CITY COMMISSION
REGULAR MEETING
OFFICIAL AGENDA
May 3, 2016
6:00 p.m.

Municipal Administration Building
Commission Chambers
201 W. Central Avenue
Lake Wales, FL 33853

1. INVOCATION
2. PLEDGE OF ALLEGIANCE
3. CALL TO ORDER
4. ROLL CALL
5. MAYOR

5.I. PROCLAMATION: National Public Works Week; May 15 - 21, 2016

Documents: PUBLIC WORKS WEEK PROCLAMATION.PDF

5.II. PROCLAMATION: Municipal Clerks Week; May 1 - 7, 2016

Documents: MUNICIPAL CLERKS WEEK PROCLAMATION.PDF

6. OLD BUSINESS
7. CITY MANAGER

7.I. PLAQUE AWARD: Christopher C. Lutton

Documents: MEMO-PLAQUE AWARD-CHIRSTOPHER LUTTON.PDF

8. CITY CLERK

8.I. OATH OF OFFICE: Commissioner Terrye Y. Howell

8.II. OATH OF OFFICE: Commissioner Robin Gibson

8.III. Group Picture

9. ROLL CALL
10. PRESENTATION/REPORT
11. COMMUNICATIONS AND PETITIONS
    Public participation is encouraged. If you are addressing the Commission, step to the podium and state your name and whether your address resides inside or outside City limits. Please limit your discussions to five (5) minutes.
12. CONSENT AGENDA
    Any member of the public can ask the City Commission to pull a consent item for separate discussion and vote that they would like to make comment on.

12.I. Purchase Authorization – Grove Construction
The City Commission will consider authorizing staff to expend funds for the

construction of ADA ramps and other general sidewalk repairs along 3rd Street and Domaris Avenue.

Documents: MEMO_GROVE CONSTRUCTION.PDF, QUOTE_GROVE.PDF, CONSTRUCTION_MAP.PDF

12.II. Galvanized Pipeline Replacement

The approval will allow Dewberry Engineering to perform engineering work for three areas in the utility system that has been identified to have the old galvanized.

Documents: MEMO-GALVANIZED PIPELINE REPLACEMENT.PDF, PROJECT 1 GALVANIZED PIPE REPLACEMENT DESIGN SCOPE OF SERVICES.PDF, PROJECT 2 GALVANIZED PIPE REPLACEMENT DESIGN SCOPE OF SERVICES.PDF, PROJECT 3 GALVANIZED PIPE REPLACEMENT DESIGN SCOPE OF SERVICES.PDF

12.III. Preliminary Financial Statements For March 31, 2016

Preliminary Financial Statements for March 31, 2016

Documents: 001 - AGENDA -COMMISSION FINANCIALS - MARCH 2016.PDF, 002 - COMMISSION FINANCIALS MARCH 2016.PDF

13. NEW BUSINESS

13.I. Ordinance 2016-06, Amending Ordinance 2001-08 Personnel Administration Policies – First Reading

Documents: MEMO-ORD2016-06.PDF, ORD2016-06.PDF

13.II. Resolution 2016-11, Merchant Services Agreement

The City Commission will consider approving Resolution 2016-11, Merchant Services Agreement with Elavon, Inc.

Documents: 001 - 2016 05 03 AGENDA MEMO MERCHANT SERVICES.PDF, 002 - MERCHANT SERVICES - RESOLUTION 2016-11.PDF, 003 - SELECTION COMMITTEE RECOMMENDATION - MERCHANT SERVICES.PDF, 004 - SCHEDULE A - PRICING.PDF, 005 - TERMS OF AGREEMENT.PDF, 006 - GOVERNMENT ENTITIES AND INSTITUTIONS ADDENDUM (WITH TOS).PDF

13.III. Commission Appointment Of Polk County Library Cooperative Governing Board Member

Documents: APPOINTMENT OF ALTERNATE TO PCLC GOVERNING BOARD019.PDF

14. CITY MANAGER

14.I. TRACKING REPORT

Documents: TRACKING.PDF

14.II. City Commission Meeting Calendar

Documents: CITY COMMISSION MEETING CALENDAR, 5-3-16.PDF

14.III. Other Meetings & Events Calendar

Documents: OTHER MEETINGS AND EVENTS CALENDAR.PDF

14.IV. City Boards Information

Documents: BOARD INFORMATION.PDF

15. CITY COMMISSION COMMENTS

16. MAYOR COMMENTS

(The staff memos are incorporated into the official record)
Minutes of the City Commission meeting can be obtained from the City Clerk's Office. The minutes are recorded, but are not transcribed verbatim. Persons requiring a verbatim transcript may make arrangements with the City Clerk to duplicate the recording, or arrange to have a court reporter present at the meeting. The cost of duplication and/or court reporter will be the expense of the requesting party.

In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk's office no later than 5:00 p.m. on the day prior to the meeting.

Appeals concerning decisions on issues requiring a public hearing:
Persons who wish to appeal any decision made by the City Commission with respect to any matter considered during a public hearing at this meeting will need a record of the proceedings, and for such purpose may need to ensure that verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

PROCLAMATION

WHEREAS, public works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, and parks ; and

WHEREAS, the health, safety, and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel, who staff public works departments, is materially influenced by the people's attitude and understanding of the importance of the work they perform; and

WHEREAS, this year's theme is "**Public Works Always There**" as we celebrate the hard work and dedication of the many public works professional throughout the world;

NOW, THEREFORE, I, Eugene Fultz, by virtue of the authority vested in me as Mayor of the City of Lake Wales, in the State of Florida, do hereby proclaim the week of May 15 through May 21, 2016 as

NATIONAL PUBLIC WORKS WEEK

in the **City of Lake Wales**, and calls upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works; and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Lake Wales, Florida to be affixed this 3rd day of May 2016.

_____

Mayor/Deputy Mayor

Proclamation

Municipal Clerks Week
May 1 - 7, 2016

***Whereas**, The Office of the Municipal Clerk, a time honored and vital part of local government exists throughout the world, and*

***Whereas**, The Office of the Municipal Clerk is the oldest among public servants, and*

***Whereas**, The Office of the Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and*

***Whereas**, Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.*

***Whereas**, The Municipal Clerk serves as the information center on functions of local government and community.*

***Whereas**, Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, provincal, county and international professional organizations.*

***Whereas**, It is most appropriate that we recognize the accomplishments of the Office of the Municipal Clerk.*

***Now, Therefore, I**, Eugene Fultz, Mayor of the City of Lake Wales, do recognize the week of May 1 through May 7, 2016, as Municipal Clerks Week, and further extend appreciation to our Municipal Clerk, Clara VanBlargan, and to all Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.*

Dated this 3rd day of May 2016

_____
Mayor Eugene Fultz

MEMORANDUM

April 14, 2016

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: Clara VanBlargan, M.M.C., City Clerk

RE: Awarding of Plaque: Christopher C. Lutton

A plaque will be presented to Christopher C. Lutton on behalf of the City of Lake Wales and its citizens at the May 3, 2016 City Commission meeting to thank Christopher for his dedicated service in making this a better community. Mr. Lutton served as City Commissioner from 2012 – 2016 of which time he served as Deputy Mayor from 2013 through 2015.

MEMORANDUM

DATE: April 25, 2016

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: James Slaton, Public/Support Services Director

SUBJECT: Purchase Authorization – Grove Construction

SYNOPSIS: *The City Commission will consider authorizing staff to expend funds for the construction of ADA ramps and other general sidewalk repairs along South 3rd Street and Domaris Avenue.*

RECOMMENDATION

It is recommended that the City Commission take the following action(s):

1. Authorize staff to expend appropriated funds in the amount of $25,232.50 for the construction of ADA ramps and general sidewalk repairs along South 3rd Street and Domaris Avenue.

2. Authorize Grove Construction to complete the work.

BACKGROUND

Several disabled residents live in the area of South 3rd street who regularly utilize the public sidewalk network for transportation. Specifically, many of these residents live at the Lake Wales Villas Apartments and travel to the South Gate Shopping Center daily. Currently, no ADA access exists on the sidewalks along South 3rd Street or Domaris Avenue and disabled residents are forced to travel in the street to get to and from the shopping center. Additionally, the sidewalks along Domaris Avenue are in poor condition and are in serious need of repair. The attached map highlights the areas that staff will make ADA compliant and/or rehabilitate.

The City Commission appropriated $25,000 in the FY15/16 adopted CIP budget for capital sidewalk projects and this project will cost $25,232.50. The balance of the project cost will be funded by the Streets Department's FY15/16 sidewalk maintenance operating budget.

The City has an approved and competitively bid contract with Grove Construction for annual street and sidewalk maintenance services.

In accordance with Sec. 2-417(d)(3) of the City's Purchasing Ordinance, all purchases in excess of Category 1 ($20,000) require City Commission approval before funds can be expended.

OTHER OPTIONS

1) Do not repair these sidewalks at this time

FISCAL IMPACT

$25,000 was appropriated for capital sidewalk projects in the FY15/16 adopted budget and this project cost is $25,232.50. The balance of the project cost will be funded by the Streets Department's FY15/16 M&R sidewalk operating budget.

ATTACHMENTS

Proposal from Grove Construction
Map of Construction Areas

GROVE CONSTRUCTION

2340 Pleasant Hill Road
Kissimmee, FL 34746

ESTIMATE

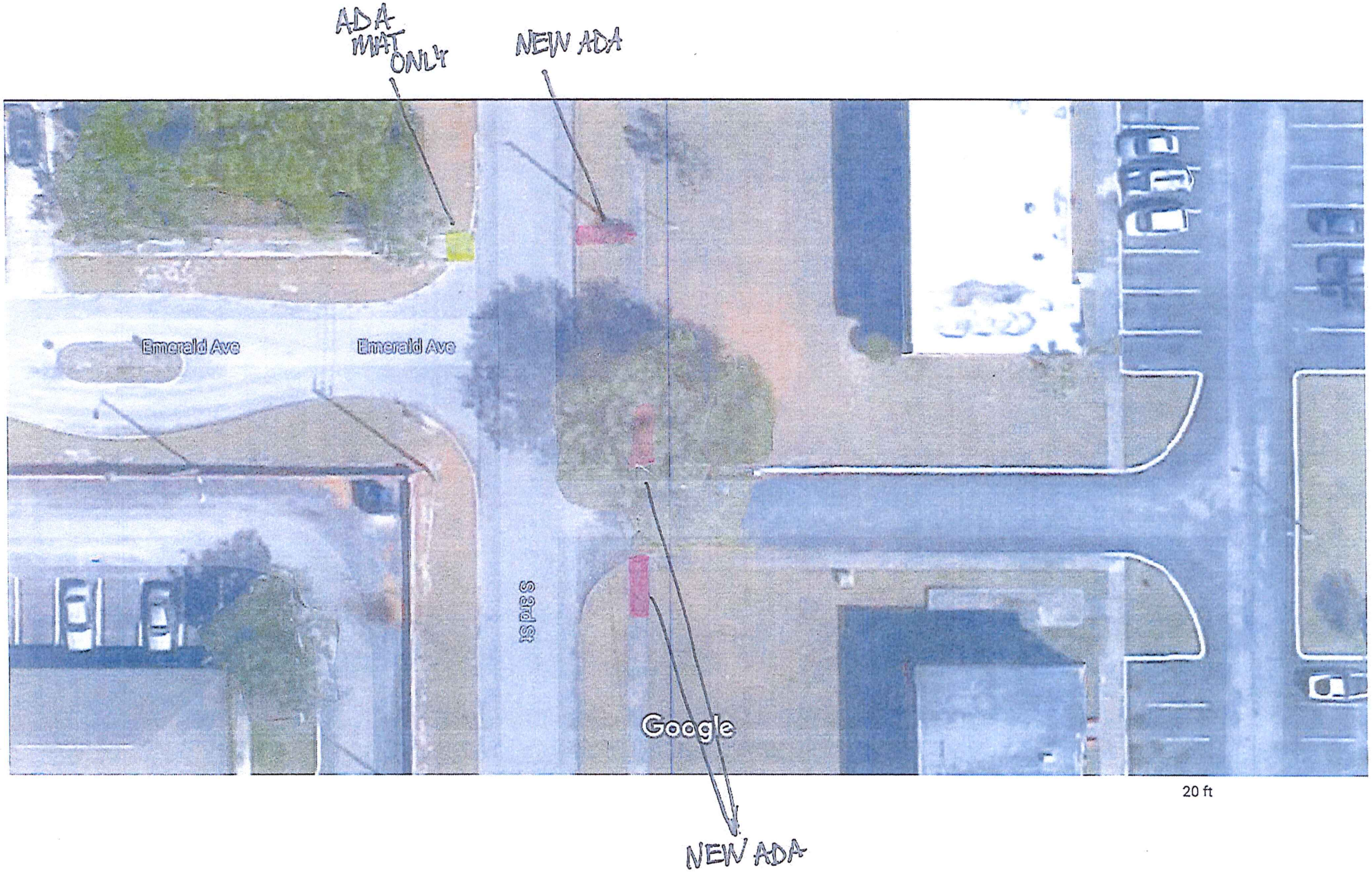
Date	Estimate #
3/28/2016	1660

Name / Address
City of Lake Wales 201 W. Central Avenue Lake Wales, FL 33853

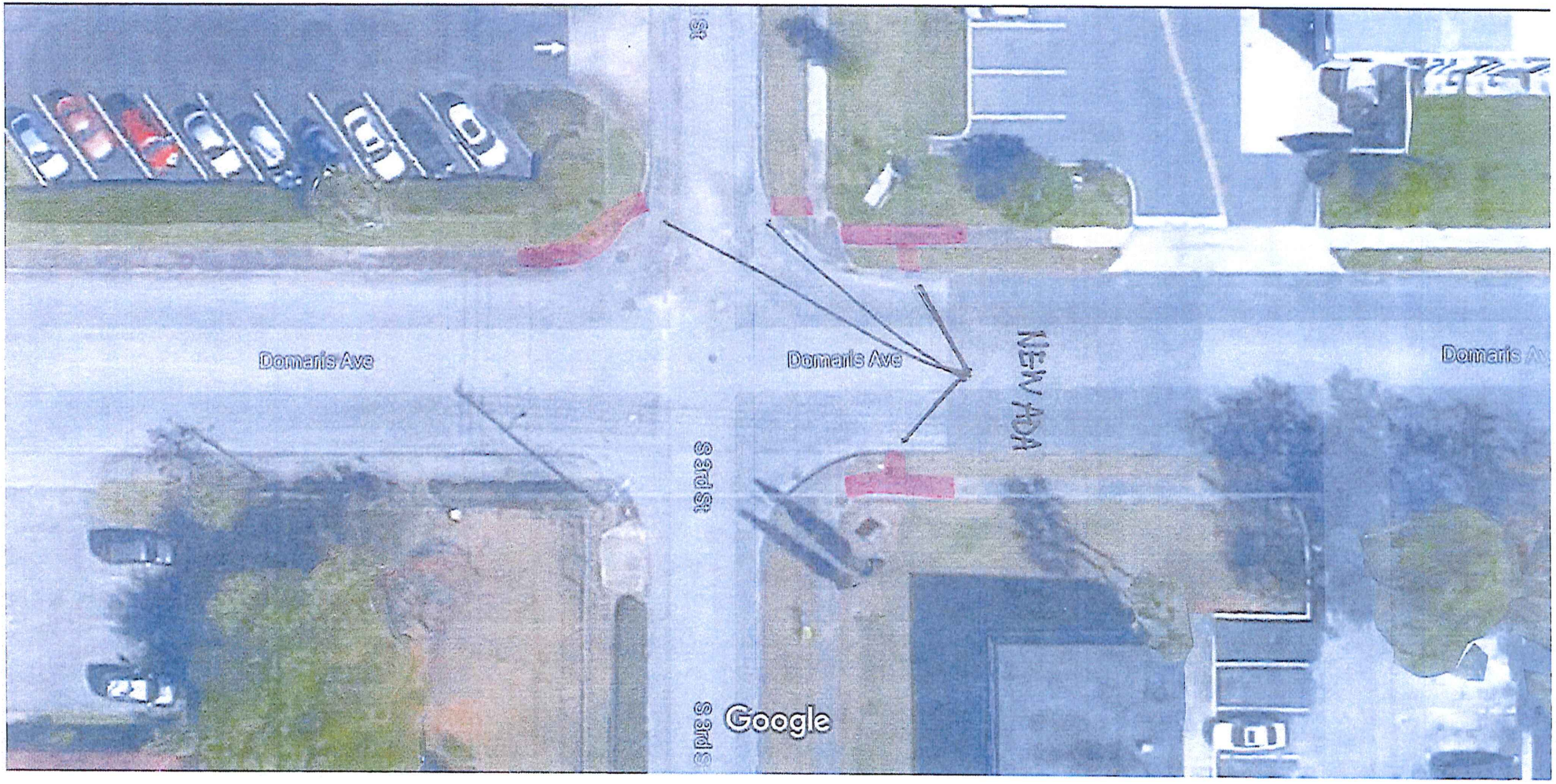
Ship To
Concrete INTERSECTION AT: Domaris and 3rd Street

Description	Qty	Cost	Amount	Markup	Total
Curb removal and replace - Sidewalks	40	58.00	2,320.00	0.00%	2,320.00
Remove and replace existing sidewalk - Sidewalks	165	67.50	11,137.50	0.00%	11,137.50
Install new Handicap Ramp (ADA requirement)	8	650.00	5,200.00	0.00%	5,200.00
Rehabilitate Handicap Ramp (ADA requirement)	1	450.00	450.00	0.00%	450.00
Driveway (FDOT index 515) - Sidewalks	70	65.00	4,550.00	0.00%	4,550.00
Best Management Practices - City of Lake Wales	1	50.00	50.00		50.00
Maintenance of Traffic - Sidewalks	1	300.00	300.00	0.00%	300.00
Mobilization - Sidewalks	400	3.00	1,200.00	0.00%	1,200.00
Preconstruction Photos or Video - Sidewalks	1	25.00	25.00	0.00%	25.00
		Total			$25,232.50

20 ft


ADA MAT ONLY
NEW ADA
Emerald Ave
Emerald Ave
S 3rd St
Google
NEW ADA

20 ft


NEW ADA
Domaris Ave
Domaris Ave
Domaris Ave
S 3rd St
S 3rd St
S 3rd St
Google

20 ft

S 2nd St
S 2nd St
S 2nd St
S 2nd St
S 2nd St
S 2nd St
McGee Auto
Service & Tires
Domaris Ave
Domaris Ave
Domaris Ave
Domaris Ave
Cash Connection Pawn
Google

50 ft

MEMORANDUM

April 26, 2016

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: Sarah B. Kirkland, Utilities Director

SUBJECT: Galvanized Pipeline Replacement

SYNOPSIS: The approval will allow Dewberry Engineering to perform engineering work for three areas in the utility system that has been identified to have the old galvanized.

STAFF RECOMMENDATION

It is recommended that the City Commission consider taking the following action:

1. Approve the task order in the amount of $52,339.00 for Dewberry to perform engineering services related to the three areas identified for this portion of the galvanized water main upgrade.

2. Authorized the City Manager to sign all the appropriate documents on the city's behalf pertaining to the task order.

BACKGROUND

Galvanized steel pipe has an average lifespan of 40 to 50 years, although it can sometimes last much longer. Flakes of corroded steel peel off the interior surface of the pipe and get carried to the back side of faucets in the home, where they gradually accumulate and restrict the water flow. Galvanized distribution lines have become a growing concern in utility systems that have been in service for long periods of time. These pipes build up with sediment on the inside, making the inside diameter of the pipe smaller and smaller over time, eventually to the point where water flow is unusable.

In an attempt to improve the distribution system of the utility, staff is always in a state of maintenance and upgrade of the system. One way staff has done this, was to identify the areas in the system that have the galvanize lines currently in place. Once all locations were identified, these areas were ranked in the order of what areas are having the most trouble with flow and volume. Based on this methodology a listing of repair areas has been created. The first of these areas to be addressed are attached. Staff is asking Dewberry to perform engineering services for approximately 10,500 feet of pipe in an attempt to begin to address some of the deficiencies in the system.

Staff recommends that the Commission take the following action, approve the attached task orders with Dewberry to perform the engineering for the galvanize pipe replacement and authorize the City manager to sign all appropriate documents on the city's behalf pertaining to this task order.

OTHER OPTIONS

Chose not to approve the contract for engineering services to begin the process of removal of the old line and the citizens continue to suffer from the lower pressure and low volume in identified areas.

FISCAL IMPACT

There has been $200,000 placed in the 15'-16' Capital Improvements budget to begin the removal of the old galvanized line and upgrade to current industry standard and size.

