addition, Paymentus can amend this schedule upon prior written notice to the Client, if such change is required due to changes in the Visa and MasterCard regulations or changes in Credit Card fees or changes in the Average Bill Amount or changes in Fee Assumptions.

## **4 Payment Processing**

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

At no cost to Client, Paymentus will develop two (2) file format interfaces with Client's billing system, using Client's existing text file format currently used to post payments to Client's billing system, and an expected change in file format during the contract term. Client will be responsible to provide Paymentus with the two file format specifications and will use commercially reasonable efforts to cooperate with Paymentus during the development of the said interfaces. If Client chooses to create an automated file integration process to download the posting files, due to Paymentus security requirements, Client will use Paymentus specified integration process. Paymentus platform is an independent full service fully hosted platform per PCI-DSS requirements for a fully hosted solution. As such, Paymentus platform does and can function independent of any billing system integration. Payment posting files(s) can be emailed or downloaded from Paymentus Agent Dashboard. If Client chooses to have Paymentus platform integrated with its billing system(s), Paymentus offers two options at no additional charge to Client or Client's ratepayers:

(i) Paymentus standard integration specification that Client can use to integrate its

billing systems with Paymentus platform ("Standard Integration"); (or)

(ii) Paymentus to either customize or configure its platform to integrate with Client using file specification or APIs supported by Client's billing system ("Client Specific Integration")

If Client chooses Standard Integration, Paymentus agrees to fully cooperate with Client and provide its specification to Client. Paymentus also agrees to participate in meetings with Client's software vendor to provide any information or clarifications needed to understand Standard Integration.

If Client chooses Client Specific Integration, Paymentus agrees to develop such integration at no cost to Client, provided however, Client agrees to fully cooperate with Paymentus and cause its software vendors to fully cooperate with Paymentus. Client agrees to provide all specification required for Client specific integration. Client further agrees to participate in testing with Paymentus and if needed, cause its billing software vendors to participate in testing.

Based on Client's use of Paymentus platform and respective modules selected under this Agreement, Paymentus will require the following integration points:

(i) For one time Payment Module:

- a. Customer Information – Text File or Real-time
- b. Payment Posting – Text File or Real-time

(ii) For Recurring Payment Module

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(iii) For E-billing Module

- a. Billing Data - Text File or Real-time link to billing data

(iv) For ECM Module

- a. Audience File – Text File for customer engagement messages

Each of these can be based on Standard Integration or Client Specific Integration.

### **4.2 PCI Compliance**

For PCI Compliance, Client agrees to use Paymentus' Fully Hosted Service.

### **4.3 Explicit User Confirmation**

Paymentus shall confirm the dollar amount of all Payments to be charged to a Card and electronically obtain the User approval of such

# Paymentus

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## 4.4 Merchant Account

Paymentus will arrange for the Client to have a merchant account with the Paymentus Authorized Processor for processing and settlement of the credit card transactions. The initial Merchant Account Agreement shall be in a form substantially similar to the Chase Agreement attached hereto, as amended, or updated from time to time.

## 4.5 Card Authorization

For authorization purposes, Paymentus will electronically transmit all Card transactions to the appropriate card associations in real time as the transactions occur.

## 4.6 Settlement

Paymentus together with its authorized Card processor shall forward the payment transactions to the appropriate card organizations for settlement directly to the Client's depository bank account previously designated by the Client (hereinafter the "Client Bank Account").

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

## 5 General Conditions of Services

### 5.1 Service Reports

Paymentus shall provide Client with reports summarizing use of the Services by Users every six months, with the first six-month period commencing on the Effective Date.

### 5.2 Paymentus Security Standards

Notwithstanding any other provisions of this Agreement, Paymentus shall implement and comply with the provisions of the 'Paymentus Security Overview' set forth in Exhibit [ ] hereto, as updated or amended from time to time.

### 5.3 User Adoption Communication by Client

Client will make Paymentus' Services available as a voluntary payment option to its ratepayers by different means of Client communication including a) through bills, invoices and other notices; b) by providing IVR and Web payment details on the Client's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; c) through Client's general IVR/Phone system; and d) other channels deemed appropriate by the Client.

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

Both parties agree that Paymentus will be presented as a voluntary payment method option. Client will communicate Paymentus option to its ratepayers wherever Client usually communicates its other payment methods.

### 5.4 Independent Contractor

Client and Paymentus agree and understand that the relationship between both parties is that of an independent contractor.

### 5.5 Client's Responsibilities

In order for Paymentus to provide Services outlined in this Agreement, the Client shall cooperate with Paymentus by:

(i) Client shall review and enter into all applicable merchant Card or cash management agreements on terms and conditions which are mutually agreeable to Client, Paymentus, and any additional necessary parties.

(ii) User Adoption marketing as described in 5.2.

(iii) Within 30 days of the merchant account setup, Client will launch the service to its ratepayers.

(iv) For the purpose of providing Client a posting file for posting to Client's billing system, Client will provide the file format specification currently used to post its payments to the billing system. Client will use commercially reasonable efforts to cooperate with Paymentus and provide the information required to integrate with Client's billing system.



