

FEB 25 2019

Approved

**REQUEST FOR AGENDA PLACEMENT FORM**

Submission Deadline - Tuesday, 12:00 PM before Court Dates

**SUBMITTED BY:** Kathy Blackwell  
**TODAY'S DATE:** 2/19/2019

**DEPARTMENT:** Treasurer/Auditor

**SIGNATURE OF DEPARTMENT HEAD:**

**REQUESTED AGENDA DATE:** 2/25/2019

**SPECIFIC AGENDA WORDING:**

Consideration of authorization for Direct Deposits, Direct Payments and guarantee agreement with VPAY.

**PERSON(S) TO PRESENT ITEM:** Kirk Kirkpatrick

**SUPPORT MATERIAL:** (Must enclose supporting documentation)

**TIME:** 2 minutes

**ACTION ITEM:** \_\_\_\_\_  
**WORKSHOP** \_\_\_\_\_

(Anticipated number of minutes needed to discuss item)

**CONSENT:** \_\_\_\_\_

**EXECUTIVE:** \_\_\_\_\_

**STAFF NOTICE:**

**COUNTY ATTORNEY:** X

**IT DEPARTMENT:** \_\_\_\_\_

**AUDITOR:** \_\_\_\_\_

**PURCHASING DEPARTMENT:** \_\_\_\_\_

**PERSONNEL:** \_\_\_\_\_

**PUBLIC WORKS:** \_\_\_\_\_

**BUDGET COORDINATOR:** \_\_\_\_\_

**OTHER:** \_\_\_\_\_

\*\*\*\*\*This Section to be Completed by County Judge's Office\*\*\*\*\*

ASSIGNED AGENDA DATE: \_\_\_\_\_

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE \_\_\_\_\_

COURT MEMBER APPROVAL \_\_\_\_\_ Date \_\_\_\_\_



AUTHORIZATION FOR DIRECT DEPOSITS (ACH CREDITS) AND DIRECT PAYMENTS (ACH DEBITS) AND GUARANTEE AGREEMENT

3701 W. Plano Parkway, #200 | Plano, TX 75075 | 469-543-6597 | vpay.com

This Authorization for Direct Deposits (ACH credits) and Direct Payments (ACH Debits) and Guarantee Agreement (this "Agreement") is executed by the following Payer, pursuant to which Payer agrees to be bound by the terms hereof effective upon signature:

PAYER:		Telephone:	TAX ID:
Johnson County		817-556-6341	75-6001030
Address:			
2 N. Main St.			
City:	State:	ZIP:	Email Address:
Cleburne	TX	74033	Kathy@johnsoncountytexas.org
IF SOLE PROPRIETOR, complete the following:			
Last Name:	First Name:	Date of Birth:	

1. Under NACHA Operating Rules and Guidelines ("NACHA Rules") that govern entries through the automated clearinghouse network ("ACH"), Payer is the Originator and VPay is a Third-Party Sender of ACH entries. Accordingly, Payer: (a) authorizes VPay to originate ACH entries on behalf of Originator to the account of a designated Receiver (e.g., a provider); (b) agrees to comply with NACHA Rules; (c) will not request VPay originate ACH entries that violate U.S. law; (d) agrees international ACH entries are not permitted and all entries are for commercial purposes; (e) agrees that if it does not comply (or cure non-compliance) with NACHA Rules, VPay may suspend or terminate origination of ACH entries; and (f) agrees VPay may audit compliance with the above to the limited extent necessary.

2. Payer authorizes: (a) VPay to initiate entries to or from the accounts specified below (the "Accounts"), and (b) the financial institution listed below (the "Depository") to release information about the Accounts to VPay to fulfill the purposes of this Agreement.

3. Payer represents and warrants that the information below is true and correct; such accounts are all maintained primarily for commercial and not personal purposes; that Payer agrees to the terms and conditions of this Agreement; and that the signature below (including by fax/PDF) is sufficient to make this Agreement effective and binding upon Payer.

4. Payer will complete and execute any additional documents that

Depository may require to effectuate and maintain this Agreement. Payer guarantees to VPay that sufficient funds will be on deposit in the Accounts or otherwise made immediately available to VPay to pay for all payments requests transmitted to VPay for processing. Failure to sufficiently fund the Accounts and any such payments may result in a delay of payments and/or in a loss of payment processing services, at VPay's discretion, in addition to any losses that VPay may incur. Payer is solely responsible for fees assessed by its Depository (if any).