ATTACHMENTS

Cost estimate for project 1-Tillman Avenue, Johnson Avenue, and Tower View Road
Cost estimate for project 2-Townsend Avenue, Steedly Avenue, and Alley behind SR 60
Cost estimate for project 3-Delmar Avenue, Grove Avenue, and Emerald Avenue

Dewberry

Dewberry Engineers Inc.
800 N. Magnolia Ave, Suite 1000
Orlando, FL 32803

407.843.5120
407.649.8664 fax
www.dewberry.com

Work Authorization: 2016 – 1 **Date:** April 21, 2016

Project Name: Tillman Ave. / Johnson Ave. / Tower View Rd. project Galvanized Pipe & AC Pipe Replacement

Sent via email to: Sarah Kirkland <SKIRKLAND@cityoflakewales.com>

Project Summary: This Scope of Services (See Attachment A) will address Project No. 1. Tillman Ave. / Johnson Ave. / Tower View Rd. project. The project will include:

1. Tillman Ave. (between 3rd St to Lakeshore Blvd.) run of approximate 1450' of 8" HDPE pipe, 4-wet taps to existing mains. Meters will be relocated to front of the homes. New hydrant between 4th St. and Lakeshore Blvd. MJ reducer on Lakeshore Blvd. Anticipate repair of sidewalks.
2. Johnson Ave. (between 3rd St. Lakeshore Blvd.) New hydrant at 3rd St. / Johnson Ave., 4-wet taps to existing mains and reducer at Johnson Ave. / 5th St. Meters to be relocated to front of the homes. Anticipate repair of sidewalks.
3. Tower View Rd. Polk Ave. / 5th St. to Hwy 60. One wet tap to existing main, 2-valves, approximate 1340' of 4" HDPE pipe. The Tower View Dr. should start at the Corner of 5th St. and Polk Ave. heading westerly to the corner of Polk Ave. & Tower View Dr. At 4th St., at this corner, line replacement will head south to the intersection just before Hesperides Rd. (Hwy 60). The end of this line will need a 4" Gate Valve with a dead end flushing stand pipe.
4. Total footage for this project is +/- 4140'.

Fees for the above will be billed as follows: The fee shall be a lump sum of $15,065.50 invoiced monthly based on a percentage of the design completed.

This Work Authorization is bound by the general terms and conditions of our original Master

Consulting Agreement dated September 23, 2015.

DEWBERRY

By: _____

Rey Malave, PE
Associate Vice President
Department Manager, Municipal Engineering

Date: April 21, 2016

Approved and Accepted

By: _____

City of Lake Wales, Florida

Date: _____

Enclosures: Attachment A - Full Scope of Services

Dewberry

Attachment A

Scope of Services
City of Lake Wales, Florida
Galvanized Pipe & AC Pipe Replacement Program

Water Main Design

Project No. 1 - Tillman Ave. / Johnson Ave. / Tower View Rd. project

Background

The City of Lake Wales (City) has an ongoing annual program to replace old substandard galvanized pipe and associated AC distribution pipe. The FY 2016 program has targeted various Project Areas:

1. Tillman Ave. / Johnson Ave. / Tower View Rd. project , and,
2. Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project , and, and
3. Delmar Ave. / Grove Ave. / Emerald Ave. project
4. Others To Be Determined

This Scope of Services will address **Project No.** 1**. Tillman Ave. / Johnson Ave. / Tower View Rd. project**. The project will include:

1. Tillman Ave. (between 3rd St to Lakeshore Blvd.) run of approximate 1450' of 8" HDPE pipe, 4-wet taps to existing mains. Meters will be relocated to front of the homes. New hydrant between 4th St. and Lakeshore Blvd. MJ reducer on Lakeshore Blvd. Anticipate repair of sidewalks.
2. Johnson Ave. (between 3rd St. Lakeshore Blvd.) New hydrant at 3rd St. / Johnson Ave., 4-wet taps to existing mains and reducer at Johnson Ave. / 5th St. Meters to be relocated to front of the homes. Anticipate repair of sidewalks.
3. Tower View Rd. Polk Ave. / 5th St. to Hwy 60. One wet tap to existing main, 2-valves, approximate 1340' of 4" HDPE pipe. The Tower View Dr. should start at the Corner of 5th St. and Polk Ave. heading westerly to the corner of Polk Ave. & Tower View Dr. At 4th St., at this corner, line replacement will head south to the intersection just before Hesperides Rd. (Hwy 60). The end of this line will need a 4" Gate Valve with a dead end flushing stand pipe.
4. Total footage for this project is +/- 4140'.

Dewberry shall provide engineering services for the City design of approximately 4,140 LF of new water main (4” and 8” HDPE) and abandonment/replacement of existing water piping.

The general site location for this project is illustrated below.

Tillman Ave & Johnson Ave Site

Tower View Dr. Site

Dewberry will provide the design and prepare construction documents and specifications; surveys (if requested), sketches, permit forms and submittals for permitting. Dewberry will also provide bidding services and limited construction, engineering and inspection (CEI) services.

Task 1 Design and Construction Documents

1.1 Dewberry will prepare construction drawings and technical specifications based on design and material standards, construction notes, details, and specifications provided by the City. The specifications will include the measurement of payment items. Dewberry shall provide an opinion of probable construction cost with the 90% design submittal.

1.2 The design anticipates that new water lines may be open-cut, directional drilled and or pipe burst, depending on site conditions and pipe materials being replaced.

1.3 Dewberry will provide the following documents to the City during the design phase. Review meetings will be held during design at 30% and 90%. It is assumed that all review comments will be made at the 30% and 90% review meetings and that the 90% design meeting will be primarily to ensure that all the review comments have been addressed to the satisfaction of the City.

- One (1) set of plans/specifications (11" x 17") and an electronic file copy (CD) at 90% with the permit applications and a cost estimate of probable costs for construction.
- One (1) Final set of signed and sealed plans/specifications (11" x 17") and an electronic file copy (CD) as final approved plans and an updated cost estimate of probable costs for construction.
- One (1) 11" x 17"set and Electronic file copy (CD) of Signed and Sealed Record drawings and As-builts at the completion of Construction.
- All electronic submittals to be in PDF and electronic CAD format.

1.3 These design services anticipate requiring the Contractor to perform field inspections and investigations of the project site, utilities and conditions prior to their bid. If requested as additional services, Dewberry can provide survey services for verifying the horizontal and vertical location of the existing utilities (specifically, additional Subsurface Utility Engineering [SUE] surveys) for the design of the proposed systems.

Task 2 Permitting and Approvals

2.1 Dewberry will prepare one (1) set of permit applications and process all documents, plan drawings, specifications and will respond to at least one (1) Request for Additional Information (RAI) for each permit application, as needed to obtain approval from the agency (ies) for the extension of the existing potable water system. This task will also include the processing of any required permitting though Polk County, the City of Lake wales, also the Florida Department of Environmental Protection (FDEP). Permit application fees will be paid for by Dewberry and reimbursed by the City as part of this proposal.

Task 3 Bidding Services

3.1 Bidding Documents – The City will issue bidding documents to prospective bidders. We will coordinate with the City to prepare bid documents for the prospective bidders for the water main project.

3.2 Addenda - Dewberry will receive the questions during the bid and will prepare a written response to those questions in consultation with the City's Utilities Director and then issue up to two (2) addendums.

3.3 Bid Opening and Evaluation - Dewberry will tabulate the bids for the project, and will review the bid packages from each bidder, and contact references for the apparent low bidder. Dewberry will summarize the findings of the bid evaluation and make a recommendation of award/reject in writing to the City's Utilities Director.

Task 4 Construction, Engineering and Inspection (CEI)

4.1 Dewberry will attend a pre-construction conference with the City Staff and Contractor.

4.2 Dewberry will attend contractor construction progress meetings (3 meetings budgeted) as requested by the Contactor and the City's Utilities Director.

4.3 Dewberry will visit the site at times other than the Monthly progress meetings, as necessary and as requested by the City, to observe the general progress of the project. We anticipate a minimum of three (3) site meetings (occurring the same dates as progress meetings) depending on the water main construction schedule.

4.4 Dewberry will assist the City's Utilities Director in resolving conflicts and other design issues during construction, including addressing written Requests for Information (RFI).

4.5 Dewberry will provide signed and sealed record drawings (both hard copies and electronic files) based on certified as-builts provided by the City and the contractor for each Project.

4.6 Dewberry will prepare and submit FDEP water clearance forms in coordination with the City.

Task 5 Geotechnical Testing and Sampling

Our Subconsultant, Ardaman & Associates, Inc., will provide Geotechnical Engineering Soils Borings & Analysis for design.

Time of Completion

The consultant will be submit 30 % design documents within 30 days of Notice to Proceed (NTP). Following receipt of City review comments, we will submit 90 % design documents within 15 days of receipt of City's comments on 30% documents. Final documents will be submitted within 15 days of receipt of City's 90% review comments.

Method of Compensation

The fee shall be a lump sum of $15,065.50 invoiced monthly based on a percentage of the design completed.

Dewberry

Dewberry Engineers Inc.
800 N. Magnolia Ave, Suite 1000
Orlando, FL 32803

407.843.5120
407.649.8664 fax
www.dewberry.com

Work Authorization: 2016 – 2 **Date:** April 21, 2016

Project Name: Townsend Ave. / Steedly Ave. / alley behind Hwy 60

Sent via email to: Sarah Kirkland <SKIRKLAND@cityoflakewales.com>

Project Summary: This Scope of Services (See Attachment A) will address Project No. 2. Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project. The project will include:

1. Townsend Ave. (between 2nd St. and 4th St.). Run of approximate 1270' of 4" HDPE pipe, need 4 wet taps into existing mains and relocation of the existing water meters to the front of the homes. Anticipate repair of sidewalks and road asphalt.
2. Steedly Ave. (Between 2nd St. & 4th St.). Run of approximate 1270' of 8" HDPE water line to loop the mains within this location. Existing water mains at each end are 6" A/C and DI pipe. One hydrant will be needed at the intersection of Steedly Ave. / 4th St. 4-wet taps into existing mains and meters will be relocated to front of the homes. Anticipate sidewalk repairs.
3. Hwy 60 E. (Between 2nd St. & 4th St.). Run of approximate 1360' of 4" HDPE in alleyway to better serve the customers facing Hwy 60 on the north side of same road. Will need 2 wet taps into existing mains, 3 valves, one MJ Tee to tie in at 3rd St. / Steedly Ave. Anticipate sidewalk repairs.
4. Total footage for this project +/- 3900'.

Fees for the above will be billed as follows: The fee shall be a lump sum of $15,296.50 invoiced monthly based on a percentage of the design completed.

This Work Authorization is bound by the general terms and conditions of our original Master Consulting Agreement dated September 23, 2015.

DEWBERRY

By: _____

Rey Malave, PE
Associate Vice President
Department Manager, Municipal Engineering

Date: April 21, 2016

Approved and Accepted

By: _____

City of Lake Wales, Florida

Date: _____

Enclosures: Attachment A - Full Scope of Services

Dewberry

Attachment A

Scope of Services
City of Lake Wales, Florida
Galvanized Pipe & AC Pipe Replacement Program

Water Main Design

Project No. 2 - Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project

Background

The City of Lake Wales (City) has an ongoing annual program to replace old substandard galvanized pipe and associated AC distribution pipe. The FY 2016 program has targeted various Project Areas:

1. Tillman Ave. / Johnson Ave. / Tower View Rd. project, and
2. Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project, and
3. Delmar Ave. / Grove Ave. / Emerald Ave. project
4. Others To Be Determined

This Scope of Services will address **Project No.** 2**. Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project.** The project will include:

1. Townsend Ave. (between 2nd St. and 4th St.). Run of approximate 1270' of 4" HDPE pipe, need 4 wet taps into existing mains and relocation of the existing water meters to the front of the homes. Anticipate repair of sidewalks and road asphalt.
2. Steedly Ave. (Between 2nd St. & 4th St.). Run of approximate 1270' of 8” HDPE water line to loop the mains within this location. Existing water mains at each end are 6" A/C and DI pipe. One hydrant will be needed at the intersection of Steedly Ave. / 4th St. 4-wet taps into existing mains and meters will be relocated to front of the homes. Anticipate sidewalk repairs.
3. Hwy 60 E. (Between 2nd St. & 4th St.). Run of approximate 1360' of 4" HDPE in alleyway to better serve the customers facing Hwy 60 on the north side of same road. Will need 2 wet taps into existing mains, 3 valves, one MJ Tee to tie in at 3rd St. / Steedly Ave. Anticipate sidewalk repairs.
4. Total footage for this project +/- 3900'.

Dewberry shall provide engineering services for the City design of approximately 3,900 LF of new water main (4” and 8” HDPE) and abandonment/replacement of existing water piping.

The general site location for this project is illustrated below.

Townsend Ave. & Steedly Ave. Site

Dewberry will provide the design and prepare construction documents and specifications; surveys (if requested), sketches, permit forms and submittals for permitting. Dewberry will also provide bidding services and limited construction, engineering and inspection (CEI) services.

Task 1 Design and Construction Documents

1.1 Dewberry will prepare construction drawings and technical specifications based on design and material standards, construction notes, details, and specifications provided by the City. The specifications will include the measurement of payment items. Dewberry shall provide an opinion of probable construction cost with the 90% design submittal.

1.2 The design anticipates that new lines may be open-cut, directional drilled and or pipe burst, depending on site conditions and pipe materials being replaced.

1.3 Dewberry will provide the following documents to the City during the design phase. Review meetings will be held during design at 30% and 90%. It is assumed that all review comments will be made at the 30% and 90% review meetings and that the 90% design meeting will be primarily to ensure that all the review comments have been addressed to the satisfaction of the City.

- One (1) set of plans/specifications (11" x 17") and an electronic file copy (CD) at 90% with the permit applications and a cost estimate of probable costs for construction.
- One (1) Final set of signed and sealed plans/specifications (11" x 17") and an electronic file copy (CD) as final approved plans and an updated cost estimate of probable costs for construction.
- One (1) 11" x 17"set and Electronic file copy (CD) of Signed and Sealed Record drawings and As-builts at the completion of Construction.
- All electronic submittals to be in PDF and electronic CAD format.

1.3 These design services anticipate requiring the Contractor to perform field inspections and investigations of the project site, utilities and conditions prior to their bid. If requested as additional services, Dewberry can provide survey services for verifying the horizontal and vertical location of the existing utilities (specifically, additional Subsurface Utility Engineering [SUE] surveys) for the design of the proposed systems.

Task 2 Permitting and Approvals

2.1 Dewberry will prepare one (1) set of permit applications and process all documents, plan drawings, specifications and will respond to at least one (1) Request for Additional Information (RAI) for each permit application, as needed to obtain approval from the agency (ies) for the extension of the existing potable water system. This task will also include the processing of any required permitting though Polk County, the City of Lake wales, also the Florida Department of Environmental Protection (FDEP). Permit application fees will be paid for by Dewberry and reimbursed by the City as part of this proposal.

Task 3 Bidding Services

3.1 Bidding Documents – The City will issue bidding documents to prospective bidders. We will coordinate with the City to prepare bid documents for the prospective bidders for the water main project.

3.2 Addenda - Dewberry will receive the questions during the bid and will prepare a written response to those questions in consultation with the City's Utilities Director and then issue up to two (2) addendums.

3.3 Bid Opening and Evaluation - Dewberry will tabulate the bids for the project, and will review the bid packages from each bidder, and contact references for the apparent low bidder. Dewberry will summarize the findings of the bid evaluation and make a recommendation of award/reject in writing to the City's Utilities Director.

Task 4 Construction, Engineering and Inspection (CEI)

4.1 Dewberry will attend a pre-construction conference with the City Staff and Contractor.

4.2 Dewberry will attend contractor construction progress meetings (3 meetings budgeted) as requested by the Contactor and the City's Utilities Director.

4.3 Dewberry will visit the site at times other than the Monthly progress meetings, as necessary and as requested by the City, to observe the general progress of the project. We anticipate a minimum of three (3) site meetings (occurring the same dates as progress meetings) depending on the water main construction schedule.

4.4 Dewberry will assist the City's Utilities Director in resolving conflicts and other design issues during construction, including addressing written Requests for Information (RFI).

4.5 Dewberry will provide signed and sealed record drawings (both hard copies and electronic files) based on certified as-builts provided by the City and the contractor for each Project.

4.6 Dewberry will prepare and submit FDEP water clearance forms in coordination with the City.

Task 5 Geotechnical Testing and Sampling

Our Subconsultant, Ardaman & Associates, Inc., will provide Geotechnical Engineering Soils Borings & Analysis for design.

Time of Completion

The consultant will be submit 30 % design documents within 30 days of Notice to Proceed (NTP). Following receipt of City review comments, we will submit 90 % design documents within 15 days of receipt of City's comments on 30% documents. Final documents will be submitted within 15 days of receipt of City's 90% review comments.

Method of Compensation

The fee shall be a lump sum of $15,296.50 invoiced monthly based on a percentage of the design completed.

Dewberry

Dewberry Engineers Inc.
800 N. Magnolia Ave, Suite 1000
Orlando, FL 32803

407.843.5120
407.649.8664 fax
www.dewberry.com

Work Authorization: 2016 – 3 **Date:** April 21, 2016

Project Name: Delmar Ave. / Grove Ave. / Emerald Ave. project

Sent via email to: Sarah Kirkland <SKIRKLAND@cityoflakewales.com>

Project Summary: This Scope of Services (See Attachment A) will address Project No. 3. Delmar Ave. / Grove Ave. / Emerald Ave. project. The project will include:

1. Demaris Ave. (between 4th St & Scenic Hwy.) Run of approximately 710' of 4" HDPE pipe. Need 2 wet taps to existing mains. May need repair of sidewalk and asphalt.
2. Grove Ave. run of approximately 350' of 8" HDPE with a hydrant set at Delmar St. This line will tie into an existing 6" A/C pipe at Delmar St. The intersection of Grove & First St. is going to have to be field verify to determine the best way to start the connection of the new water pipe.
3. Delmar St. run of approximately 660' of 4" HPDE pipe to loop the street between Grove and Russell Ave. 8" X 4" wet tap the existing main on Grove Ave., 6" X 2" wet tap the main at Russell Ave.
4. Emerald Ave., (between 2nd St. & 3th St.) run of approximately 660' of 4" HDPE pipe requiring two wet taps to existing mains. We anticipate sidewalk and asphalt repairs will be needed.
5. Total proposed footage for this project +/- 2380'. We anticipate minor sidewalk and asphalt repairs will be needed.

Fees for the above will be billed as follows: The fee shall be a lump sum of $21,977.00 invoiced monthly based on a percentage of the design completed.

This Work Authorization is bound by the general terms and conditions of our original Master

Consulting Agreement dated September 23, 2015.