# Paymentus

## 6 Governing Laws

This Agreement shall be governed by the laws of the state of California.

## 7 Communications

### 7.1 **Authorized Representative**

Each party shall designate an individual to act as a representative for the respective party, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

### 7.2 **Notices**

All notices of any type hereunder shall be in writing and shall be given by Certified Mail or by a national courier or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

#### **To Client**

C/O: Customer Service Administrator  
Address: 1036 West Main Street  
Grass Valley CA 95945  
Email: [tipton@nidwater.com](mailto:tipton@nidwater.com)

#### **To Paymentus**

C/O: President and CEO  
Address: 13024 Ballantyne Corporate Place  
Suite 450  
Charlotte, NC 28277  
Email: [ceo@paymentus.com](mailto:ceo@paymentus.com)

Notices shall be declared to have been given or received on the date the notice is physically received if given by hand delivery, or if notices given by US Post, then notice shall be deemed to have been given upon on date said notice was deposited in the mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received.

### 7.3 **Interpretation**

It is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.

### 7.4 **Amendment of Agreement**

Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

### 7.5 **Severability**

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

### 7.6 **Attorney's Fees**

Should any litigation arise concerning this Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

### 7.7 **Confidentiality**

Client will not 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 about Paymentus' business, operations, financial condition, technology, systems, no-how, products, services, suppliers, Clients, marketing data, plans, and models, and personnel. Paymentus will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential User information it receives in connection with its performance of the services.

### 7.8 **Intellectual Property**

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

### 7.9 **Force Majeure**

# Paymentus

Paymentus 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 Paymentus' 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, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

## **8 Indemnification and Insurance**

### **8.1 Paymentus Indemnification and Hold Harmless**

Paymentus agrees to the fullest extent permitted by law, to indemnify and hold harmless the Client and its governing officials, agents, employees, and attorneys (collectively, the "Client Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Client Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Paymentus in performing the Services or (ii) a material breach by Paymentus of its covenants ("Claims").

In addition to and separate from its duty to indemnify, Buyer shall defend Seller against suits, actions, or proceedings founded upon Claims. This duty to defend arises upon the commencement of the suit, action, or proceeding founded upon Claims.

### **8.2 Client Indemnification and Hold Harmless**

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless Paymentus, its affiliates, officers, directors, stockholders, agents, employees, and representatives, (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including without limitation reasonable attorney's fees and expenses) incurred by any Paymentus Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Client related to the Services or (ii) a material breach of Client's covenants ("Claims").

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duty to defend arises upon the commencement of the suit, action, or proceeding founded upon Claims.

### **8.3 Insurance**

Paymentus shall maintain insurance coverage equal to at least the minimum coverages designated in Exhibit B hereto.

### **8.4 Warranty Disclaimer**

Except as expressly set forth in this Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to the Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement.

### **8.5 Limitation of Liability**

Notwithstanding the foregoing, the parties agree that neither party shall be liable to the other for any lost profits, lost savings or other special, indirect or consequential damages, even if the party has been advised of or could have foreseen the possibility of such damages. Paymentus' total liability for damages for any and all actions associated with this Agreement or the Services shall in no event exceed the specific dollar amount of the Paymentus Service Fee paid to Paymentus for the particular payment transaction which is the subject matter of the claim of damage. The preceding limitation of the dollar amount does not apply to Paymentus' indemnification obligations for which the liability shall not exceed the corresponding insurance limits provided hereunder.

### **8.6 Insurance Limits**

Paymentus shall maintain insurance limits equal to at least the minimum limits designated in exhibit B hereto throughout the term of this Agreement:

## **9 Term and Termination**

### **9.1 Term**

The term of this Agreement shall commence on the effective date of this Agreement and continue for a period of 5 (five) years ("Initial Term") from the Launch Date. Services under this Agreement shall begin within 30 days of the merchant account setup.

## MASTER SERVICES AGREEMENT

Client:	Nevada Irrigation District CA
Client Address:	1036 West Main Street Grass Valley CA 95945
Contact for Notices to Client:	Aurora Tipton
Estimated Yearly Bills / Invoices:	245,000

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**Client:**

By: 

Name: Keith Schermer

Title: GM

Date: 8/8/19

**Paymentus:**

By: 

Name: Jerry Portocalis

Title: Senior Vice President

Date: August 5, 2019

# Paymentus

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# Paymentus

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# Paymentus

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(ii) User Adoption marketing as described in 5.2.

(iii) Within 30 days of the merchant account setup, Client will launch the service to its ratepayers.

(iv) For the purpose of providing Client a posting file for posting to Client's billing system, Client will provide the file format specification currently used to post its payments to the billing system. Client will use commercially reasonable efforts to cooperate with Paymentus and provide the information required to integrate with Client's billing system.