5. This Agreement will remain in full force and effect until VPay and Depository have received written notification from Payer of its specific termination of this Agreement in such time and in such manner as to afford VPay and Depository a reasonable opportunity to act on it; provided, however, the terms of this Agreement and Payer's obligation to guarantee to VPay funds for all payment requests transmitted to VPay for processing by or on behalf of Payer will survive termination. VPay may terminate this Agreement on three (3) days' advance written notice to Payer. Written notice of termination must be faxed or mailed to VPay at:

VPAY  
 ATTN: Treasury Department  
 3701 West Plano Parkway, #200  
 Plano, Texas 75075  
 Facsimile No. 469-543-6597

Depository Name:		Branch (if applicable):	
First Financial Bank		Cleburne	
Depository Address:	City:	State:	Zip:
400 Pine St.	Ahilene	TX	79601
Transit (ABA Number (9-digits):	Phone:		
111301122	817-202-3186		
Names as it Appears on Account:		Account Number:	
Claims Payment Account		42110079268	
Authorized Signature:			Date:
			February 25, 2019
Name (please print):		Title:	
Roger Harmon		County Judge	

AUTHORIZATION FOR DIRECT DEPOSITS (ACH CREDITS) AND DIRECT PAYMENTS (ACH DEBITS) AND GUARANTEE AGREEMENT



**ADDITIONAL TERMS AND CONDITIONS:**

**Available Funds.** Available Funds. Once funds have been received by VPay's partnering financial institution from the Accounts, Payer shall not recall any portion of the funds transfer. In the event that a funds transfer from the Accounts is returned to such Accounts or otherwise reversed without VPay's prior approval or funds are otherwise not available to fund payment requests, VPay is hereby authorized, upon discovery or notice of such event, to immediately suspend the processing of payment requests pending a resolution with Payer acceptable to VPay of the funding to be allocated for such payments. Notwithstanding the foregoing, Payer remains at all times obligated to fund all payment requests delivered by, or on behalf of, Payer to VPay. Any suspension shall not limit VPay's rights under this Agreement, at law or in equity.

**Inaccurate Information or Fraud.** Payer is responsible for all losses incurred by VPay as a result of (a) the delivery of inaccurate information or the omission of material information by, or on behalf of (e.g., through another vendor engaged by Payer, such as vendors of claims adjudication or bill review systems), Payer to VPay, and/or (b) fraud committed by employees, agents or contractors of Payer, and shall pay to VPay the full amount of such losses promptly upon delivery to Payer of reasonable documentation supporting such losses.

**Limitation of Liability; Disclaimer.** Except for the payment to Payer of any funds debited by VPay in error and the obligation of VPay to properly pay or apply Payer funds, VPay specifically disclaims any and all liability that may arise under this Agreement, including, without limitation, any other form of actual damages or any indirect, special, incidental, punitive or consequential damages. **VPAY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE.**

**Indemnification.** Payer agrees to indemnify and hold harmless VPay and VPay's partnering financial institution(s) (collectively, "Indemnitees") from and against any and all expenses, penalties (including fines or fees), liabilities and/or damages of any kind whatsoever in connection with any claims, suits, actions, demands, assessments or proceedings, threatened, asserted or filed against an Indemnitee, or incurred in the defense of any of the foregoing (including reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification), (a) to the extent related to the actions of Payer, Payer's financial institution or any agent or contractor of either, or (b) arising from (i) Payer's failure to guarantee to VPay funds are on deposit in the Accounts or are otherwise immediately available to VPay to pay for all payments requests transmitted to VPay for processing, or (ii) VPay's reliance on information, representations or warranties made and provided by Payer pursuant to this Agreement. **NOTWITHSTANDING THE ABOVE PROVISIONS, PAYER'S OBLIGATION TO INDEMNIFY IS SUBJECT TO THE TEXAS CONSTITUTION AND THE LIMITS OF THE TEXAS TORT CLAIMS ACT.**

**Costs.** Payer is solely responsible for any fees and other charges assessed by its financial institution.

**No Implied Waiver.** A failure by either party to take any action with respect to any breach by the other party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent breach or with respect to any continuation or repetition of the original breach. The provisions of this paragraph may only be waived by a party by a written acknowledgement of such waiver by such party.

**Governing Law; Forum Selection.** This Agreement and the obligations of the parties hereunder will be interpreted, construed and enforced in accordance with the laws of the State of Texas, without regard to its choice of law rules. All judicial proceedings arising out of or relating to this Agreement or any obligation hereunder shall ~~exclusively be brought in any federal or state court of competent jurisdiction located in Dallas, Texas~~ and each Party irrevocably accepts generally and unconditionally the exclusive jurisdiction and venue of such court, waives any defense of forum non conveniens and agrees that service of process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to such party at the address specified in this Agreement or as otherwise noticed in accordance with this Agreement.

**Miscellaneous.** Payer may not assign or otherwise transfer this Agreement, in whole or in part, without VPay's prior written consent. A change of control of Payer shall be deemed an assignment. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will bind the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither party nor their respective agents or contractors have made any representations or promises, and no party is relying upon any such representations or promises, in entering this Agreement except as expressly set forth herein. Each party relies exclusively upon its own judgment. This Agreement shall not be modified, in whole or in part, except in writing executed by each of the parties. This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties and each of their respective successors and assigns. The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions, and this Agreement shall be construed as if such invalid or unenforceable provisions or parts were omitted. This Agreement may be executed in any number of counterparts. Facsimile and PDF signatures are deemed effective.

BE IN THE STATE DISTRICT COURTS IN TARRANT COUNTY, TEXAS OR THE FEDERAL DISTRICT COURTS IN DALLAS COUNTY, TEXAS

*VPay*  
*11/13/11*

AUTHORIZATION FOR DIRECT DEPOSITS (ACH CREDITS) AND DIRECT PAYMENTS (ACH DEBITS) AND GUARANTEE AGREEMENT