DEWBERRY

By: _____

Rey Malave, PE
Associate Vice President
Department Manager, Municipal Engineering

Date: April 21, 2016

Approved and Accepted

By: _____

City of Lake Wales, Florida

Date: _____

Enclosures: Attachment A - Full Scope of Services

Dewberry

Attachment A

Scope of Services
City of Lake Wales, Florida
Galvanized Pipe & AC Pipe Replacement Program

Water Main Design

Project No. 3 - Delmar Ave. / Grove Ave. / Emerald Ave. project

Background

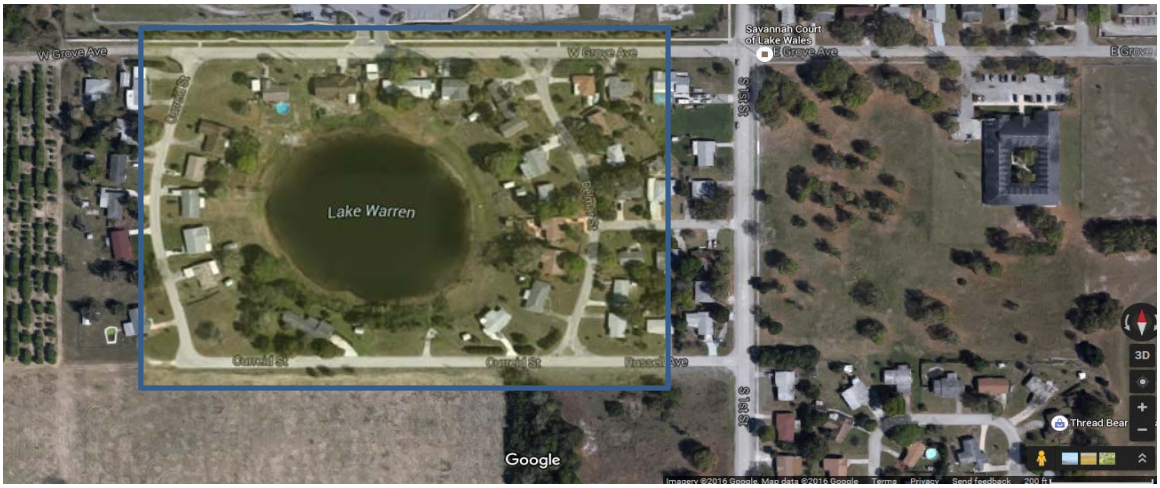
The City of Lake Wales (City) has an ongoing annual program to replace old substandard galvanized pipe and associated AC distribution pipe. The FY 2016 program has targeted various Project Areas:

1. Tillman Ave. / Johnson Ave. / Tower View Rd. project , and
2. Townsend Ave. / Steedly Ave. / alley behind Hwy 60 project , and
3. Delmar Ave. / Grove Ave. / Emerald Ave. project
4. Others To Be Determined

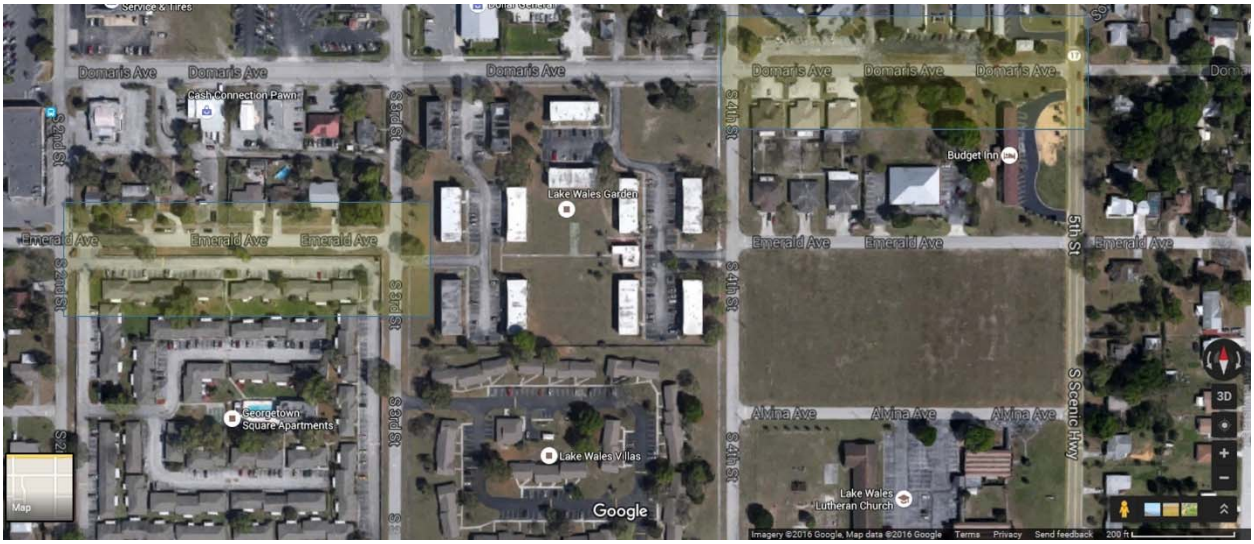
This Scope of Services will address **Project No.** 3**. Delmar Ave. / Grove Ave. / Emerald Ave. project**. The project will include:

1. Demaris Ave. (between 4th St & Scenic Hwy.) Run of approximately 710' of 4" HDPE pipe. Need 2 wet taps to existing mains. May need repair of sidewalk and asphalt.
2. Grove Ave. run of approximately 350' of 8" HDPE with a hydrant set at Delmar St. This line will tie into an existing 6" A/C pipe at Delmar St. The intersection of Grove & First St. is going to have to be field verify to determine the best way to start the connection of the new water pipe.
3. Delmar St. run of approximately 660' of 4" HPDE pipe to loop the street between Grove and Russell Ave. 8" X 4" wet tap the existing main on Grove Ave., 6" X 2" wet tap the main at Russell Ave.
4. Emerald Ave., (between 2nd St. & 3th St.) run of approximately 660' of 4" HDPE pipe requiring two wet taps to existing mains. We anticipate sidewalk and asphalt repairs will be needed.
5. Total proposed footage for this project +/- 2380'. We anticipate minor sidewalk and asphalt repairs will be needed.

Dewberry shall provide engineering services for the City design of approximately 2,380 LF of new water main (4" and 8" HDPE) and abandonment/replacement of existing water piping. The general site location for this project is illustrated below.



Grove Ave & Delmar St. Site



Emerald Ave & Domaris Ave Sites

Dewberry will provide the design and prepare construction documents and specifications; surveys (if requested), sketches, permit forms and submittals for permitting. Dewberry will also provide bidding services and limited construction, engineering and inspection (CEI) services.

Task 1 Design and Construction Documents

1.1 Dewberry will prepare construction drawings and technical specifications based on design and material standards, construction notes, details, and specifications provided by the City. The specifications will include the measurement of payment items. Dewberry shall provide an opinion of probable construction cost with the 90% design submittal.

1.2 The design anticipates that new water lines may be open-cut, directional drilled and or pipe burst, depending on site conditions and pipe materials being replaced.

1.3 Dewberry will provide the following documents to the City during the design phase. Review meetings will be held during design at 30% and 90%. It is assumed that all review comments will be made at the 30% and 90% review meetings and that the 90% design meeting will be primarily to ensure that all the review comments have been addressed to the satisfaction of the City.

- One (1) set of plans/specifications (11" x 17") and an electronic file copy (CD) at 90% with the permit applications and a cost estimate of probable costs for construction.
- One (1) Final set of signed and sealed plans/specifications (11" x 17") and an electronic file copy (CD) as final approved plans and an updated cost estimate of probable costs for construction.
- One (1) 11" x 17"set and Electronic file copy (CD) of Signed and Sealed Record drawings and As-builts at the completion of Construction.
- All electronic submittals to be in PDF and electronic CAD format.

1.3 These design services anticipate requiring the Contractor to perform field inspections and investigations of the project site, utilities and conditions prior to their bid. If requested as additional services, Dewberry can provide survey services for verifying the horizontal and vertical location of the existing utilities (specifically, additional Subsurface Utility Engineering [SUE] surveys) for the design of the proposed systems.

Task 2 Permitting and Approvals

2.1 Dewberry will prepare one (1) set of permit applications and process all documents, plan drawings, specifications and will respond to at least one (1) Request for Additional Information (RAI) for each permit application, as needed to obtain approval from the agency (ies) for the extension of the existing potable water system. This task will also include the processing of any required permitting though Polk County, the City of Lake wales, also the Florida Department of Environmental Protection (FDEP). Permit application fees will be paid for by Dewberry and reimbursed by the City as part of this proposal.

Task 3 Bidding Services

3.1 Bidding Documents – The City will issue bidding documents to prospective bidders. We will coordinate with the City to prepare bid documents for the prospective bidders for the water main project.

3.2 Addenda - Dewberry will receive the questions during the bid and will prepare a written response to those questions in consultation with the City's Utilities Director and then issue up to two (2) addendums.

3.3 Bid Opening and Evaluation - Dewberry will tabulate the bids for the project, and will review the bid packages from each bidder, and contact references for the apparent low bidder. Dewberry will summarize the findings of the bid evaluation and make a recommendation of award/reject in writing to the City's Utilities Director.

Task 4 Construction, Engineering and Inspection (CEI)

4.1 Dewberry will attend a pre-construction conference with the City Staff and Contractor.

4.2 Dewberry will attend contractor construction progress meetings (3 meetings budgeted) as requested by the Contactor and the City's Utilities Director.

4.3 Dewberry will visit the site at times other than the Monthly progress meetings, as necessary and as requested by the City, to observe the general progress of the project. We anticipate a minimum of three (3) site meetings (occurring the same dates as progress meetings) depending on the water main construction schedule.

4.4 Dewberry will assist the City's Utilities Director in resolving conflicts and other design issues during construction, including addressing written Requests for Information (RFI).

4.5 Dewberry will provide signed and sealed record drawings (both hard copies and electronic files) based on certified as-builts provided by the City and the contractor for each Project.

4.6 Dewberry will prepare and submit FDEP water clearance forms in coordination with the City.

Task 5 Geotechnical Testing and Sampling

Our Subconsultant, Ardaman & Associates, Inc., will provide Geotechnical Engineering Soils Borings & Analysis for design.

Time of Completion

The consultant will be submit 30 % design documents within 30 days of Notice to Proceed (NTP). Following receipt of City review comments, we will submit 90 % design documents within 15 days of receipt of City's comments on 30% documents. Final documents will be submitted within 15 days of receipt of City's 90% review comments.

Method of Compensation

The fee shall be a lump sum of $21,977.00 invoiced monthly based on a percentage of the design completed.

MEMORANDUM

May 3, 2016

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: Dorothy Ecklund, Finance Director

RE: Preliminary Financial Statements for March 31, 2016

SYNOPSIS: The preliminary financial statements report revenues received and expenditures made through the end of March 31, 2016.

The unaudited financial statements for the City of Lake Wales for the Period Ending March 31, 2016 are presented to the City Commission for review. At the end of March 31, 2016 the City was 50% into the fiscal year.

General Fund (001), page 2:
The General Fund appears to be materially on target with revenue and expenditure expectations.

Transportation Fund (102), page 7:
The Transportation Fund appears to be materially on target with revenue and expenditure expectations.

CRA Fund (105), page 12:
The CRA fund appears to be materially on target with revenue and expenditure expectations.

Library Fund (110), page 17:
The Library Fund appears to be materially on target with revenue and expenditure expectations.

Utility System Fund (403), page 27:
The Utility System Fund appears to be materially on target with revenue and expenditure expectations.

Airport Authority (404), page 29:
The Airport Authority appears to be materially on target with revenue and expenditure expectations.

ATTACHMENTS
Preliminary Financial Statements

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
GENERAL FUND - 001
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	GENERAL FUND - 001			
	Cash - Unrestricted	3,006,055	1,386,126	1,619,929
001-101-096-000-000	General Fund Emergency Fund 3706	400,697	100,279	300,418
001-102-001-000-000	Petty Cash (Finance Dept.)	500	400	100
001-102-002-000-000	Petty Cash-Depot Museum	200	0	200
	CASH	3,407,452	1,486,804	1,920,648
	ACCOUNTS RECEIVABLE	746,864	890,800	(143,936)
	DUE FROM OTHER FUNDS	211,526	1,069,472	(857,946)
	INVENTORY	68,427	59,176	9,251
	PREPAID	116,841	25,886	90,955
	TOTAL ASSETS	4,551,110	3,532,138	1,018,972
	ACCOUNTS PAYABLE	173,739	152,647	21,091
	DUE TO OTHER FUNDS	0	0	0
	DEPOSIT & TRUST ACCOUNTS	3,396	4,532	(1,136)
	ACCRUED PAYROLL & WITHHOLDING	270,050	296,764	(26,714)
	DEFERRED REVENUE	127,949	146,069	(18,119)
	TOTAL LIABILITIES	575,134	600,012	(24,878)
	EXCESS REV OVER/UNDER EXP	1,671,597	1,721,994	(50,397)
001-271-001-000-000	Fund Balance	2,304,379	1,210,133	1,094,246
	TOTAL FUND BALANCE	3,975,976	2,932,126	1,043,850
	TOTAL LIAB. AND FUND BALANCE	4,551,110	3,532,138	1,018,972

PRELIMINARY SCH. OF REV & EXP
GENERAL FUND - 001
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	TAXES					
001-311-100-000-000	Ad Valorem Taxes	3,541,400	3,033,435	3,800,800	3,274,443	3,812,795
001-314-100-000-000	Utility Service Tax - Electric	825,000	349,650	1,063,000	514,612	1,057,081
001-314-300-000-000	Utility Service Tax - Water	255,000	131,292	246,000	115,389	246,369
001-314-800-000-000	Utility Service Tax - Propane	40,000	16,255	40,000	18,955	37,087
001-315-000-000-000	Communications Svc Tax	312,400	78,377	328,800	186,384	317,311
001-316-000-000-000	Business Tax Receipts	75,000	68,960	75,000	68,258	72,034
	TOTAL: TAXES	5,048,800	3,677,969	5,553,600	4,178,040	5,542,677
	LICENSES & PERMITS					
001-322-000-000-000	Building Permits	350,000	130,053	370,000	139,353	371,063
001-323-100-000-000	Franchise Fees - Electric	785,000	413,489	1,115,000	536,998	1,115,026
001-323-700-000-000	Franchise Fees-Solid Waste-Flr	118,000	59,000	153,000	59,000	153,016
001-325-100-000-000	Tree Removal Permit Fees	500	0	500	0	0
001-325-400-000-000	Site Develmt Permit & Inspect Fees	5,000	12,838	8,000	2,694	8,496
	TOTAL: LICENSES & PERMITS	1,258,500	615,380	1,646,500	738,045	1,647,600
	INTERGOVERNMENTAL REVENUE					
001-330-000-000-000	Spcl Assessment - Fire	1,020,000	1,017,717	0	0	0
001-331-304-000-000	Bullet Proof Vest Grant	2,021	2,021	0	0	0
001-331-600-000-000	HIDTA Award	8,000	9,401	13,500	12,523	22,949
001-333-100-000-000	PILOT-Lake Wales Housing Authority	2,500	6,719	2,500	0	0
001-333-200-000-000	PILOT - Water's Edge	0	0	28,000	28,346	28,346
001-335-121-000-000	State Rev. Sharing - from S/Tx	356,898	174,860	344,800	155,380	349,328
001-335-140-000-000	Mobile Home Licenses	30,000	32,644	36,000	30,555	36,137
001-335-150-000-000	Alcoholic Beverage Licenses	10,600	1,939	10,600	668	10,970
001-335-180-000-000	Local Government 1/2 Sales Tax	870,942	430,975	828,500	404,801	837,416
001-335-230-000-000	Firemen'S Supplemental Comp	8,000	4,083	8,160	3,420	8,133
001-337-220-000-000	Polk Sch Board - Sro	116,352	58,176	116,352	58,176	116,352
001-337-225-000-000	LW Charter Schools-Sro	58,176	29,088	58,176	29,088	58,176
001-337-700-000-000	Grant - Polk County - Rec Dept	75,000	0	0	0	0
001-337-750-000-000	Grant - US Soccer	25,000	0	0	0	0
001-338-200-000-000	County Business License	7,500	3,746	7,500	3,560	8,166
	TOTAL: INTERGOVERNMENTAL REV	2,590,989	1,771,369	1,454,088	726,517	1,475,972
	CHARGES FOR SERVICES					
001-341-100-000-000	Recording, Copy & Certifying	500	270	500	193	252
001-341-101-000-000	Sale of Maps and Publications	500	85	500	29	546
001-341-102-000-000	Police Verification-Investigations	10,000	14,004	24,000	12,416	24,235
001-341-106-000-000	Administrative Charge - Street Lght	350	350	340	350	350
001-341-123-000-000	Election Qualifying Fees	100	125	100	125	125
001-341-403-000-000	Management Fees - Water/Sewer	457,918	228,959	437,998	218,999	437,998
001-341-510-000-000	Planning & Zoning Board Fees	15,000	10,152	24,000	14,292	25,503
001-341-520-000-000	Comprehensive Planning Fees	2,000	2,745	4,500	1,340	4,687

PRELIMINARY SCH. OF REV & EXP
GENERAL FUND - 001
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
001-341-524-000-000	Reimbursement-Building Fees	3,000	4,323	4,700	2,736	4,730
001-341-540-000-000	Bldg Official Svcs. - Frostproof	10,000	7,100	11,600	5,851	11,680
001-341-900-000-000	Reimbursement-Grove House Taxes	7,500	7,891	8,500	7,569	7,569
001-341-901-000-000	Polk Cnty Impact Fee-Coll Chrg	2,000	2,446	2,000	749	4,166
001-341-902-000-000	Polk Pub Svc Tx - Coll Fee	600	349	600	315	641
001-341-905-000-000	BCA/DCA Coll Fee for Education	600	631	1,136	839	1,137
001-342-199-000-000	Miscellaneous Police Services	500	0	500	0	0
001-342-200-000-000	Fire Service - Highland Park	15,000	16,510	9,823	9,823	9,823
001-342-201-000-000	Fire Service - Polk County	0	0	257,547	194,518	257,577
001-343-400-000-000	Garbage Fees	1,055,000	569,924	1,077,000	546,521	1,073,672
001-343-802-000-000	Cemetery - Grave Locating Fees	10,000	5,797	12,300	7,271	12,370
001-343-803-000-000	Cemetery - Lot Marking	350	43	350	75	141
001-343-804-000-000	Cemetery - Burial Space Lot	5,000	3,391	35,000	11,116	16,555
001-343-805-000-000	Cemetery - Burial Sp Mausoleum	0	5,550	0	2,716	19,307
001-343-806-000-000	Cemetery - Vault/Casket Id	400	274	400	222	381
001-343-809-000-000	Cemetery - Misc Chgs For Svc	500	100	500	220	270
001-343-810-000-000	Cemetery Installment Adm Fee	600	57	600	0	0
001-343-811-000-000	Cemetery Trust Revenue	600	0	600	0	0
001-343-900-000-000	Tree Replacement Fees	2,000	0	2,000	0	0
001-347-290-000-000	Miscellaneous Recreation Fees	1,000	0	0	1,200	1,200
	TOTAL: CHARGES FOR SERVICES	1,601,018	881,075	1,917,094	1,039,484	1,914,913
	FINES & FORFEITURES					
001-351-100-000-000	Court Fines	20,000	17,436	30,000	12,998	31,984
001-351-300-000-000	Law Enforcement Education	1,500	1,820	2,900	1,487	2,962
001-351-600-000-000	Excess Alarm Fees	0	100	0	0	0
001-351-650-000-000	Damage Restitution	100	0	100	0	0
001-351-900-000-000	Miscellaneous Fines	150	0	150	0	24
001-354-100-000-000	Parking Fines	500	1,100	500	75	950
001-354-200-000-000	Code Enforcement Fines	20,000	863	34,300	31,408	34,380
	TOTAL: FINES & FORFEITURES	42,250	21,318	67,950	45,968	70,301
	MISCELLANEOUS REVENUES					
	Interest Income	5,300	3,795	7,600	2,985	6,261
001-362-010-000-000	Orange Grove - Land Lease	0	0	30,000	22,500	22,500
001-362-701-000-000	Community Center - Austin Kitchen R	1,000	136	4,000	133	469
001-362-704-000-000	Ridge League Dinner-Receipts	0	0	8,000	6,154	6,316
001-362-706-000-000	JP Austin Center Rental	2,000	2,280	2,000	669	2,154
001-362-709-000-000	Tourist Club Rental	2,000	1,700	2,000	1,664	5,499
001-362-710-000-000	Field Rentals	0	0	0	67	67
001-362-790-000-000	User Fees - Other Rental	2,000	583	2,000	796	1,950
001-362-800-000-000	Rental-Mike LaRosa	3,600	1,800	3,600	1,800	3,600
001-364-002-000-000	Loss Recoveries - Insured	0	0	15,176	10,878	15,176
001-364-100-000-000	Sale of Surplus Equipment	0	0	0	2,117	0
001-364-175-000-000	Gain on Sale of Capital Asset	99,257	99,515	1,737	0	1,737
001-366-025-000-000	Donations Lincoln Park-Basketball	0	0	42,000	42,000	42,000
001-366-060-000-000	Donations-Cemetary Brick	0	0	0	105	140
001-366-512-000-000	Donations-League of Cities Dinner	0	0	0	550	550
001-366-521-000-000	Donations-Police Dept.	613	613	0	16,000	16,000
001-366-522-000-000	Donations-Fire Dept	1,000	150	1,000	500	650

PRELIMINARY SCH. OF REV & EXP
GENERAL FUND - 001
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
001-366-539-000-000	Cemetery: Misc Donations	0	0	18,000	0	0
001-366-572-200-000	Donations - Special Events	0	0	0	581	581
001-366-702-000-000	Recycling Proceeds	0	122	0	0	462
001-366-900-000-000	Donations/Miscellaneous	1,000	2,500	1,000	994	1,920
001-369-000-000-000	Other Miscellaneous Revenues	5,000	2,093	5,000	76	124
001-369-006-000-000	Public Notice Reimbrsmts (Ads)	0	788	0	200	636
001-369-010-000-000	Vendor Fees	0	120	0	90	430
001-369-012-000-000	Reimbursement-Police Special Detail	200	0	200	0	0
001-369-014-000-000	Reimb-Special Events In-Kind	6,075	7,793	5,233	4,749	7,403
001-369-015-000-000	Reimbursement-Staffing Comm Center	100	1,805	2,500	488	2,477
001-369-016-000-000	Reimbursement - Ball Field Lights	100	0	100	0	0
001-369-017-000-000	Reimb. - Ball Field Lining/Prep.	100	0	100	0	0
001-369-200-000-000	Workers' Compensation Reimb	0	2,083	0	0	369
001-369-900-000-000	Other Miscellaneous Revenue	0	581	0	348	7,143
001-369-999-000-000	Other	500	726	500	8,870	8,895
001-369-999-999-999	Suspense - Cash Receipts	0	1,333	0	127	0
	TOTAL: MISCELLANEOUS REVENUES	129,845	130,515	151,746	125,440	155,509
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
001-381-330-000-000	Transfer from Capital Projects	17,500	0	0	0	0
	TOTAL: INTERFUND TRANSFER	17,500	0	0	0	0
	CONTRIBUTIONS FROM ENTERPRISE					
001-382-403-000-000	Contribution from Water/Sewer	1,140,000	570,000	1,020,000	510,000	1,020,000
	TOTAL: CONT FROM ENTERPRISE OP	1,140,000	570,000	1,020,000	510,000	1,020,000
	OTHER SOURCES					
001-385-000-000-000	Lease/Loan Proceeds	612,941	0	790,560	0	290,560
001-385-100-000-000	Loan Proceeds - Series 2015	0	0	0	0	500,000
	TOTAL: OTHER FINANCING SOURCES	612,941	0	790,560	0	790,560
	TOTAL REVENUES/OTHER FIN SRCS	12,441,843	7,667,626	12,601,538	7,363,493	12,617,532