# Paymentus

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### 7.2 Notices

All notices of any type hereunder shall be in writing and shall be given by Certified Mail or by a national courier or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

#### To Client

C/O: Customer Service Administrator  
Address: 1036 West Main Street  
Grass Valley CA 95945  
Email: [tipton@nidwater.com](mailto:tipton@nidwater.com)

#### To Paymentus

C/O: President and CEO  
Address: 13024 Ballantyne Corporate Place  
Suite 450  
Charlotte, NC 28277  
Email: [ceo@paymentus.com](mailto:ceo@paymentus.com)

Notices shall be declared to have been given or received on the date the notice is physically received if given by hand delivery, or if notices given by US Post, then notice shall be deemed to have been given upon on date said notice was deposited in the mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received.

### 7.3 Interpretation

It is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.

### 7.4 Amendment of Agreement

Modifications or changes in this Agreement must be in writing and executed by the parties bound to this Agreement.

### 7.5 Severability

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

### 7.6 Attorney's Fees

Should any litigation arise concerning this Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

### 7.7 Confidentiality

Client will not 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 about Paymentus' business, operations, financial condition, technology, systems, no-how, products, services, suppliers, Clients, marketing data, plans, and models, and personnel. Paymentus will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential User information it receives in connection with its performance of the services.

### 7.8 Intellectual Property

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

### 7.9 Force Majeure

# Paymentus

Paymentus 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 Paymentus' 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, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

## **8 Indemnification and Insurance**

### **8.1 Paymentus Indemnification and Hold Harmless**

Paymentus agrees to the fullest extent permitted by law, to indemnify and hold harmless the Client and its governing officials, agents, employees, and attorneys (collectively, the "Client Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Client Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Paymentus in performing the Services or (ii) a material breach by Paymentus of its covenants ("Claims").

In addition to and separate from its duty to indemnify, Buyer shall defend Seller against suits, actions, or proceedings founded upon Claims. This duty to defend arises upon the commencement of the suit, action, or proceeding founded upon Claims.

### **8.2 Client Indemnification and Hold Harmless**

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless Paymentus, its affiliates, officers, directors, stockholders, agents, employees, and representatives, (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including without limitation reasonable attorney's fees and expenses) incurred by any Paymentus Indemnitee as a result or arising out of (i) the willful misconduct or negligence of Client related to the Services or (ii) a material breach of Client's covenants ("Claims").

In addition to and separate from its duty to indemnify, Buyer shall defend Seller against suits, actions, or proceedings founded upon Claims. This

duty to defend arises upon the commencement of the suit, action, or proceeding founded upon Claims.

### **8.3 Insurance**

Paymentus shall maintain insurance coverage equal to at least the minimum coverages designated in Exhibit B hereto.

### **8.4 Warranty Disclaimer**

Except as expressly set forth in this Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to the Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement.

### **8.5 Limitation of Liability**

Notwithstanding the foregoing, the parties agree that neither party shall be liable to the other for any lost profits, lost savings or other special, indirect or consequential damages, even if the party has been advised of or could have foreseen the possibility of such damages. Paymentus' total liability for damages for any and all actions associated with this Agreement or the Services shall in no event exceed the specific dollar amount of the Paymentus Service Fee paid to Paymentus for the particular payment transaction which is the subject matter of the claim of damage. The preceding limitation of the dollar amount does not apply to Paymentus' indemnification obligations for which the liability shall not exceed the corresponding insurance limits provided hereunder.

### **8.6 Insurance Limits**

Paymentus shall maintain insurance limits equal to at least the minimum limits designated in exhibit B hereto throughout the term of this Agreement:

## **9 Term and Termination**

### **9.1 Term**

The term of this Agreement shall commence on the effective date of this Agreement and continue for a period of 5 (five) years ("Initial Term") from the Launch Date. Services under this Agreement shall begin within 30 days of the merchant account setup.



# Paymentus

At the end of the Initial Term, this Agreement will automatically renew for successive three (3) year periods unless either Client or Paymentus provide the other party with not less than 6 (six) months prior written notice before such automatic renewal date that such party elects not to automatically renew the term of this Agreement.

## 9.2 Material Breach

A material breach of this Agreement shall be cured within 60 (sixty) days ("Cure Period") after a party notifies the other of such breach. During the Cure Period, Client shall be permitted to obtain and utilize substitute payment card services without penalty or fault. In the event, such material breach has not been cured within the Cure Period, the non-breaching party can terminate this Agreement by providing the other party with a 30 (thirty) days notice.

## 9.3 Upon Termination

Upon termination of this Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Paymentus shall cease all Services being provided hereunder unless otherwise directed by the Client in writing.

# Paymentus

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# Paymentus

## Schedule A – Paymentus Service Fee Schedule

Paymentus Service Fee to the Customer and User will be based on the following table:

Payment Type	Paymentus Service Fee Per Transaction
Visa, MasterCard, Discover and E-Checks payments  (Average Bill Amount of \$195.00)  Note: Maximum Amount per Payment is \$1,000.00  Multiple payments can be made	Flat Fee of \$3.75 to User
Enterprise Communication Manager (Outbound IVR or email messages)	2,000 messages per month at no cost. \$0.15 cents per message thereafter.

The Paymentus Service Fee will be collected in addition to the end-user bill payment total. Paymentus may apply different limits per transactions for user adoption or to mitigate risks.