PRELIMINARY SCH. OF REV & EXP
GENERAL FUND - 001
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	CITY COMMISSION	96,576	48,639	96,190	54,239	93,506
	CITY MANAGER	205,434	111,139	213,306	121,539	210,456
	CITY CLERK	113,288	53,957	107,855	45,511	104,875
	FINANCE	294,235	159,337	302,281	154,172	299,182
	PERSONNEL	143,740	73,551	147,018	75,856	145,499
	CITY ATTORNEY	66,375	36,624	67,037	18,510	66,400
	PLANNING & ZONING	209,969	106,732	230,074	115,174	226,684
	FLEET MAINTENANCE	0	0	0	0	0
	FACILITIES MAINTENANCE	108,985	26,595	55,400	10,390	38,341
	INFORMATION SERVICES	203,279	84,163	171,138	66,466	159,443
	INSURANCE/RISK MANAGEMENT	0	0	0	0	0
	SUPPORT SERVICES	86,796	46,553	85,650	58,670	85,288
	MUNICIPAL ADM BLDG	30,017	20,495	64,872	28,149	60,957
	NON-DEPARTMENTAL	183,200	12,084	158,200	12,310	32,326
	POLICE DEPARTMENT	4,579,010	2,215,098	4,484,644	2,097,455	4,394,432
	FIRE CONTROL	2,705,169	1,333,992	2,479,806	1,214,033	2,453,792
	BUILDING PERMITS & INSPEC	217,414	119,934	224,906	108,462	221,266
	CODE ENFORCEMENT	55,262	25,208	47,680	22,632	42,683
	WASTE DISPOSAL	872,405	444,257	918,296	442,217	909,293
	LAKES CONSERVATION	8,000	0	2,000	500	500
	CEMETERY OP	145,448	85,121	164,341	78,926	160,184
	FIELD OPERATIONS	6,736	0	0	0	0
	PUBLIC SVC ADMIN	467	0	0	0	0
	OTHER TRANSPORTATION	5,433	0	5,433	0	5,433
	ECONOMIC DEVELOPEMENT	130,800	93,750	125,700	62,710	125,210
	OTHER HUMAN SERVICES	13,500	12,500	1,000	0	0
	LIBRARY	0	0	0	0	0
	PARKS DIVISION	651,268	318,554	554,161	280,159	537,985
	RECREATION FACILITIES	736,669	282,257	573,020	253,087	558,612
	SPECIAL EVENTS	45,175	33,365	43,103	24,581	42,596
	DEPOT	136,242	63,715	32,978	8,109	29,600
	INTERFUND TRANSFERS	299,655	188,412	518,888	287,640	518,740
	TOTAL EXPENDITURES	12,350,547	5,996,029	11,874,977	5,641,500	11,523,285
	REVENUE EXCESS OVER(UNDER) EXP	91,296	1,671,597	726,561	1,721,994	1,094,246

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
TRANSPORTATION FUND - 102
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	TRANSPORTATION FUND - 102			
	Cash - Unrestricted	167,147	76,794	90,352
	CASH	167,147	76,794	90,352
	ACCOUNTS RECEIVABLE	119,016	128,994	(9,978)
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	286,163	205,788	80,374
	ACCOUNTS PAYABLE	0	0	0
	DUE TO OTHER FUNDS	0	0	0
	DEFERRED REVENUE	0	0	0
	TOTAL LIABILITIES	0	0	0
	EXCESS REV OVER/UNDER EXP	32,911	7,223	25,688
102-271-001-000-000	Fund Balance	253,252	198,565	54,686
	TOTAL FUND BALANCE	286,163	205,788	80,374
	TOTAL LIAB. AND FUND BALANCE	286,163	205,788	80,374

PRELIMINARY SCH. OF REV & EXP
TRANSPORTATION FUND - 102
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	TAXES					
102-312-300-000-000	Polk Ninth Cent Voted Gas Tax	57,000	32,359	77,000	36,706	74,771
102-312-400-000-000	Local Option Gas Tax	410,141	209,216	404,600	200,706	408,216
102-312-405-000-000	New Local Option Gas Tax - 5C	255,740	133,213	252,650	125,163	256,157
	TOTAL: TAXES	722,881	374,788	734,250	362,575	739,144
	INTERGOVERNMENTAL REVENUE					
102-335-120-000-000	8Th Cent Motor Fuel (26.62%)	118,142	54,344	113,300	51,435	113,750
102-335-490-000-000	Motor Fuel Tax Rebate	12,500	3,643	12,500	6,829	14,177
	TOTAL: INTERGOVERNMENTAL REV	130,642	57,987	125,800	58,263	127,926
	CHARGES FOR SERVICES					
102-344-901-000-000	F.D.O.T. Right of Way Contract	23,606	11,803	23,606	17,705	23,606
102-344-902-000-000	FDOT Signal Maint Contract	34,048	0	17,903	0	17,903
102-344-903-000-000	FDOT LIght Maint Contract	75,018	0	72,833	0	72,833
	TOTAL: CHARGES FOR SERVICES	132,672	11,803	114,342	17,705	114,342
	MISCELLANEOUS REVENUES					
	Interest Income	300	0	300	0	0
102-369-000-000-000	Other Miscellaneous Revenues	500	0	500	0	0
	TOTAL: MISCELLANEOUS REVENUES	800	0	800	0	0
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
102-381-001-000-000	Transfer from General Fund	76,244	0	0	0	0
102-381-330-000-000	Transfer from Cap. Proj Fund	0	0	5,075	0	5,075
	TOTAL: INTERFUND TRANSFER	76,244	0	5,075	0	5,075
	TOTAL: OTHER FINANCING SOURCES	0	0	0	0	0
	TOTAL REVENUES/OTHER FIN SRCS	1,063,239	444,578	980,267	438,544	986,487
	STREET OPERATION	785,647	337,665	807,218	345,041	790,155

PRELIMINARY SCH. OF REV & EXP
TRANSPORTATION FUND - 102
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	STORMWATER DIVISION	34,600	1,317	24,600	607	14,442
	STREET ADMIN.	57,185	57,185	85,673	85,673	85,673
	DISASTER RECOVERY	0	0	0	0	0
	TRANSPORTATION PROJECTS	187,307	15,500	75,000	0	41,530
	TOTAL EXPENDITURES	1,064,739	411,667	992,491	431,321	931,800
	REVENUE EXCESS OVER(UNDER) EXP	(1,500)	32,911	(12,224)	7,223	54,686

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
STREET LIGHTING FUND - 103
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	STREET LIGHTING FUND - 103			
	CASH	14,952	14,037	915
	TOTAL ASSETS	14,952	14,037	915
	ACCOUNTS PAYABLE	0	0	0
	TOTAL LIABILITIES	0	0	0
	EXCESS REV OVER/UNDER EXP	(830)	(543)	(286)
103-271-001-000-000	Fund Balance	15,781	14,580	1,201
	TOTAL FUND BALANCE	14,952	14,037	915
	TOTAL LIAB. AND FUND BALANCE	14,952	14,037	915

PRELIMINARY SCH. OF REV & EXP
STREET LIGHTING FUND - 103
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	SPECIAL ASSESSMENT					
103-325-200-000-000	Brookshire Street Lighting	14,500	6,043	14,500	6,372	14,830
	TOTAL REVENUES/OTHER FIN SRCS	14,500	6,043	14,500	6,372	14,830
	EXPENSES					
	STREET LIGHTING	14,602	6,872	14,602	6,916	13,629
	TOTAL EXPENDITURES	14,602	6,872	14,602	6,916	13,629
	REVENUE EXCESS OVER(UNDER) EXP	(102)	(830)	(102)	(543)	1,201

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
CRA FUND -105
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	CRA FUND - 105			
	Cash - Unrestricted	365,811	249,148	116,663
105-102-010-000-000	Restricted - Escrow Business Park	100,000	100,000	0
	CASH	465,811	349,148	116,663
	ACCOUNTS RECEIVABLE	5,372	4,972	400
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	471,183	354,120	117,063
	ACCOUNTS PAYABLE	716	0	716
	DEPOSIT & TRUST ACCOUNTS	100,000	100,000	0
	ACCRUED PAYROLL & WITHHOLDING	0	0	0
	DUE TO OTHER FUNDS	0	0	0
	TOTAL LIABILITIES	100,716	100,000	716
	EXCESS REV OVER/UNDER EXP	220,882	84,779	136,103
105-271-001-000-000	Fund Balance	149,586	169,341	(19,755)
	TOTAL FUND BALANCE	370,468	254,120	116,348
	TOTAL LIAB. AND FUND BALANCE	471,183	354,120	117,063

PRELIMINARY SCH. OF REV & EXP
CRA FUND - 105
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	TAXES					
105-311-200-000-000	City Tax Increment Area 1	55,142	55,142	70,792	70,792	63,093
105-311-400-000-000	City Tax Increment Area 3	15,718	15,718	19,908	19,908	16,029
105-311-600-000-000	City Tax Increment Area 2	508,064	508,064	443,846	458,846	442,651
	TOTAL: TAXES	578,924	578,924	534,546	549,546	521,773
	INTERGOVERNMENTAL REVENUE					
105-337-220-000-000	LWHA Officer Contribution	29,131	14,709	29,131	14,280	29,131
105-338-300-000-000	County Tax Increment Area 1	51,418	50,971	55,362	55,096	54,049
105-338-500-000-000	County Tax Increment Area 3	14,656	14,594	13,641	13,838	13,731
105-338-700-000-000	County Tax InCRement CRA Exp	473,753	461,889	380,300	379,504	378,445
	TOTAL: INTERGOVERNMENTAL REV	568,958	542,163	478,434	462,718	475,356
	MISCELLANEOUS REVENUES					
	Interest Income	1,000	0	1,000	0	0
105-364-200-000-000	Sale of Land	0	0	0	24,322	24,322
105-364-210-000-000	Gov. Wide - Gain/Loss	0	0	0	0	(17,778)
105-364-220-000-000	Gov. Wide (Contra) - Gain/(Loss)	0	0	0	0	17,778
105-369-999-000-000	Other	0	0	23,000	0	0
	TOTAL: MISCELLANEOUS REVENUES	1,000	0	24,000	24,322	24,322
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
	TOTAL: INTERFUND TRANSFER	0	0	0	0	0
	OTHER SOURCES					
	TOTAL: OTHER FINANCING SOURCES	0	0	0	0	0
	TOTAL REVENUES/OTHER FIN SRCS	1,148,882	1,121,087	1,036,980	1,036,586	1,021,451
	EXPENDITURES					
	CRA - ECONOMIC DEVELOPMENT	50,320	25,712	71,630	35,643	70,535
	CRA - COMMUNITY REDEVELOPMENT	150,742	76,400	111,562	56,226	110,733
	CRA - COMMUNITY POLICING	0	0	0	0	0
	CRA - CODE ENFORCEMENT	0	0	0	0	0
	CAPITAL OUTLAY	120,000	2,250	0	0	0

PRELIMINARY SCH. OF REV & EXP
CRA FUND - 105
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	TRANSFERS	795,843	795,843	859,938	859,938	859,938
	TOTAL EXPENDITURES	1,116,905	900,205	1,043,130	951,807	1,041,206
	REVENUE EXCESS OVER(UNDER) EXP	31,977	220,882	(6,150)	84,779	(19,755)

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
POLICE FORFEITURES FUND - 106
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	POLICE FORFEITURE FUND - 106			
	CASH	47,395	39,162	8,233
	ACCOUNTS RECEIVABLE	0	0	0
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	47,395	39,162	8,233
	ACCOUNTS PAYABLE	0	0	0
	ACCRUED PAYROLL & WITHHOLDING	0	0	0
	DUE TO OTHER FUNDS	0	123	(123)
	TOTAL LIABILITIES	0	123	(123)
	EXCESS REV OVER/UNDER EXP	18,219	3,904	14,315
106-271-001-000-000	Fund Balance	29,176	35,135	(5,959)
	TOTAL FUND BALANCE	47,395	39,039	8,356
	TOTAL LIAB. AND FUND BALANCE	47,395	39,162	8,233

PRELIMINARY SCH. OF REV & EXP
POLICE FORFEITURE FUND - 106
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	FINES & FORFEITS					
106-351-900-000-000	Forfeitures - Police Dept	20,000	27,747	26,280	17,061	26,282
	TOTAL: FINES & FORFEITURES	20,000	27,747	26,280	17,061	26,282
	MISCELLANEOUS REVENUES					
	Interest Income	0	53	100	48	92
106-364-175-000-000	Gain on Sale of Capital Asset	0	663	0	0	0
	TOTAL: MISCELLANEOUS REVENUES	0	716	100	48	92
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
	TOTAL: INTERFUND TRANSFER	0	0	0	0	0
	OTHER SOURCES					
	TOTAL: OTHER FINANCING SOURCES	0	0	0	0	0
	TOTAL REVENUES/OTHER FIN SRCS	20,000	28,463	26,380	17,110	26,374
	EXPENDITURES					
	OPERATING	25,359	10,244	38,400	13,205	32,333
	CAPITAL OUTLAY	0	0	0	0	0
	TRANSFERS	0	0	0	0	0
	TOTAL EXPENDITURES	25,359	10,244	38,400	13,205	32,333
	REVENUE EXCESS OVER(UNDER) EXP	(5,359)	18,219	(12,020)	3,904	(5,959)

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
LIBRARY FUND - 110
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	LIBRARY FUND - 110			
	Cash - Unrestricted	292,622	214,538	78,084
110-102-001-000-000	Petty Cash - Books By Mail	50	50	0
110-102-002-000-000	PETTY CASH - BOOK MOBILE	100	0	100
110-101-062-000-000	Library Impact Fees 3771	119,455	150,195	(30,739)
	CASH	412,227	364,782	47,445
	ACCOUNTS RECEIVABLE	0	0	0
	DUE FROM OTHER FUNDS	0	0	0
	PREPAID	6,689	3,893	2,796
	TOTAL ASSETS	418,916	368,675	50,241
	ACCOUNTS PAYABLE	0	0	0
	ACCRUED PAYROLL & WITHHOLDING	23,244	24,092	(848)
	TOTAL LIABILITIES	23,244	24,092	(848)
	EXCESS REV OVER/UNDER EXP	271,271	221,037	50,235
110-271-001-000-000	Fund Balance	124,401	123,547	854
	TOTAL FUND BALANCE	395,673	344,584	51,089
	TOTAL LIAB. AND FUND BALANCE	418,916	368,675	50,241

PRELIMINARY SCH. OF REV & EXP
LIBRARY FUND - 110
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	TAXES					
110-311-100-000-000	Ad Valorem Taxes	398,844	301,109	377,500	325,033	378,471
	TOTAL: TAXES	398,844	301,109	377,500	325,033	378,471
	INTERGOVERNMENTAL REVENUE					
110-338-001-000-000	Polk County - Intergov. Rev.	224,400	112,184	225,000	112,934	225,869
110-338-005-000-000	Polk County Books By Mail	250,000	250,000	225,000	225,000	225,000
110-338-006-000-000	Polk County Bookmobile Rev.	85,000	85,000	75,000	0	75,000
	TOTAL: INTERGOVERNMENTAL REV	559,400	447,184	525,000	337,934	525,869
	CHARGES FOR SERVICES					
110-341-000-000-000	Reimbursement of Expense	144	16	0	27	47
110-347-250-000-000	Special Interest Classes	8,000	4,062	8,000	4,775	7,334
	TOTAL: CHARGES FOR SERVICES	8,144	4,078	8,000	4,801	7,380
	IMPACT FEES					
110-363-221-000-000	Impact Fees - Library	25,000	7,805	29,500	11,455	29,573
	TOTAL IMPACT FEES	(25,000)	(7,805)	(29,500)	(11,455)	(29,573)
	MISCELLANEOUS REVENUES					
	Interest Income	4,500	145	4,500	155	348
110-362-790-000-000	User Fees -Library	50	0	100	0	0
110-366-001-000-000	Contribution - LW Library Assn	12,000	4,329	11,000	7,197	11,172
110-366-025-000-000	Donations-Books By Mail	50	3	25	124	261
110-369-000-000-000	Other Miscellaneous Revenues	0	478	0	0	711
110-369-999-000-000	Other	0	0	710	0	0
	TOTAL: MISCELLANEOUS REVENUES	16,600	4,954	16,335	7,476	12,492
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
	TOTAL: INTERFUND TRANSFER	0	0	0	0	0
	TOTAL REVENUES/OTHER FIN SRCS	1,007,988	765,131	956,335	686,699	953,785

PRELIMINARY SCH. OF REV & EXP
LIBRARY FUND - 110
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	LIBRARY FUND	951,753	456,499	922,371	440,999	889,066
	CAPITAL OUTLAY	79,500	37,360	66,535	24,664	63,865
	TOTAL EXPENDITURES	1,031,253	493,859	988,906	465,663	952,931
	REVENUE EXCESS OVER(UNDER) EXP	(23,265)	271,271	(32,571)	221,037	854

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
LAW ENF BLOCK GRT FUND - 116
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	LAW ENFORCEMENT BLOCK GRANT			
	CASH	0	0	0
	ACCOUNTS RECEIVABLE	9,170	5,019	4,151
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	9,170	5,019	4,151
	ACCOUNTS PAYABLE	0	0	0
	ACCRUED PAYROLL & WITHHOLDING	0	0	0
	DUE TO OTHER FUNDS	9,170	5,019	4,151
	TOTAL LIABILITIES	9,170	5,019	4,151
	EXCESS REV OVER/UNDER EXP	0	0	0
	TOTAL FUND BALANCE	0	0	0
	TOTAL LIAB. AND FUND BALANCE	9,170	5,019	4,151

PRELIMINARY SCH. OF REV & EXP
LAW ENF BLOCK GRT FUND - 116
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	INTERGOVERNMENTAL					
116-331-300-000-000	Byrne Grant - JAG D (Direct)	4,000	0	4,353	4,346	4,346
116-331-305-000-000	Byrne Grant - JAG - C (Countywide)	10,000	9,170	10,000	673	10,007
	TOTAL: INTERGOVERNMENTAL	14,000	9,170	14,353	5,019	14,353
	MISCELLANEOUS REVENUES					
	Interest Income	0	0	0	0	0
	TOTAL: MISCELLANEOUS REVENUES	0	0	0	0	0
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
	TOTAL: INTERFUND TRANSFER	0	0	0	0	0
	OTHER SOURCES					
	TOTAL: OTHER FINANCING SOURCES	0	0	0	0	0
	TOTAL REVENUES/OTHER FIN SRCS	14,000	9,170	14,353	5,019	14,353
	EXPENDITURES					
116-521-000-352-050	Operating Supplies - Equipment	0	0	0	0	6,801
116-521-000-664-990	Other Equipment	14,000	9,170	14,353	5,019	7,552
	TOTAL EXPENDITURES	14,000	9,170	14,353	5,019	14,353
	REVENUE EXCESS OVER(UNDER) EXP	0	0	0	0	0

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
DEBT SERVICE FUND - 201
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	DEBT SERVICE FUND - 201			
	CASH	1,224,703	1,090,245	134,458
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	1,224,703	1,090,245	134,458
	DUE TO OTHER FUNDS	0	0	0
	TOTAL LIABILITIES	0	0	0
	EXCESS REV OVER/UNDER EXP	(27,973)	(858,179)	830,206
201-271-001-000-000	Fund Balance	1,252,676	1,948,424	(695,748)
	TOTAL FUND BALANCE	1,224,703	1,090,245	134,458
	TOTAL LIAB. AND FUND BALANCE	1,224,703	1,090,245	134,458

PRELIMINARY SCH. OF REV & EXP
DEBT SERVICE FUND - 201
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	TAXES					
201-314-100-000-000	Utl Taxes-Elect(Series 2003/Leases)	600,000	300,000	263,000	131,500	263,000
201-315-000-000-000	Communication Svc Tax(Series 2013)	156,400	156,400	150,000	50,000	150,000
	TOTAL: TAXES	756,400	456,400	413,000	181,500	413,000
	LICENSES & PERMITS					
201-313-100-000-000	Franch Fees - Elect (Series 2015)	255,000	127,500	0	0	0
	TOTAL: LICENSES & PERMITS	255,000	127,500	0	0	0
	IMPACT FEES					
201-363-222-000-000	Impact Fees - Fire South	10,000	6,610	94,041	5,168	94,039
	TOTAL: IMPACT FEES	10,000	6,610	94,041	5,168	94,039
	MISCELLANEOUS REVENUES					
	Interest Income	0	98	0	20	85
	TOTAL: MISCELLANEOUS REVENUES	0	98	0	20	85
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
201-381-001-000-000	Transfer from General Fund	0	0	71,100	0	71,017
201-381-102-000-000	Transfer from Transp.(Series 2003)	57,185	57,185	85,673	85,673	85,673
201-381-105-000-000	Transfer from CRA(Series 2003/2007)	795,843	795,843	859,938	859,938	859,938
	TOTAL: INTERFUND TRANSFER	853,028	853,028	1,016,711	945,611	1,016,628
	TOTAL REVENUES/OTHER FIN SRCS	1,874,428	1,443,636	1,523,752	1,132,299	1,523,752
	DEBT SERVICE - PRINCIPAL	1,544,984	1,298,230	1,843,640	1,779,986	1,842,290
	DEBT SERVICE - INTEREST & FEES	325,720	173,379	392,538	210,491	377,209
	TOTAL EXPENDITURES	1,870,704	1,471,609	2,236,178	1,990,478	2,219,499
	REVENUE EXCESS OVER(UNDER) EXP	3,724	(27,973)	(712,426)	(858,179)	(695,748)

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
CAPITAL PROJECT FUND - 330
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	CAPITAL PROJECT FUND - 330			
	Cash - Unrestricted	0	0	0
330-101-062-000-000	Fire North Rescue Impact Fee 3755	8,116	11,076	(2,960)
330-101-063-000-000	Police Services Impact Fee 1438	229,535	192,969	36,565
330-101-064-000-000	Parks & Recreation Impact Fee 1420	252,754	254,999	(2,245)
330-101-200-000-000	Series 2013- Cemetery	0	2,500	(2,500)
	CASH	490,404	461,544	28,861
	ACCOUNTS RECEIVABLE	0	43,541	(43,541)
	DUE FROM OTHER FUNDS	0	0	0
	TOTAL ASSETS	490,404	505,085	(14,680)
	ACCOUNTS PAYABLE	0	53,158	(53,158)
	DEFERRED REVENUE	0	5,075	(5,075)
	DUE TO OTHER FUNDS	73,417	325,232	(251,816)
	TOTAL LIABILITIES	73,417	383,466	(310,049)
	EXCESS REV OVER/UNDER EXP	(6,987)	(574,857)	567,870
330-271-001-000-000	Fund Balance	423,975	696,476	(272,501)
	TOTAL FUND BALANCE	416,988	121,619	295,369
	TOTAL LIAB. AND FUND BALANCE	490,404	505,085	(14,680)

PRELIMINARY SCH. OF REV & EXP
CAPITAL PROJECT FUND - 330
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	INTERGOVERNMENTAL REVENUE					
330-334-721-000-000	RTP Grant-Lake Wales Trail	0	0	99,300	0	99,305
330-334-727-000-000	FRDAP Grant - Skate Park	0	0	50,000	0	50,000
330-334-729-000-000	Grant-Premier Streets LW Project	0	0	5,075	0	5,075
	TOTAL: INTERGOVERNMENTAL REV	0	0	154,375	0	154,380
	IMPACT FEES					
330-363-220-000-000	Impact Fees- Police	10,000	9,143	39,000	12,128	39,010
330-363-222-000-000	Impact Fees - Fire North	8,400	5,607	23,900	9,117	23,933
330-363-270-000-000	Impact Fees- Culture/Rec	6,000	16,932	56,000	16,519	55,824
	TOTAL IMPACT FEES	(24,400)	(31,682)	(118,900)	(37,764)	(118,768)
	MISCELLANEOUS REVENUES					
	Interest Income	2,500	621	2,678	1,001	1,614
	TOTAL: MISCELLANEOUS REVENUES	2,500	621	2,678	1,001	1,614
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
330-381-001-000-000	Transfer from General Fund	0	8,000	275,000	125,926	274,936
	TOTAL: INTERFUND TRANSFER	0	8,000	275,000	125,926	274,936
	TOTAL REVENUES/OTHER FIN SRCS	26,900	40,303	550,953	164,690	549,697
	EXPENDITURES					
330-522-622-003-000	Cemetery - New Addition	0	0	600,000	555,354	579,503
330-572-000-663-003	Skate Park - Equipment	0	16,433	70,000	0	53,185
330-572-000-663-020	Lake Wales Trails Extension	0	0	190,000	184,193	184,435
330-572-663-022-000	C/O - Park Signage	13,000	0	0	0	0
330-572-663-023-000	C/O - ADA Parking - Soccer Complex	30,000	0	0	0	0
330-572-663-024-000	C/O - Electric Upgrades - LW Park	20,000	21,095	0	0	0
330-572-663-210-000	C/O-Lake Wales Park - Excercise Equ	10,000	9,762	0	0	0
330-581-000-991-001	Transfer to General Fund	17,500	0	0	0	0
330-581-000-991-102	Transfer to Transportation Fund	0	0	5,075	0	5,075
	TOTAL EXPENDITURES	90,500	47,290	865,075	739,547	822,198
	REVENUE EXCESS OVER(UNDER) EXP	(63,600)	(6,987)	(314,122)	(574,857)	(272,501)

PRELIMINARY - BALANCE SHEET
UTILITY SYSTEM FUND - 403
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	UTILITY SYSTEM - FUND 403			
	CASH & INV. - UNRESTRICTED	394,331	1,200	393,131
	CASH & INV. - SEWER IMPACT FEE	1,309,245	1,212,294	96,951
	CASH & INV. - WATER IMPACT FEE	267,810	136,120	131,690
	CASH & INV. - DEBT SERVICE SIN	1,044,738	743,761	300,978
403-103-100-000-000	Loan Proceeds Series 2015	700,523	0	700,523
403-103-010-000-000	Utilities Emergency Sinking Fund 80	5,013	142,534	(137,521)
403-104-801-001-160	Utilty Cash-Customer Deposits	815,233	735,978	79,254
403-104-801-001-165	C Street Sewer Project - Escrow	10,196	2,846	7,350
403-104-801-001-167	C Street Sewer - Postage Escrow	34	34	0
	CASH & INV. - RESERVE ACCOUNTS	1,530,999	881,392	649,607
	TOTAL CASH & INVESTMENTS	4,547,123	2,974,767	1,572,357
	ACCOUNTS RECEIVABLE	954,836	1,000,063	(45,228)
	DUE FROM OTHER FUNDS	0	0	0
	INVENTORY	169,848	173,835	(3,987)
	PREPAID	6,572	6,572	0
	NET FIXED ASSETS	35,513,200	35,176,515	336,685
	UNAMORTIZED BOND ISSUE COSTS	0	(3,911)	3,911
	TOTAL ASSETS	41,191,578	39,327,840	1,863,738
	ACCOUNTS PAYABLE	51,393	94,930	(43,536)
	ACCRUED LIABILITIES	134,825	848,956	(714,131)
	ACCRUED INTEREST	99,540	105,774	(6,234)
	CUSTOMER DEPOSITS	817,139	737,089	80,049
	ACCRUED PAYROLL & WITHHOLDING	114,973	107,724	7,249
	DEFERRED REVENUE	230,534	239,434	(8,900)
	DEBT	10,852,151	9,752,108	1,100,044
	TOTAL LIABILITIES	12,300,556	11,886,016	414,540
	EXCESS REV OVER/UNDER EXP	367,321	245,802	121,518
403-272-000-000-000	Retained Earnings	28,523,702	27,196,022	1,327,680
	TOTAL FUND BALANCE	28,891,023	27,441,824	1,449,198

PRELIMINARY - BALANCE SHEET
UTILITY SYSTEM FUND - 403
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	TOTAL LIAB. AND FUND BALANCE	41,191,578	39,327,840	1,863,738

PRELIMINARY SCH. OF REV & EXP
UTILITY SYSTEM FUND - 403
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	CHARGES FOR SERVICES	7,673,000	3,800,052	6,996,000	3,376,400	6,999,866
	INTEREST INCOME	6,480	5,567	6,480	2,471	6,783
	GRANTS	650,000	0	0	113,377	0
	DEBT PROCEEDS	9,400,000	0	0	0	0
	OTHER REVENUE & SOURCES:					
403-362-200-000-000	Lease - Telecommunication Site	185,000	90,181	200,000	102,775	200,744
403-363-230-000-000	Water Impact Fees	75,000	46,538	127,000	42,913	127,528
403-363-235-000-000	Sewer Impact Fees	100,000	73,031	180,000	54,314	180,273
403-364-100-000-000	Sale of Surplus Equipment	0	0	0	203	0
403-364-175-000-000	Gain on Sale of Capital Asset	0	0	(6,625)	0	5,330
403-364-661-000-000	Gain On Sale of Land	0	0	0	0	(11,954)
403-369-902-000-000	Bad Debt Recovery - Water	1,000	0	1,000	12	12
403-369-999-000-000	Other	0	521	10,000	0	2,419
	TOTAL: OTHER REV. & SOURCES	361,000	210,271	511,375	200,217	504,352
	TOTAL REVENUES/OTHER FIN SRCS	18,090,480	4,015,890	7,513,855	3,692,465	7,511,000
	WATER PLANT OPERATION	845,071	308,722	868,149	356,357	711,330
	SEWER PLANT OPERATION	1,008,939	391,923	924,845	324,035	664,037
	REUSE WATER OPERATION	148,654	35,845	85,373	25,223	38,899
	UTILITY ADMINISTRATION	938,902	426,560	952,768	436,996	881,192
	UTILITY OPERATION PERSONNEL	1,200,392	621,304	1,233,149	587,347	1,226,111
	UTILITY BILLING	290,345	146,867	208,904	88,152	207,046
	UTILITY DEPRECIATION	70,000	0	70,000	25,692	1,212,176
	WATER CAPITAL	434,877	39,711	1,040,000	605,132	0
	SEWER CAPITAL	7,550,200	638,742	2,910,000	361,258	0
	CDBG CAPITAL OUTLAY	650,000	14,920	0	6,071	0
	REUSE CAPITAL	50,000	0	50,000	0	0
	INTERFUND TRANSFERS	1,140,000	570,000	1,020,000	510,000	1,020,000
	OTHER NONOPERATION	0	63	0	89	0
	DEBT SERVICE	2,327,327	453,912	1,669,544	120,311	222,530
	TOTAL EXPENDITURES	16,654,707	3,648,570	11,032,732	3,446,662	6,183,320
	REVENUE EXCESS OVER(UNDER) EXP	1,435,773	367,321	(3,518,877)	245,802	1,327,680

CITY OF LAKE WALES
PRELIMINARY - BALANCE SHEET
AIRPORT AUTHORITY FUND - 404
03/31/2016

ACCOUNT #	DESCRIPTION	CURRENT FY	PRIOR FY	INCREASE (DECREASE)
	AIRPORT AUTHROITY - FUND 404			
	CASH	0	175	(175)
	ACCOUNTS RECEIVABLE	1	50	(49)
	DUE FROM OTHER FUNDS	0	0	0
	PREPAID	0	0	0
	NET FIXED ASSETS	10,518,850	7,781,986	2,736,864
	TOTAL ASSETS	10,518,851	7,782,211	2,736,640
	ACCOUNTS PAYABLE	262	136,848	(136,586)
	DUE TO OTHER FUNDS	128,939	28,323	100,616
	DEFERRED REVENUE	324	573	(249)
	PRIOR PERIOD ADJUSTMENT	0	0	0
	DEBT	123,961	135,795	(11,834)
	TOTAL LIABILITIES	253,487	301,539	(48,052)
	EXCESS REV OVER/UNDER EXP	(1,552)	(78,715)	77,163
404-272-000-000-000	Retained Earnings	10,266,916	7,559,387	2,707,530
	TOTAL FUND BALANCE	10,265,364	7,480,671	2,784,693
	TOTAL LIAB. AND FUND BALANCE	10,518,851	7,782,211	2,736,640

PRELIMINARY SCH. OF REV & EXP
AIRPORT AUTHORITY FUND - 404
03/31/2016

ACCOUNT NO.	DESCRIPTION	CURRENT FY BUDGET	YEAR TO DATE ACTUAL	PRIOR FY BUDGET	PRIOR FY ACTUAL	PRIOR - FY 09/30/2011
	REVENUES					
	INTERGOVERNMENTAL REVENUE					
404-331-419-000-000	FAA - Airfield Improvements	0	0	2,587,810	1,204,398	2,587,832
404-331-420-000-000	FAA - Rehab Resurface/Envir Assess	1,087,232	0	0	0	0
404-334-419-000-000	FDOT - Airfield Improvements	0	0	290,812	36,700	290,784
404-334-420-000-000	FDOT - Rehab Resurface/Enir Assess	80,402	0	0	0	0
	TOTAL: INTERGOVERNMENTAL REV	1,167,634	0	2,878,622	1,241,098	2,878,616
	CHARGES FOR SERVICES					
404-341-900-000-000	Reimbursement-Airport Ad Val Taxes	3,000	80	2,300	2,211	2,211
404-341-900-000-100	Reimbursement - Electric-T Hangers	960	400	2,500	0	1,159
404-344-101-000-000	T-Hangar Rentals	47,720	23,856	43,550	19,981	43,882
404-344-102-000-000	Tie-Down Fees	1,000	0	300	355	1,092
404-344-103-000-000	Fuel Flow Charges	7,000	4,711	5,000	2,633	4,906
404-344-104-000-000	Campground Rentals	7,350	3,674	7,169	3,412	7,368
	TOTAL: CHARGES FOR SERVICES	67,030	32,721	60,819	28,592	60,617
	OTHER REVENUES & SOURCES					
	Interest Income	0	0	0	0	0
404-362-541-000-000	FBO Lease-Rental Mowing Credit	6,000	3,000	6,000	0	6,000
404-364-000-000-000	FBO Lease- Rental Imprv. Credit	11,834	5,917	11,834	0	23,668
	TOTAL: OTHER REV. & SOURCES	17,834	8,917	17,834	0	29,668
	OTHER FINANCING SOURCES					
	INTER FUND TRANSFER					
404-381-001-000-000	Transfer from The General Fund	134,483	88,175	172,788	161,715	172,788
	TOTAL: INTERFUND TRANSFER	134,483	88,175	172,788	161,715	172,788
	TOTAL REVENUES/OTHER FIN SRCS	1,386,981	129,813	3,130,063	1,431,405	3,141,689
	OPERATIONS	99,434	50,462	96,495	35,052	96,489
	CAPITAL OUTLAY	1,275,713	74,987	3,113,122	1,475,068	0
	DEPRECIATION	0	0	0	0	325,837
	DEBT SERVICE	11,834	5,917	28,558	0	11,834
	TOTAL EXPENDITURES	1,386,981	131,365	3,238,175	1,510,120	434,160
	REVENUE EXCESS OVER(UNDER) EXP	0	(1,552)	(108,112)	(78,715)	2,707,530

MEMORANDUM

April 25, 2016

TO: Honorable Mayor & City Commission

VIA: Kenneth Fields, City Manager

FROM: Sandra D. Davis, Human Resources Director

SUBJECT: Ordinance 2016-06, Amending Ordinance 2001-08 Personnel Administration Policies – First Reading

SYNOPSIS: Ordinance 2016-06 is being presented to allow payment of overtime to exempt employees during declared times of emergency.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2016-06 upon First Reading.

BACKGROUND

The Federal Labor Standards Act establishes procedures to exempt certain classifications of employees from the overtime provisions. Under normal operations, these employees do not receive overtime compensation.

The purpose of Ordinance 2016-06 is to provide the conditions for which overtime will be paid to exempt (salaried) employees. If the following conditions are met, then exempt employees will be eligible for overtime compensation:

1. The Mayor of the City of Lake Wales has signed a declaration declaring that a State of Emergency exists in the City.
2. The City has activated its Emergency Operations Center and the City Manager has implemented the City's Emergency Management Plan.

FISCAL IMPACT

The fiscal impact of Ordinance 2016-06 will depend on the magnitude of future disasters or emergencies and the amount of services needed by the community. However, costs may be significantly reduced by reimbursement from FEMA.

OTHER OPTIONS

Do not adopt Ordinance 2016-06

ATTACHMENT

Ordinance 2016-06
Current overtime Ordinance is attached for information. (k) Will be added if adopted.

Current Overtime Policy

Sec. 2-244. Overtime.

(a) As a general rule, the requirement of frequent overtime services in a department shall be considered evidence of under-staffing or improper organization and shall be subject to review by the city manager; however, employees shall work overtime when requested unless excused by their supervisor.

(b) Records of all overtime work shall be kept by the department head, and overtime compensation will not be paid unless overtime work has been documented by the employee and verified by the supervisor.

(c) Employees in non-exempt classifications required to work in excess of forty (40) hours in a designated work week shall be paid overtime or granted compensatory time off. Monetary payment or compensatory time off for overtime shall be calculated at the rate of one and one-half (1½) times the regular rate for all hours worked in excess of forty (40) hours in any designated work week.

(d) For purposes of computing overtime, "Time Worked" shall mean those hours during which the employee is engaged in performing the duties of his job. With the exceptions stated in this paragraph, overtime pay will only be paid when an employee has actually worked more than forty (40) hours per week. Overtime shall not be computed on sick leave, jury duty/witness duty, funeral leave, or comp time. However, vacation days, holidays, safety days, and optional holiday shall be counted as days worked when calculating overtime.

(e) Non-exempt employees who, for their own convenience, arrive early at their work area or leave late will not perform work during these periods. Work during such periods is likely to extend the employee's work week beyond forty (40) hours and will require the prior authorization of the department head.

(f) At the request of the employee and at the discretion of the department head, non-exempt employees may be granted compensatory time off (comp time) in lieu of monetary wage. Comp time will accrue at the premium rate of time and one-half (1½) for each hour of overtime worked.

1. An employee who has accumulated comp time may request time off. Such requests will be granted within a reasonable amount of time so long as time off does not unduly disrupt the department's operations. Compensatory time off will require the prior approval of the department head.
2. No employee will be permitted to accrue more than eighty (80) hours of comp time. If the employee has accrued the maximum comp time, all subsequent overtime worked will be paid as monetary wage.
3. Upon termination, comp time remaining on the books will be paid at the employee's current rate or his average rate over the last three years, whichever is higher.
4. An employee may request monetary payment of all or a portion of accrued comp time at his current hourly rate. Such request shall be made by memorandum to the city manager and shall receive the approval of the city manager prior to payment. A copy of the memorandum will be placed in the employee's personnel file.
5. Any non-exempt employee that is, or has been, promoted or reclassified to an exempt position shall have any accrued comp time liability immediately paid to the employee in a single cash disbursement, at his or her final rate of pay prior to promotion from the non-exempt position.

(g) Overtime resulting from training required by the City shall qualify for overtime compensation. Overtime compensation will not be paid when training is voluntary. Travel time to and from work or place of training will not be considered as time worked and will not be included in calculating overtime.

(h) An employee who works in two or more different classifications during a single pay period and performs two or more different types of work for which different straight-time rates have been established, shall receive overtime pay calculated on the weighted average of such rates.

(i) Part-time employees shall earn time and one-half (1½) after working forty (40) hours in a week. All hours worked in excess of a normal schedule up to forty (40) hours will be paid at the employee's straight hourly rate. At the discretion of the department head, the part-time employee may accrue comp time for hours worked in excess of his normal schedule, however comp time shall be earned at the rate of 1 hour off for each hour worked until forty (40) hours have been worked. After working forty (40) hours in one week, the part-time employee will earn overtime pay or accrue comp time at the rate of time and one-half (1½) for each hour worked.

(j) Employees in exempt classifications are salaried employees and are expected to work as long as necessary to fulfill their job responsibilities. If, however circumstances arise which require considerable extra work time, compensatory time off may be granted at the discretion of the department head; however, such compensatory time shall not accrue as for non-exempt employees and shall not be paid as a monetary wage.

ORDINANCE 2016-06

AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, LAKE WALES CODE OF ORDINANCES; AMENDING OVERTIME TO ALLOW PAYMENT OF OVERTIME TO EXEMPT EMPLOYEES DURING DECLARED TIMES OF EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED by the City Commission of the City of Lake Wales, Polk County, Florida.

SECTION 1. Chapter 2, Administration, Lake Wales Code of Ordinances is hereby amended to read as follows:

ARTICLE III PERSONNEL ADMINISTRATION.

DIVISION 1. GENERAL POLICIES.

Sec. 2-244. Overtime

(k) Whenever by declaration of the Mayor immediate action is necessary to preserve the public peace, property, health, or safety within the City or to provide for continued operation of city government and exempt employees are directed by the City Manager to undertake immediate emergency response measures, such exempt employees shall be paid overtime wages at a rate of pay commensurate with overtime pay calculated for non-exempt employees during the period of the emergency. If the following conditions are met, then exempt personnel will be eligible for overtime compensation.

1. The Mayor of the City of Lake Wales has signed a declaration declaring that a State of Emergency exists in the City.

2. The City has activated its Emergency Operations Center and the City Manager has implemented the City's Emergency Management Plan.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 4. This ordinance shall become effective immediately upon its passage by the City Commission.

CERTIFIED AS TO PASSAGE**,** this _____ day of _____, 2016.

CITY OF LAKE WALES, FLORIDA

_____
Mayor/Commissioner

_____
City Clerk Clara VanBlargan, MMC

MEMORANDUM

May 3, 2016

TO: Honorable Mayor and City Commissioners

VIA: Kenneth Fields. Otte, City Manager

FROM: Dorothy Ecklund, Finance Director

RE: Resolution 2016-11, Merchant Services Agreement Elavon, Inc.

SYNOPSIS: *The City Commission will consider approving Resolution 2016-11, Merchant Services Agreement with Elavon, Inc.*

STAFF RECOMMENDATION:

1. Approve Resolution 2016-11, authorizing an agreement between the City of Lake Wales and Elavon, Inc. for merchant services.

2. Authorize the City Manager to execute the agreement.

BACKGROUND:

On February 8, 2016, the City issued a request for proposal for merchant services (RFP#16-407). Six companies submitted proposals:

1) Elavon, Inc.
2) First Data
3) Forte Payment System
4) Pace
5) Point & Pay
6) TD Bank

A selection committee selected Elavon, Inc. for recommendation to provide merchant services to the City. The selection committee criteria included expertise, experience and price.

The term of the contract shall be from 06/01/2016 – 06/30/2019, with the option to renew for two (2) additional one year periods, unless canceled in writing by either party upon thirty (30) days written notice to the other party.

FISCAL IMPACT:

Elavon, Inc. shall submit "Interchange plus fee pricing" for merchant services. Elavon, Inc. must pass interchange rates and assessments at true costs and issue interchange credits, when applicable. Elavon, Inc. fee pricing sheet has been attached as Schedule A.

The Finance Department, based on past merchant service transaction volumes, estimated the annual fees charged by Elavon, Inc. at $3,400. First year equipment purchases are estimated to

cost an additional $3,500. These estimates do not include “Interchange Fees” which are set by and passed onto Visa/Master Card/American Express.

ATTACHMENT:

Resolution 2016-11
Elavon, Inc. Terms of Service Agreement
Schedule A
Proposal Ranking Tabulation

Note: Copies of the proposals received are available within the City Clerk’s Office.

RESOLUTION 2016-11

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY AN AGREEMENT BETWEEN THE CITY OF LAKE WALES AND ELAVON, INC. FOR MERCHANT SERVICES.

WHEREAS, the City of Lake Wales seeks a merchant service agreement relating to processing of credit and debit card transactions.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Lake Wales, that:

1. The City Commission approves entering into an Agreement for Merchant Services with Elavon, Inc. This agreement shall be from 06/01/2016 through 06/30/2019 with the option to renew for two (2) additional one year periods, unless canceled in writing by either party upon thirty (30) days written notice to the other party.

2. The City Manager is hereby authorized to execute the above referenced Agreement on behalf of the City of Lake Wales.

THIS RESOLUTION INTRODUCED AND PASSED by the City Commission of the City of Lake Wales, Polk County, Florida at its regular meeting on May 03, 2016.

_____

Mayor/Commissioner, City of Lake Wales

ATTEST:

_____

City Clerk Clara VanBlargan, MMC

Service to be ranked:
Merchant Services

PROPOSAL RANKING TABULATION

Name of Community:	**CITY OF LAKE WALES, POLK COUNTY, FLORIDA**

Firm A:	First Data
Firm B:	Forte Payment Sytem
Firm C:	Pace
Firm D:	Point & Pay
Firm E:	TD Bank
Firm F:	US Bank/Elavon
Firm G:	
Firm H:	

	EVALUATOR	SIGNATURE	A	B	C	D	E	F	G	H
	Dorothy Ecklund		95	90	90	85	100	100		
1.	Patricia Sifuentes-Lopez		95	85	90	80	100	100		
2.	James Slaton		95	90	90	90	100	100		
3.										
4.										
5.	0									
6.	TOTAL		285	265	270	255	300	300		

The 1st Ranked Firm is:	**US Bank/ Elavon**
The 2nd Ranked Firm is:	**TD Bank**
The 3rd Ranked Firm is:	**First Data**

Rankings tabulated by: D Ecklund Date: 4/6/16

Service to be ranked:
Merchant Credit Card Services

MERCHANT SERVICES PROPOSAL RANKING SUMMARY

Name of Community:	**CITY OF LAKE WALES, POLK COUNTY, FLORIDA**
Name of Person Ranking Firms:	**Dorothy Ecklund**

Firm A:	First Data	40 years self,	6.2m locations	63 billion trans	2300 employee
Firm B:	Forte Payment Sytem	18 years,	33000 Clients	22 b. trans	Customer Sur. team 10
Firm C:	Pace	17 years,	N/A	1.8 billion	Management team 3
Firm D:	Point & Pay	15 years,	1800 Clients	15 billion	
Firm E:	TD Bank	27 years,	20300 Clients	4.6 billion	26,000 employees
Firm F:	US Bank/Elavon	25 years,	1.3m locations 1500 bank clients	300 billion	
Firm G:					
Firm H:					

	EVALUATION FACTORS	POSSIBLE POINTS	A	B	C	D	E	F
1.	Past experience and performance	35	35	35	30	35	35	35
2.	Personnel and firms compliance	35	35	35	35	35	35	35
3.	Price Quote	30	25	20	25	15	25	30
4.								
	TOTAL	100	95	90	90	85	100	100

The First Ranked Firm	US Bank/Elavon
The Second Ranked F	TD Bank
The Third Ranked Firm	First Data

Proposal Ranked by: Dorothy Ecklund

Signature: DEcklund

Service to be ranked:
Merchant Credit Card Services

MERCHANT SERVICES PROPOSAL RANKING SUMMARY

Name of Community:	**CITY OF LAKE WALES, POLK COUNTY, FLORIDA**
Name of Person Ranking Firms:	**Patricia Sifuentes - Lopez**

Firm A:	First Data
Firm B:	Forte Payment Sytem
Firm C:	Pace
Firm D:	Point & Pay
Firm E:	TD Bank
Firm F:	US Bank/Elavon
Firm G:	
Firm H:	

	EVALUATION FACTORS	POSSIBLE POINTS	A	B	C	D	E	F	G	H
1.	Past experience and performance	35	35	30	30	30	35	35		
2.	Personnel and firms compliance	35	35	35	30	30	35	35		
3.	Price Quote	30	25	20	30	20	30	30		
4.										
	TOTAL	100	95	85	90	80	100	100		

The First Ranked Firm	US BANK / ELAVON
The Second Ranked F	TD BANK
The Third Ranked Firm	FIRST DATA

Proposal Ranked by: PATRICIA SIFUENTES-LOPEZ
Signature: Patricia Sifuentes-Lopez

Service to be ranked:
Merchant Credit Card Services

MERCHANT SERVICES PROPOSAL RANKING SUMMARY

Name of Community:	**CITY OF LAKE WALES, POLK COUNTY, FLORIDA**
Name of Person Ranking Firms:	**James Slaton**

Firm A:	First Data
Firm B:	Forte Payment Sytem
Firm C:	Pace
Firm D:	Point & Pay
Firm E:	TD Bank
Firm F:	US Bank/Elavon
Firm G:	
Firm H:	

	EVALUATION FACTORS	POSSIBLE POINTS	A	B	C	D	E	F
1.	Past experience and performance	35	35	35	35	35	35	35
2.	Personnel and firms compliance	35	35	35	30	35	35	35
3.	Price Quote	30	25	20	25	20	30	30
4.								
	TOTAL	100	95	90	90	90	100	100

The First Ranked Firm	US Bank
The Second Ranked F	TD Bank
The Third Ranked Firm	First Data

Proposal Ranked by: James Slaton

Signature:

Schedule A

City of Lake Wales, Florida

Merchant Credit Card Services

RFP: No. 16-407

Visa/MasterCard/Discover Interchange Fees	
Interchange Card Level	PASS THROUGH
Association Dues and Assessments	PASS THROUGH
Other Fees	
VISA/MasterCard/Discover/Diners/Carte Blanche Authorization Fee	$0.05 per authorization
VISA/MasterCard/Discover/Diners/Carte Blanche Processing Fee	0.10%
American Express Fee, (authorization)	$0.05/per transaction
Voice Authorization Fee (basic)	$0.75 per authorization
Monthly MID Processing Fee Minimum*	$10.00
Chargeback	$25
Return NSF Item Fees	$20
Supplies and Miscellaneous Fees	
Set-Up Fee	$0.00
Paper Statement fees, if desired –	$5/monthly
Electronic Statement (Merchant Connect Basic)	$0
PCI Monthly Fee (Protection Policy) **	$7/per MID
PCI Non Compliance Fee***	$45.95/monthly per MID
Equipment (EMV) Terminals-Peripherals	
VeriFone Vx520 (Purchase)	$499.00 ea.
VeriFone Vx820 Pin Pad (Purchase)	$323.00 ea.
Triple Lock PINPad and Terminal (Purchase)	$799.00
VeriFone Vx520 (36 month lease)	$28.00/month
VeriFone Vx820 Pin Pad (36 month lease)	$13.00/month
Triple Lock PINPad and Terminal (36 month lease)	$41.00/month
Terminal Security	
Safe-T Silver (Terminal Based P2PE & Tokenization) with $100,000 indemnity (replaces PCI monthly fee)	$15.00 per month
Safe-T Gold (Terminal Based P2PE & Tokenization) with $100,000 indemnity (replaces PCI monthly fee)	$25.00 per month
Terminal Security Injection Fee	$100.00
Processing Software (SAAS)	
Converge Set-Up	$199.00
Converge Monthly Fee	$10.00
Converge Monthly Fee with Tokenization	$29.00
Wireless Access Fee --- Wi-Fi	N/A
Wireless Access Fee --- Cellular	See your existing Cellular Provider
Ingenico iSC 250 Terminal (Purchase)	$588.00
Ingenico iSC 250 Terminal (36 Month Lease)	$22.00/Month
Converge ICMP for Mobile use (Purchase)	$249.00
Converge ICMP for Mobile use (36 Month Lease)	$9.00 / Month
Electronic Reporting Tool (Merchant Connect)	
MerchantConnect Basic	$0.00
MerchantConnect Premium (1-5 users)	$20/month

Schedule A

City of Lake Wales, Florida

Merchant Credit Card Services

RFP: No. 16-407

Pricing Provisions:

1. American Express transactions are submitted directly to American Express for processing, payment and settlement.
2. Rate qualifications require compliance with Visa, MasterCard, Discover Card, Carte Blanche and Diners Club Interchange requirements, including settlement within 24 hours of authorization.

Additional Comments

1. *If the processing cost does not reach $25, per MID we will assess a minimum processing cost of $10.
2. **This fee includes basic coverage in case of a PCI breach. For additional coverage, we offer our Safe-T Silver and Safe-T Gold packages.
3. *** This fee is only assessed if City of Lake Wales has not provided its required PCI SAQ (Self-Assessment Questionnaire) within 90 days of MID issuance. When the City of Lake Wales completes its annual assessment, the fee will drop down to either $7.00, $15.00 (Safe-T Silver) or $25.00 (Safe-T Gold).

Discover, MasterCard and Visa Interchange and Assessment pricing is dependent upon interchange and other fees imposed on all credit card processors by Discover, MasterCard, and Visa and other third parties. Elavon will pass through increases or decreases of these fees imposed by the Discover, MasterCard, and Visa Association upon written notice.

In certain instances Elavon may, through its various sales channels, submit more than one response to this RFP. While Elavon's exceptions to the legal terms and conditions of the RFP may be similar, the remainder of the bid and pricing issues will differ due to the independent responses prepared by each sales channel

Terms of Service

July 2015

TABLE OF CONTENTS

SECTION A – GENERAL PROVISIONS 2
1. DEFINITIONS 2
2. RULES OF CONSTRUCTION 2
3. ACCEPTANCE OF PAYMENT DEVICES 2
4. TRANSACTIONS 2
5. DEMAND DEPOSIT ACCOUNT (DDA) 3
6. SECURITY INTERESTS; RESERVE ACCOUNT; RECOUPMENT AND SET-OFF 4
7. FEES; OTHER AMOUNTS OWED; TAXES 6
8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY 7
9. REPRESENTATIONS AND WARRANTIES 8
10. AUDIT AND INFORMATION 9
11. FRAUD MONITORING 9
12. BUSINESS CONTINUITY 10
13. PERSONAL GUARANTY 10
14. THIRD PARTIES 10
15. TERM AND TERMINATION 11
16. COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE 12
17. USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS 15
18. MISCELLANEOUS PROVISIONS 16
19. PROVISIONS APPLICABLE TO MERCHANT'S ACCEPTANCE OF TRANSACTIONS IN CANADA 20
20. EQUIPMENT LEASING 28
21. ELECTRONIC GIFT CARDS 34
22. BILLER DIRECT SERVICES 37
SECTION B – ELECTRONIC CHECK SERVICES 42
SECTION C – TOKENIZATION SERVICES 44
SECTION D – FANFARE SERVICES 46
SECTION E – AMERICAN EXPRESS ACCEPTANCE PROGRAM 50

SECTION F– TRANSEND PRO HEALTHCARE SERVICES 69
SECTION G – SAFE- T SERVICES 84
SECTION H – GLOSSARY 86

TERMS OF SERVICE

These Terms of Service (TOS) and the other portions of the Agreement govern the Merchant's participation in the Program. The TOS is incorporated into and made part of the Agreement and the signature by an authorized representative of the Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction, shall be the Merchant's acceptance of and agreement to abide by the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS shall be effective. Merchant acknowledges that it has received, understands, and agrees to be bound by the Agreement.

SECTION A - GENERAL PROVISIONS

1. **DEFINITIONS.** Definitions used within this TOS are listed alphabetically in the Glossary.

2. **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day," unless specifically stated otherwise. In the event of a conflict between the terms of Section (A) – General Provisions, and any subsequent Section of the TOS, the terms of the subsequent Section shall prevail.

3. **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as a form of payment from its Customers. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Payment Device Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the "MOG"), incorporated herein and located at our website https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf. Each schedule, exhibit, addendum or attachment to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Merchant Application.

4. **TRANSACTIONS.**

   a. **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing to Merchant by Elavon from time to time.

   b. **Settlement of Transactions**.

      i. **Deposits**. Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. For purposes of Transactions in Canada, Merchant agrees that the Agreement is a contract for the advance of credit to Merchant within the meaning of Section 11.01(b) of the *Companies' Creditors Arrangement Act* (Canada) and within the meaning of Section 65.1(4)(b) of the *Bankruptcy and Insolvency Act* (Canada). Subject to this Section, Elavon and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide Merchant provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement). Merchant acknowledges that its obligation to Elavon and Member for all amounts owed under the Agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.

      ii. **Provisional Credit**. Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Elavon and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Elavon or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse

provisional credit for any Transaction. Further, Elavon may delay Merchant-issued Customer credits for up to five (5) business days for accounting verification. Customer credits issued by Merchant to PIN-Debit Cards will not be subject to this delay. Member or Elavon may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Elavon's sole discretion.

iii. **Original Transaction Receipts**. Under no circumstances will Elavon or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Elavon and Member.

c. **Processing Limits**. Elavon may impose a cap on the dollar amount of Transaction Receipts that it will process for Merchant as indicated on the Merchant Application as Merchant's annual volume or as otherwise established by Elavon. This limit may be changed by Elavon from time to time, without prior notice to Merchant. If Merchant exceeds the established limit, Elavon may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to Merchant or hold those deposits in a separate account or Reserve Account.

d. **Chargebacks**. Merchant is fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including all Chargebacks. Merchant will pay Elavon and Member for all Chargebacks. Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason. Merchant authorizes Elavon and Member to offset from funds due Merchant for Transaction activity or to debit the DDA, the Reserve Account, or any other account held at Member or at another financial institution for the amount of all Chargebacks including, as applicable, any currency fluctuations. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks. Guarantors are personally liable to Elavon and Member for all Chargebacks.

5. DEMAND DEPOSIT ACCOUNT (DDA).

a. **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement. Merchant irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement, to initiate ACH debit and credit entries to the DDA, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of the ACH network, in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Elavon and Member have been paid in full. Merchant also authorizes Elavon's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. Merchant must obtain prior consent from Member and Elavon to change the DDA. If Merchant does not get that consent, Elavon or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Elavon and Member have the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the new DDA. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. Merchant may request from

Elavon written confirmation of Elavon's and Member's consent to change the DDA. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (A)(4) of the TOS. Elavon and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. To the extent required, Merchant authorizes Member or Elavon to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH authorization. To the extent required, Merchant authorizes and appoints Member to act as its agent to collect Transaction amounts from the Issuer, the Customer or the Customer's financial institution. Member, in its sole discretion or at Elavon's direction, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Elavon and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement.

b. **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and immediately notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days after the month end date on the statement containing the asserted error. If Merchant fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Member or Elavon for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of Merchant's written notice. During that sixty (60) day period, Elavon will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Elavon.

c. **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA. Merchant authorizes Elavon and/or Member to direct the depository institution to hold funds in the DDA in an amount which Elavon and/or Member, in their respective discretion, either individually or collectively, deem sufficient to fully protect Elavon's and Member's rights under the Agreement or to block or restrict Merchant's or others' access to funds in the DDA (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from Elavon or Member.

d. **Indemnity.** Merchant will indemnify and hold harmless Elavon and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. Merchant will also indemnify and hold harmless the depository institution at which it maintains its DDA for acting in accordance with any instruction from Elavon and/or Member regarding the DDA.

6. SECURITY INTERESTS; RESERVE ACCOUNT; RECOUPMENT AND SET-OFF.

a. **Security Interests**.

i. **Security Agreement**. The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Elavon and Member a security interest in and lien upon (and in Quebec, a hypothec on): (a) all funds at any time in the Reserve Account or DDA, regardless of the source of such funds, and (b) all funds underlying

present and future Transaction Receipts; and (c) any amount which may be due to Merchant under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other security to Elavon and Member, upon request, to secure its obligations under the Agreement. These security interests and liens (and hypothecs) will secure all of Merchant's obligations under the Agreement and any other agreements now existing or later entered into between Merchant and Elavon and/or Member including Merchant's obligation to pay any amounts due and owing to Member or Elavon. Elavon and Member may execute this security interest (and hypothecs), without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.

ii. **Perfection**. Upon request of Elavon or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest (and hypothec). Merchant represents and warrants that no other person or entity has a security interest (or hypothec) in the Secured Assets. With respect to such security interests and liens (and hypothecs), Elavon and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Elavon and Member written consent prior to granting a security interest (or hypothec) of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Elavon and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Elavon or Member. Merchant authorizes and appoints Elavon as Merchant's attorney in fact to sign Merchant's name to any control agreement used for the perfection of any security interest or lien (or hypothec) granted hereunder.

b. **Reserve Account**.

i. **Establishment**. Elavon and/or Member may establish a Reserve Account at any time for the purpose of providing a source of funds to pay Member and Elavon for any and all amounts owed by Merchant. The Reserve Account shall be maintained with sums sufficient to satisfy Merchant's current and/or future obligations as determined by Member or Elavon. Member and Elavon shall have sole control of the Reserve Account. Member and/or Elavon may, at any time, require that the amount on deposit in the Reserve Account be increased.

ii. **Funding**. Member and Elavon may fund the Reserve Account by any one or more of the following means.

aa. Member and Elavon may require Merchant to deposit into the Reserve Account funds in an amount determined by Elavon;

bb. Member and Elavon may debit the DDA in any amount; or

cc. Member and Elavon may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.

iii. **Use of Funds in Reserve Account**. Member or Elavon may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes or future amounts Merchant will owe under the Agreement or any other agreement between Merchant and Member or Elavon. Also, Member or Elavon may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Elavon. Further, Merchant agrees that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

iv. **Termination of Reserve Account**. Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before two-hundred-seventy (270) days following the effective date of termination of the Agreement.

c. **Recoupment and Set-off.** Member and Elavon have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Merchant under the Agreement or any other agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 or applicable law to Elavon and Member, and in order to ensure that Elavon and Member do not and are not obliged to advance credit to Merchant, Merchant must create or maintain the Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to Elavon and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the initiation of the Bankruptcy Proceeding or the filing of the petition, motion, request for stay or other proceeding in connection with a Bankruptcy Proceeding.

d. **Remedies Cumulative.** The rights conferred upon Member and Elavon in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member and Elavon under the Agreement, at law or in equity. Rather, each and every right of Member and Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

7. FEES; OTHER AMOUNTS OWED; TAXES.

a. **Fees.** Merchant will pay Member and Elavon fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup form(s). Such fees will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement. In addition, Merchant will pay Elavon at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on Merchant's account. Elavon may adjust the fees in accordance with Section (A)(18)(p) below.

b. **Other Amounts Owed.** Merchant will immediately pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Merchant's Transaction processing), assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH, and in the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Merchant will immediately pay Elavon or Member such amount. Elavon will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

c. **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If Merchant is a tax-exempt entity, Merchant will provide Elavon and Member with an appropriate certificate of tax exemption.

8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

a. **Accuracy of Information**. Merchant represents and warrants to Member and Elavon that all information provided to Elavon in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is true and complete and properly reflects the business, financial condition and principal partners, owners, officers, or ownership of Merchant. Merchant must promptly notify Elavon in writing of any changes to such information, including, without limitation, any additional location or new business at which Merchant desires to accept Payment Devices, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how Transactions are completed (i.e., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will provide any additional information requested by Elavon within a reasonable time. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to Merchant's business information. Merchant will defend, indemnify, and hold harmless Member and Elavon for all losses and expenses incurred by Member or Elavon arising out of any such change, whether or not reported to Elavon, or Merchant's failure to provide requested information. Merchant will not submit Transactions for processing to Elavon or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Elavon. Elavon may immediately terminate the Agreement upon notification by Merchant of a change to the information in the Merchant Application. Merchant authorizes Elavon and Member to contact credit reporting agencies and Merchant's creditors to make inquiries and obtain reports regarding Merchant's credit standing upon Elavon's or Member's receipt of the Merchant Application.

b. **Indemnification**. Merchant will be liable for and indemnify, defend, and hold harmless Elavon, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Elavon in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by Merchant of the Agreement and those related to any Bankruptcy Proceeding.

c. **Limitation of Liability**. Merchant acknowledges that Elavon's and Member's fees for the Processing Services provided to Merchant by Elavon and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by Merchant during the last three (3) months. In no event will Elavon, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.

d. **Performance.** Elavon and Member will perform all services in accordance with the Agreement. Elavon makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **Elavon and Member disclaim all implied warranties, including those of merchantability and fitness for a particular**

purpose. Neither Elavon nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Elavon or Member and without the fault or negligence of Elavon or Member.

9. REPRESENTATIONS AND WARRANTIES. Merchant represents and warrants to Elavon and Member as of the time the Agreement is effective, and reaffirm to Elavon and Member each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:

a. **Organization**. Merchant is a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized in the United States, or validly existing and federally organized in Canada or in a province or territory of Canada, as applicable.

b. **Corporate Power**. Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in the Agreement to all provisions of the Agreement and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon, now or in the future. Further, Merchant represents and warrants that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.

c. **No Litigation**. There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would adversely affect Merchant's financial condition or operations. Merchant has never (i) been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) been named to the Consortium Merchant Negative File maintained by Discover, or (iii) been placed on or named to any other negative or terminated merchant file of any other Payment Network, or, if Merchant has, Merchant has disclosed that fact to Elavon in writing.

d. **Transactions**. All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from Merchant or a return or adjustment related to such purchase. Merchant will not submit unlawful or illegal Transactions. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to Elavon and Member. No Transaction involves a Customer obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing with Elavon.

e. **Compliance with Laws and Regulations**. Merchant will comply with all Laws and Payment Network Regulations.

f. **Business Use**. Merchant is obtaining and using the Processing Services from Elavon for business purposes only and to facilitate lawful business Transactions between Merchant and Merchant's Customers. Merchant will not submit Transactions for processing to Elavon or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Elavon. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.

g. **Responsibility for Actions**. Merchant is responsible for any violations of the Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without

Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control.

10. AUDIT AND INFORMATION.

a. **Audit.** Merchant authorizes Elavon and Member to perform an audit of its business to confirm compliance with the Agreement. Merchant will obtain and submit a copy of an audit from a third party acceptable to Elavon of the financial, physical security, information security, and operational facets of Merchant's business at its expense when requested by Elavon or Member. Further, Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations.

b. **Information**.

i. **Authorizations**. Merchant authorizes Elavon and Member to make, from time to time, any business and personal credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.

ii. **Financial Information**. Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant further agrees to provide to Elavon and Member such other information regarding Merchant's financial condition as Elavon and/or Member may request from time to time. Within one-hundred twenty (120) days after the end of each fiscal year, Merchant will furnish Elavon or Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

iii. **Merchant Information**. Merchant agrees that any Merchant financial information, Transaction Data, and other information regarding Merchant, its principles, affiliates, or agents that Merchant or Merchant principle provides to Elavon or Member on the Merchant Application or otherwise obtained by Elavon or Member in connection with the Agreement may be: (i) used by Elavon, Member, and their respective service providers, affiliates, agents, and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes and to maintain Merchant's account pursuant to this Agreement; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) utilized to enhance or improve Elavon's products or services, generally; (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement. Elavon may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Elavon's customers or specific segments of Elavon's Customers.

c. **Customer Identification**. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.

11. FRAUD MONITORING. Merchant is solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors, including

Value Added Servicers, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to Merchant's Transactions, for fraudulent or other suspicious activity. Elavon and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.

12. **BUSINESS CONTINUITY**. Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. Neither Elavon nor Member has a duty to recreate lost Transactions.

13. **PERSONAL GUARANTY**. As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Merchant, the designated Guarantor(s), jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance by Merchant of each of its duties and obligations to Elavon and Member pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice. No act or thing, except full payment and discharge of all of Merchant's duties and obligations to Elavon and Member, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Merchant pertaining to Merchant's duties and obligations to Elavon and Member, any evidence thereof, and any security therefore, except the defense of discharge by payment. Guarantor(s) understands further that Elavon and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Merchant or any other person or entity responsible therefore or any security held by Elavon, Member, or Merchant. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guaranty and of the creation and existence of Merchant's duties and obligations to Elavon and Member; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing Merchant's duties and obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); and (iv) **the right to trial by jury in action in connection with this Personal Guaranty.** This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives, and assigns, and may be enforced by or for the benefit of any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Merchant, is consideration for the Personal Guaranty and that each Personal Guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guaranty.

14. **THIRD PARTIES**.

a. **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Elavon and Member from

and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Merchant's use of any Value Added Servicer is at Merchant's risk. Neither Elavon nor Member is responsible for any Value Added Servicer or for the products or services offered by such Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon. A Value Added Servicer's access to or ability to integrate with the products, services, and systems of Elavon may terminate at any time and Elavon shall have no obligation to advise Merchant of such termination.

b. **Use of POS Devices Provided by Others**. In addition to the foregoing, if Merchant uses a Value Added Servicer for the purposes of data capture and/or authorization, Merchant agrees: (i) that the third party providing such services will be Merchant's agent in the delivery of Transactions to Elavon and Member via a data processing system or network compatible with Elavon's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Elavon will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

c. **Liability for Direct Agreement with Third Party**. Elavon and Member have no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party, including any Value Added Servicer, even if Elavon collects fees or other amounts from Merchant with respect to such hardware, software or services.

15. TERM AND TERMINATION.

a. **Term**. Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the date of acceptance of the Merchant Application by Elavon and Member, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive two (2) year terms ("Renewal Term") unless terminated as set forth below. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.

b. **Termination**.

i. **Merchant**.

aa. The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least thirty (30) days prior to the expiration of the then current term.

bb. The Agreement may be terminated by Merchant in the event of a material breach of the terms of the Agreement by Member or Elavon, provided Merchant gives Member and Elavon written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the party Merchant claims to be in breach of the Agreement.

ii. **Elavon or Member**.

aa. The Agreement may be terminated by Elavon or Member at any time with or without cause during the Initial Term or any Renewal Term.

bb. Elavon's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this Section shall not limit any other right of Elavon or Member to terminate the Agreement expressed elsewhere.

iii. **Notice of Termination**. Notice of termination by Merchant, Elavon, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Merchant's termination request shall be completed on a form available from Elavon, but at a minimum, must include the name of the Merchant and Merchant Identification Number, and must be signed by the principal owner(s) of Merchant. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive two (2) year Renewal Terms effective on the date of reinstatement.

c. **Action Upon Termination**.

i. **Accounts**. All Merchant's obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant pays all amounts Merchant owes Elavon or Member or amounts for which Merchant is liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than one-hundred-eighty (180) days from termination. If a Reserve Account is established by Elavon, then any balance remaining after Chargeback rights have expired and all other amounts owed by Merchant has been paid will be disbursed to Merchant.

ii. **Leased Equipment**. If Merchant's equipment is leased, Merchant is obligated to honor the terms and conditions of Section (A)(20) below. If Merchant's Leased Equipment is owned by Elavon, Merchant must return all equipment owned by Elavon within ten (10) business days after termination of the Agreement and immediately pay Elavon any amounts Merchant owes for such Leased Equipment.

iii. **Return to Elavon**. All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within ten (10) business days after termination of the Agreement. Merchant will be fully liable for any and all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

16. COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.

a. **Compliance with Laws and Payment Network Regulations.** Merchant agrees to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Elavon. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. Merchant further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic funds transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements

relating to the content of Transaction Receipts provided to Customers. Merchant will assist Member and Elavon in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. Merchant will execute and deliver to Member and Elavon all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

b. **Privacy Laws in the United States (if applicable)**. In addition to Section (A)(17)(b), Merchant must take all commercially reasonable steps to protect the confidentiality of Customer and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Customer and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.

c. **Privacy Laws in Canada (if applicable).** Merchant represents, covenants and agrees that it is in compliance with all applicable privacy laws, including without limitation the Personal Information Protection and Electronic Documents Act (Canada), and that any personal information of a Customer that may be communicated or disclosed to Elavon under or in connection with the Agreement or any services to be provided by Elavon to Merchant has been obtained in compliance with such laws and that Elavon will not be in breach of any such laws by receiving and using such information in connection with performing its obligations under or in connection with the Agreement or any services to be provided by Elavon to Merchant.

d. **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed and updated by Visa and American Express, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by Elavon and Member, the listing itself and Merchant waives and holds harmless Elavon and Member from all claims and liabilities Merchant may have as a result of such reporting.

e. **Security Program Compliance**. Merchant must comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Merchant also shall ensure that all Value Added Servicers and third parties from whom Merchant procures third party POS Devices comply with the requirements of the Security Programs. Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents. Should Merchant participate in a program with any other Credit Card Association or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, Merchant must comply therewith and ensure that Merchant's officers, directors, shareholders, employees, and agents, including Value Added Servicers or third party POS Devices, also comply with the program requirements of such Payment Network.

f. **Data Compromise**.

i. **Notice and Investigation**. Merchant acknowledges and agrees that Cardholder Data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Elavon and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used, including from systems within Merchant's or any Agent's control, without authorization from Merchant or Merchant's Agents (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances; (b) the form, number and range of compromised account information; (c) specific account numbers compromised; and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Elavon and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Elavon and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Elavon and Member may request. In addition, Merchant must provide all audit reports to Elavon and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Elavon and Member. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Merchant will allow Elavon or Member to perform or have performed such audits at Merchant's expense.

ii. **Preservation of Records**. In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with Elavon and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.

iii. **Liability for Data Incident**. Without waiving any of Elavon's and Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Elavon or Member incur as a result of such Data Incident, including any fees, fines, penalties, assessments or other amounts levied or collected by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.

iv. **Data Breach Reimbursement**. Merchant may be eligible to receive reimbursement or setoff from amounts owed to Elavon for: (a) any sums reasonably required to conduct an independent security audit of Merchant to identify the source of the Data Incident, and (b) any fines and assessments levied or collected by the Payment Networks in connection with a Data Incident (collectively, "Data Breach Reimbursement"). In order to be eligible to receive Data Breach Reimbursement, Merchant must: (x) be enrolled in Elavon's PCI Compliance Program and (y) be classified as either a Level 3 or Level 4 merchant by the Payment Networks. If Merchant is eligible for Data Breach Reimbursement, except as otherwise provided in the Agreement, the maximum amount of Data Breach Reimbursement available to Merchant is $20,000.

g. **Office of Foreign Assets Control Compliance**. Elavon and Member are entities governed by the Laws of the United States of America and as such, neither Elavon nor Member may provide any products or services to Merchant or its Customers that contravene the Laws of the United States of America, including, without limitation, the Laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any successor thereto.

17. USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

a. **Use of Trademarks**. Merchant will prominently display the promotional materials provided by Elavon in Merchant's place of business as may be required or requested by the Payment Networks. Merchant's use of Visa, MasterCard, and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Merchant's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials, provided by Visa, MasterCard, Discover Network, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network, or such other Payment Networks endorse any goods or services other than their own and Merchant may not refer to Visa, MasterCard, Discover Network, or any other Payment Networks in stating eligibility for Merchant's products or services.

b. **Confidentiality**.

i. **Customer and Transaction Information**. Merchant shall, at all times protect the confidentiality of Customer and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant will not disclose Customer or Transaction information to any third party, except to an agent of Merchant approved by Elavon that is assisting in completing a Transaction, or as required by Laws or Payment Network Regulations. Merchant must maintain all systems and media containing Customer and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Customer and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that Merchant no longer deems necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Customer and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. Merchant may not print on any Transaction Receipt or other document that is given to the Customer, retained by Merchant, or transferred to a third party, the entire contents of the magnetic stripe or the CVV2/CVC2/CID data elements. In accordance with Section (A)(16)(e), Merchant shall immediately notify Elavon if Merchant knows or suspects that any Customer or Transaction information has been accessed by unauthorized persons or has been used for any purpose not permitted herein whether such access or use occurred at: (i) Merchant; (ii) a Value Added Servicer; (iii) Elavon or Member; or (iv) elsewhere.

ii. **Bankruptcy**. In the event of failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Customer or Transaction information to third parties, and Merchant must:

aa. Return this information to Elavon; or

bb. Provide acceptable proof of destruction of this information to the Elavon.

iii. **Elavon or Member Confidential Information**. Merchant agrees to protect Elavon's and Member's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate Elavon's or Member's Confidential Information, except in connection with the performance of its obligations under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

c. **Passwords**. If Merchant receives a password from Elavon to access any of Elavon's databases or services Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Elavon if Merchant believes the Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold Elavon and Member harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.

d. **Proprietary Interest**. Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.

18. MISCELLANEOUS PROVISIONS.

a. **Entire Agreement**. The Agreement (including all attachments, exhibits, addenda and other documents incorporated by reference into the Agreement, attachments, exhibits or addenda), Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Personal Guaranty signed by a Guarantor, which Personal Guaranty shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Personal Guaranty, the following order of priority will apply: (i) any amendment to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) any Merchant Agreement or Merchant Processing Agreement; (vi) the Merchant Operating Guide; and (vii) any other guides or manuals provided to Merchant from time to time.

b. **Governing Law in the United States (if applicable)**. The Agreement will be governed by and construed in accordance with the Laws of the State of Georgia with respect to Transactions occurring in the United States, except that Section (A)(18)(g) shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Any challenge to the enforceability of the agreement to arbitrate contained in

Section (A)(18)(g) of the Agreement, on any ground, shall be brought in either the Superior Court of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia, and in no other court, and each of the parties to the Agreement consents to the exercise of personal jurisdiction by these courts and waives all objections based on a lack of personal jurisdiction, venue or the inconvenience of the forum. Merchant, hereby waives any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant represents that this waiver is knowingly, willingly and voluntarily given.

c. **Jurisdiction and Venue; Governing Law in Canada (if applicable).** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario with respect to Transactions occurring in Canada, except for the hypothec created pursuant to Section (A)(6)(a)(i) (the "Québec Hypothec") which will be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable in the Province of Québec. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the Province of Ontario and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the Province of Ontario. Any action or proceeding relating to or arising from the Agreement (other than collection actions by Elavon or Member relating to amounts owed by Merchant under the Agreement) must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties hereby attorn to the exclusive jurisdiction of the courts of Ontario (or of the courts of Québec with respect to the Québec Hypothec). Merchant, Member and Elavon hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Member and Elavon each represents to the other that this waiver is knowingly, willingly and voluntarily given.

d. **Exclusivity**. During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Elavon and Member as contemplated by the Agreement without Elavon's written consent.

e. **Construction**. Any alteration or strikeover in the text of the Agreement will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

f. **Assignability**. The Agreement may be assigned by Member or Elavon, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. If Merchant sells its business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.

g. **Arbitration**. All claims or controversies, or other matters in question, between the parties arising out of or related to the Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association as modified by the Agreement. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Georgia, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Georgia could order or grant, including, without limitation, specific performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process. The arbitrator shall have no authority to decide claims on a class action basis. An arbitration can only decide our or Merchant's claim and may not consolidate or join the claims of other persons who may have similar claims. Merchant may not assert a claim in arbitration on behalf of any third party or represent any class of claimants in an

arbitration brought pursuant to the Agreement. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section (A)(18)(b), any arbitration shall be governed by the Federal Arbitration Act.

h. **Notices**. Any written notice to Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Elavon. Any written notice to Elavon, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.

i. **Bankruptcy in the United States (if applicable)**. Merchant will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Elavon on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. Merchant acknowledges that the Agreement constitutes a contract to extend credit or other financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy. Such financial accommodations include, but may not be limited to, the incurrence by Elavon from time to time of credit risk associated with funds transfers and Elavon's compliance with Payment Network Regulations relating to Chargebacks. Merchant further acknowledge that such financial accommodations constitute an integral part of the Agreement.

j. **Bankruptcy in Canada (if applicable)**. Merchant will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Elavon on the list and matrix of creditors as filed with any bankruptcy, commercial or civil court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. Merchant agrees that the Agreement is a contract for the advance of credit to Merchant within the meaning of Section 11.01(b) of the *Companies' Creditors Arrangement Act* (Canada) and within the meaning of Section 65.1(4)(b) of the *Bankruptcy and Insolvency Act* (Canada) and cannot be assigned by Merchant in the event of a Bankruptcy Proceeding relating to Merchant. Merchant hereby acknowledges but that for the agreement in the immediately preceding sentence, Member and Elavon would not have entered into the Agreement.

k. **Attorneys' Fees**. Merchant will be liable for and will indemnify and reimburse Member and Elavon for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Elavon: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Merchant to Member or Elavon; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim, proceeding, or cause of action brought against Elavon or Member arising out of Merchant's obligations under this Agreement.

l. **Customer Contact.** Merchant authorizes Member and Elavon to contact its Customers or their Issuer if Member or Elavon determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.

m. **Telephone Recording.** Merchant authorizes Elavon to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Elavon's discretion.

n. **Information Sharing.** Merchant understands and agrees that Elavon may disclose any information gathered by Elavon to (i) Elavon's "affiliates" (i.e., companies related to Elavon by common control or ownership) that offer financial products or services, including those identified in the Agreement and to Elavon's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Elavon in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

o. **Communication with Merchant.** Merchant agrees that Elavon and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.

p. **Amendments.** Member and Elavon may propose amendments or additions to the Agreement. Member or Elavon will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Notwithstanding any limitations set forth in the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided. Further, Elavon is entitled to pass through to Merchant any fee increases imposed upon Elavon by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors.

q. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. Neither the failure, the delay by Elavon or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by Merchant must be signed by Elavon.

r. **Independent Contractors.** Elavon, Member, and Merchant will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.

s. **Survival.** All of Merchant's obligations to Elavon and Member shall survive termination of the Agreement, including, without limitation, Sections (A)(4)(a)-(d), (A)(5)(a)-(d), (A)(6)(a)-(d), (A)(7)(a)-(c), (A)(8)(a)-(d), (A)(9)(g), (A)(13), (A)(14), (A)(15), (A)(17)(a)-(d), (A)(18)(b), (A)(18)(g), and (A)(18)(k) of the TOS.

t. **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

u. **Force Majeure**. None of the parties hereto shall be considered in default in performance of its obligations to the extent such performance is delayed by force majeure affecting the party's ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject

matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of the parties hereto.

v. **Expenses**. Except as otherwise specifically provided in the Agreement, each party shall pay its own costs and expenses in connection with the Agreement and the transactions contemplated hereby, including all attorneys' fees, accounting fees and other expenses.

w. **No Third Party Beneficiaries**. No provisions of the Agreement shall be construed to confer any rights or benefits on any Person not a party to the Agreement or a permitted assignee or successor of a party to the Agreement, unless such rights or benefits are expressly extended to third parties.

19. PROVISIONS APPLICABLE TO MERCHANT'S ACCEPTANCE OF TRANSACTIONS IN CANADA

a. **Pre-Authorized Debits (PADs).** Merchant authorizes Member, Elavon, and their respective vendors and agents to initiate debit and credit entries to the DDA, the Reserve Account, or any other account maintained by Merchant at any institution that is a member of the CPA, all in accordance with the Agreement. Merchant agrees that any withdrawal by Member, Elavon and their respective vendors and agents in accordance with the Agreement are PADs for business purposes, as defined under Rule H1 of the CPA. **Merchant hereby waives the right to receive advance notice from Member, Elavon and their respective vendors and agents of any and all such debits.** This authorization will remain in effect after termination of the Agreement and until all of Merchant's obligations to Elavon and Member have been paid in full. If Merchant changes the DDA, this PAD authorization will apply to the new account and Merchant shall provide Elavon and Member in writing such information regarding the new DDA as they deem necessary. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. If Merchant changes the DDA, Merchant agrees that it is responsible for all costs incurred by Member and/or Elavon in connection with Merchant's decision to change the DDA. Merchant may revoke the PAD authorization upon thirty (30) days' prior written notice to Elavon, but any such revocation shall constitute a material breach of the Agreement. Merchant may obtain a sample cancellation form, as well as further information on Merchant's right to cancel a PAD authorization by contacting Merchant's financial institution or by visiting www.cdnpay.ca. Merchant has certain recourse rights if any debit does not comply with the Agreement. For example, Merchant has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on Merchant's recourse rights, Merchant may contact its financial institution or visit www.cdnpay.ca.

b. **Amendments.** This Section applies to Merchants in Canada in lieu of Section (A)(18)(p) above. Member and Elavon may propose amendments or additions to the Agreement. Member or Elavon will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided; provided, that, with respect to Credit Card and Debit Card Transactions, changes to fees or the introduction of new fees authorized by the Agreement will be effective upon ninety (90) days notice to Merchant, unless a later effective date is provided. Further, Elavon is entitled to pass through to Merchant any fee increases imposed upon Elavon by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors; provided, that, with respect to Credit Card and Debit Card Transactions, any such fee increases will be effective upon ninety (90) days notice to Merchant.

c. **Termination.** In addition to Merchant's other termination rights in the Agreement, the Agreement may be terminated by Merchant without penalty in the event that Elavon or Member notifies Merchant of a fee increase or the introduction of a new fee; provided that Merchants may not terminate the Agreement in connection with new fees or fee increases made in accordance with pre-determined fee schedules. Merchant must notify Elavon and Member of its intent to terminate the Agreement within ninety (90) days of receiving notice of the new fee or fee increases from Elavon or Member.

d. **Personal Guaranty**. As a primary inducement to Elavon and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Elavon or Member to or for the benefit of Merchant, the designated Guarantor(s), jointly and severally, and in Quebec solidarily, unconditionally and irrevocably, guarantee the continuing full and faithful payment and performance by Merchant of all duties, debts, liabilities and obligations of Merchant to Elavon or Member, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by Merchant to Elavon or Member in any currency, and wherever incurred, and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by Merchant to Elavon or Member in any currency pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice (collectively, the "Obligations"). The Guarantor(s) also unconditionally agrees that, if Merchant does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Guarantor(s) for any reason under the guarantee set forth above, the Guarantor(s) shall indemnify Elavon and Member immediately on demand against any cost, loss, damage, expense or liability suffered by Elavon or Member as a result of Merchant's failure to do so. The liability of the Guarantor(s) hereunder is unlimited. No act or thing, except the indefeasible and full payment and discharge in cash of all of the Obligations, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Merchant pertaining to the Obligations, any evidence thereof, and any security therefore, except the defense of discharge of the Obligations by full and indefeasible payment in cash. Guarantor's(s') liability to pay or perform the Obligations shall arise immediately after demand has been made in writing on Guarantor(s). Guarantor(s) understands further that Elavon and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Merchant or any other person or entity responsible therefore or any security held by Elavon, Member, or Merchant. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guarantee and of the creation and existence of the Obligations; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing the Obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); (iv) without limiting in any way any other waivers of defenses set out herein, any and all defenses available at equity or common law to the fullest extent permitted under applicable law; and (v) **the right to trial by jury in action in connection with this Personal Guarantee.** Guarantor(s) agrees that this is a continuing guarantee and that Guarantor's(s') liability under this Personal Guarantee will not be discharged, affected or released by: (a) any variation, renewal, extension or replacement of the Agreement, other agreements or any security (including any other guarantees) held by Elavon or Member; (b) any extension of time or other indulgence given to Merchant or others under the Agreement or any security; (c) any delay or refusal by Elavon to require or enforce payment of the Obligations or any security; (d) the taking, non-perfecting, or giving up of any security or by any dealings with Merchant or others respecting the Obligations, the Agreement or any security; (e) the death or legal incapacity of the Guarantor(s) or the dissolution, amalgamation, other fundamental change, death or legal incapacity, as the case may be, of Merchant; or (f) any event which results in Merchant not being under a legal obligation to make any payment or perform any obligation under the Agreement. Guarantor(s) renounces the benefit of discussion and division. This Personal Guarantee will bind all heirs, administrators, estate trustees, representatives, permitted successors, and assigns of Guarantor(s), and may be enforced by or for the benefit of

any successors in interest to Elavon or Member. Guarantor(s) understands that the inducement to Elavon and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Merchant, is consideration for the Personal Guarantee and that each Personal Guarantee remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guarantee. **Guarantor hereby authorizes any credit reporting agency or bureau to furnish Elavon and Member upon request with a credit bureau report that relates to the Guarantor.** To the extent that any limitation period applies to any claim for payment of obligations or remedy for enforcement of obligations under this Personal Guarantee, each Guarantor agrees that: (a) any limitation period is expressly excluded and waived entirely if permitted by applicable law; (b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law; (c) any limitation period applying to this Personal Guarantee expressed to be payable on demand shall not begin before an express demand for payment of the relevant obligations is made in writing by Elavon or Member to the Guarantor; (d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment by the Guarantor of its obligations; and (e) each of this Personal Guarantee and the Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies to it. This Personal Guarantee has been negotiated by the Guarantor or reviewed by the Guarantor with the benefit of independent legal counsel and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Personal Guarantee.

e. **Language.** The parties hereby acknowledge that they have required the Agreement and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.

f. **Equipment Leasing in Canada.** If Lessee has elected to lease any Leased Equipment from Lessor, the terms and conditions set forth in Sections (A)(19)(g) through (w) below apply in lieu of Section (A)(20) below.

g. **Non-Cancellable Lease.** This lease cannot be cancelled by Lessee during the term hereof. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Leased Equipment on terms and conditions set forth herein. The parties agree that the lease of the Leased Equipment in the lease is, for all purposes, a financial lease under a financial lease agreement (as such terms are used in the Bank Act (Canada) and the regulations thereunder). Lessee acknowledges acceptance and receipt of the Leased Equipment and certify that the Leased Equipment shall be used for business purposes only. **Lessee hereby authorizes any credit reporting agency or bureau to furnish to Lessor upon Lessor's request a credit bureau report that relates to Lessee.**

h. **No Warranties by Lessor**. Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever, including the suitability of the Leased Equipment, its durability, its condition, and/or its quality. Lessee leases the Leased Equipment "as-is." Lessor disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Lessor shall not be liable to Lessee or others for any loss, damage or expense of any kind or nature caused directly or indirectly by any Leased Equipment however arising, or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Leased Equipment or any other matter by the supplier of the Leased Equipment (the "Vendor"), the manufacturer or others shall be binding on Lessor nor shall the breach of such relieve Lessee of, or in any way affect, any of Lessee's obligations to Lessor herein. If the Leased Equipment is not satisfactory for any reason, Lessee shall make any claim on account thereof solely against the Vendor and/or manufacturer and Lessee shall nevertheless perform all of Lessee's obligations under the lease. Lessee will not assert any claim whatsoever against Lessor for any loss whatsoever including without limitation any loss of anticipatory profits or any other indirect, special, or consequential damages. Lessor makes no

warranty as to the treatment of the lease for accounting or tax purposes. Neither Vendor nor any agent of Vendor is an agent of Lessor or is authorized to waive or alter any term or condition of the lease.

i. **Ordering Leased Equipment; Lessor's Right to Terminate.** Lessee has selected the Leased Equipment and the Vendor and requested that Lessor purchase the Leased Equipment from the Vendor and arrange for delivery to Lessee at Lessee's expense. If within forty-five (45) days from the date Lessor orders the Leased Equipment, it has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on ten (10) days written notice to Lessee terminate the lease and Lessor's obligations to Lessee.

j. **Term and Payments.** The sum of all periodic monthly installment payments indicated herein or on any application shall constitute the aggregate payments under the lease. The term of the lease shall commence as of the date that the lease is accepted by Lessor (the "Commencement Date"), and shall continue until all of Lessee's obligations under the lease have been fully performed. The installment payments shall be payable monthly in advance, the first payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments shall be due on the same day of each successive month thereafter until all of the balance of the payments and any additional payments or expenses payable by Lessee under the lease have been paid in full. All payments shall be made to Lessor by pre-authorized debit as contemplated herein or at the address set forth herein or such other address as Lessor may designate in writing. Lessee hereby authorizes Lessor and its agents to withdraw without advance notice to Lessee, which notice Lessee waives, any amounts, including without limitation any and all taxes now due or imposed, owed by Lessee in conjunction with the lease, by initiating periodic debit entries to the DDA all in accordance with and subject to the terms of Section (A)(19)(a) above. Upon a Default (as defined below), Lessee authorizes debit of the DDA for the full amount due under the lease. Lessee agrees that any withdrawals authorized above are pre-authorized debits for business purposes, as defined under Rule H1 of the CPA. Lessee represents, warrants and guarantees that all persons whose signatures are required to sign on the DDA have signed the lease and that the DDA is a business purpose account. By providing and delivering this authorization to Lessor, this constitutes delivery to the financial institution that maintains the DDA. A lease payment (whether paid by debit or other means) that is not honored by Lessee's financial institution for any reason will be subject to a returned item service fee in the amount of $20 payable by Lessee to Lessor, the amount of which may be debited from the DDA. Should it be necessary to switch to statement billing from pre-authorized debits, Lessor is authorized to add a $10.00 per month service charge to the monthly payment amount as reimbursement for the added service and processing expenses. Lessee's obligation to make all payments hereunder shall be absolute and unconditional and is not subject to any abatement, set-off, compensation, defense or counterclaim for any reason whatsoever. If a security deposit is required, the same shall be held by Lessor to secure the faithful performance of the lease and returned or applied in accordance with the terms of the lease. If Lessee fails to make any monthly payment or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the required payment, a late fee of 15% of the amount past due (but at least $7.50) for each late payment. Each month the past due payment remains unpaid, an additional late fee will be assessed. Payments are applied to late fees and service charges first and then to payments in respect of lease obligations. These amounts shall be payable in addition to all amounts payable by Lessee to Lessor as a result of exercise of any of the remedies herein provided. If Lessee requests and Lessor provides any services not set out herein, Lessee agrees to pay additional applicable fees. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed $50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.

k. **Assignment.** (a) Lessor may assign or transfer the lease or Lessor's interest in the Leased Equipment without notice to or consent by Lessee. Any assignee of Lessor shall have all of the rights, but none of the obligations, of Lessor under the lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim, set-off or compensation that

Lessee may have against Lessor, (b) Lessee shall not assign all or any part of Lessee's rights or obligations under the lease or enter into any sublease of all or any part of the Leased Equipment without Lessor's prior written consent, (c) Lessee shall not create, incur, assume or suffer to exist any security interest, mortgage, lien, pledge, hypothec or other right, encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Leased Equipment or the lease or any of Lessor's interests thereunder.

l. **Title; Quiet Enjoyment.** Lessor shall at all times retain title to the Leased Equipment. Lessor may at Lessee's expense, cause the lease or any document, statement or other instrument in respect to the lease showing Lessor's interest in the Leased Equipment, including without limitation Personal Property Security Act or Civil Code of Québec financing statements, to be filed, registered or recorded and/or refiled, reregistered and rerecorded. Lessee waives the right, where permitted by law, to receive a copy of any financing statement, financing change statement or verification statement. Lessee agrees to execute and deliver any document, statement or instrument requested by Lessor for such purpose, and agrees to reimburse Lessor for any expense arising therefrom. Lessee shall at Lessee's expense protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keep the Leased Equipment free from legal process or encumbrance whatsoever, and shall give Lessor immediate notice thereof and shall indemnify Lessor from any loss caused thereby. Lessee agrees to procure for and deliver to Lessor, such estoppel certificates, landlord's or mortgagees' waiver or other similar documents as Lessor may request. Provided Lessee is not in default hereunder, Lessee may quietly use and enjoy the Leased Equipment subject to the terms hereof.

m. **Care, Use and Location.** Lessee shall maintain the Leased Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Leased Equipment in the regular course of Lessee's business, within its normal operating capacity, without abuse, and shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Leased Equipment; shall use the Leased Equipment solely for business purposes; shall not make any modification, alteration or addition to the Leased Equipment without Lessor's prior written consent; shall not affix the Leased Equipment to real or immovable property as to change its nature to a fixture; shall keep the Leased Equipment at the location(s) to which Lessor has agreed, and shall not move the Leased Equipment from such location(s) without Lessor's prior written consent. Under no circumstances does Lessor have any responsibility to install, promote, service, clean, maintain or repair the Leased Equipment, all of which is Lessee's responsibility.

n. **Net Lease; Taxes.** Lessee intends the monthly payments hereunder to be net to Lessor, and Lessee agrees to pay all provincial, territorial and federal sales, goods and services, harmonized, use, excise, stamp, documentary and ad valorem taxes, license and registration fees, assessments, fines, penalties and similar charges imposed on the lease, possession or use of the Leased Equipment during the term of the lease; Lessee shall pay all taxes (except Lessor's net capital and income taxes) imposed on Lessor or Lessee with respect to the payments hereunder or the lease of the Leased Equipment; and, shall reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessor is entitled to the tax benefits available to an owner of the Leased Equipment, including without limitation, the right to claim tax depreciation, capital cost allowance or other deductions in respect of the capital cost thereof, investment tax credits and deductions for interest incurred by Lessor to finance the purchase of the Leased Equipment, and Lessee shall not take any tax filing position inconsistent with the foregoing.

o. **Indemnity.** Lessee agrees to indemnify and save Lessor, Lessor's agents, servants, successors and assigns harmless from any and all liability, damage or loss, including without limitation reasonable legal fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding the termination of the lease.

p. **Insurance.** Lessee shall keep the Leased Equipment insured against all risks of loss or damage from any cause whatsoever for not less than the full replacement value thereof. The amount of such insurance shall be sufficient so that neither Lessor nor Lessee will be considered a co-insurer. Lessee shall carry public liability insurance, both personal injury and equipment damage, covering the Leased Equipment. All such insurance shall be in form and with insurers satisfactory to Lessor, and shall name Lessor and any assignee as first loss payee as its interest may appear with respect to equipment damage coverage and as additional insured with respect to public liability coverage. Lessee shall pay the premiums for such insurance and upon request deliver to Lessor satisfactory evidence of insurance coverage required hereunder. The proceeds of such insurance payable, as a result of loss or damage to any item of Leased Equipment, shall be applied to satisfy Lessee's obligation as set forth in Section (A)(19)(q) below. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact, to make a claim for, receive payment of and execute and endorse all documents, cheques or drafts, received in payment for loss or damage under any such insurance policy. This appointment is coupled with an interest and is irrevocable.

q. **Loss or Destruction of Leased Equipment.** Lessee shall notify Lessor immediately and shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. In such event, Lessee shall at Lessee's expense (except to the extent of any proceeds of insurance provided by Lessee which shall have been received by Lessor as a result thereof), and at Lessor's option, shall either (a) repair such item, returning it to its previous condition, unless damaged beyond repair; or (b) pay Lessor all accrued and unpaid monthly payments and late charges payable hereunder, plus an amount (the "Loss Amount") equal to (i) the value of all monthly payments to become due during the remaining term of the lease, plus (ii) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in Lessor's sole reasonable discretion; or (c) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which shall be and become Lessor's property, shall be included within the term "Leased Equipment" as used herein and shall be leased from Lessor herewith for the balance of the full term of the lease.

r. **Loss or Destruction Waiver.** Lessor may in Lessor's sole and absolute discretion waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee at current rates in order that Lessor may fully insure the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor shall provide for its replacement with Leased Equipment of comparable value at that time, provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required monthly fee for the Loss or Destruction Waiver. Lessee shall cooperate with Lessor in making any claim with respect to the Leased Equipment.

s. **Default.** If any one of the following events (each a "Default") shall occur, then to the extent permitted by applicable law, Lessor shall have the right to exercise any one or more remedies set forth herein: (i) Lessee fails to pay any payments hereunder, monthly or otherwise, when due; or (ii) Lessee fails to pay, when due, any indebtedness owed to Lessor or any of Lessor's affiliates arising independently of the lease, and such default shall continue for five (5) days; or (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after ten (10) days written notice; or (iv) Lessee becomes insolvent or make an assignment for the benefit of creditors; or (v) a receiver, trustee or liquidator of Lessee or of all or a substantial part of Lessee's assets are appointed with or without Lessee's application or consent; or (vi) an application for a bankruptcy order is filed, or any other proceedings are commenced by or against Lessee, or Guarantor, under the Bankruptcy and Insolvency Act (Canada), or under any other bankruptcy, arrangement, dissolution, liquidation or insolvency law(s) providing for relief of debtors.

t. **Remedies.** If a Default shall occur, Lessor may, at Lessor's option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid installment payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if a Default shall occur as described in any of Sections (A)(19)(s)(iv) through (vi) above, Lessor without any notice or action shall be deemed to have made such a declaration; (ii) automatically charge any or all of Lessee's credit cards or accounts, other lines-of-credit or the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. If Lessor takes possession of the Leased Equipment, Lessor shall give Lessee credit for any sums received by Lessor from the sale or rental of the Equipment after deduction of the expenses of sale or other disposition and Lessee shall remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software forming part of the Leased Equipment is nontransferable or its transfer restricted, Lessee agrees that Lessor and/or the licensor of such software shall have no duty to remarket such software or otherwise mitigate any damages relating to such software. Lessee shall also be liable for and shall pay to Lessor (i) all expenses incurred by Lessor in connection with the enforcement of any of Lessor's remedies including without limitation all collection expenses, that includes, but is not limited to, charges for collection letters and collection calls, charges of collection agencies, sheriffs, etc.; and all expenses of repossessing, storing, shipping, repairing and selling the Leased Equipment; and (ii) reasonable legal fees and court costs. Lessee and Lessor acknowledge the difficulty in establishing a value for the unexpired lease term and, owing to such difficulty, agree that the provisions of this paragraph represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. All of Lessor's remedies hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on Lessor's part to exercise and no delay in exercising any right to remedy shall operate as a waiver thereof or modify the terms of the lease.

u. **END OF LEASE TERM. (I) UPON EXPIRATION OF THE LEASE TERM, LESSEE SHALL HAVE THE OPTION TO PURCHASE THE LEASED EQUIPMENT FOR AN AMOUNT EQUAL TO 10% OF THE AGGREGATE LEASE PAYMENTS ON 12 MONTH, 24 MONTH, 36 MONTH, 48 MONTH OR 60 MONTH LEASES. WRITTEN NOTICE OF THE EXERCISE OF THIS OPTION MUST BE SENT TO LESSOR AT LEAST THIRTY (30) DAYS PRIOR TO EXPIRATION OF THE LEASE TERM; (II) IF LESSEE DOES NOT ELECT TO PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE SHALL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST AND/OR THE REPAIR, REFURBISHING AND CLEANING COST IN AN AMOUNT DESIGNATED BY LESSOR WHICH IS PAYABLE WITHIN TEN (10) DAYS OF LESSOR'S DEMAND; (III) IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED EQUIPMENT AS PROVIDED IN (I) OR (II) ABOVE, THE LEASED EQUIPMENT SHALL CONTINUE TO BE HELD AND LEASED HEREUNDER AND THE LEASE SHALL BE EXTENDED INDEFINITELY AS TO TERM AT THE THEN CURRENT MONTHLY PAYMENT UNTIL LESSOR HAS RECEIVED PAYMENT AT LEAST EQUAL TO LESSOR'S FULL INVESTMENT IN THE LEASED EQUIPMENT, AS CALCULATED BY LESSOR, FOLLOWING WHICH, AND UPON NOTICE FROM LESSOR TO LESSEE, LESSEE SHALL BE DEEMED TO HAVE PURCHASED THE**

LEASED EQUIPMENT FROM LESSOR ON AN "AS IS, WHERE IS" BASIS, SUBJECT TO THE RIGHT OF EITHER LESSEE OR LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON LESSEE SHALL DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS PARAGRAPH; AND (IV) PROVIDED LESSEE HAS FULFILLED ALL OF LESSEE'S OBLIGATIONS HEREUNDER, LESSEE'S SECURITY DEPOSIT, IF ANY, (1) SHALL BE REFUNDED AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE'S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT BY LESSEE.

v. **Privacy.** Each of Lessee and Guarantor consents and agrees that Lessor may (i) collect and use any personal information provided by Lessee or Guarantor or obtained under any provision of the lease for the purpose of furthering the objects of the lease and to respond to any further application for services by Lessee; (ii) **use such information to conduct credit checks from time to time with credit bureaus**; (iii) disclose such information and any information regarding late payments, missed payments or Defaults hereunder to Lessor's affiliates and third party service providers, payment networks, credit bureaus or agencies, financial institutions and similar parties for the purposes stated herein; (iv) use such information to investigate potentially fraudulent or questionable activities regarding the Leased Equipment or services for which the Leased Equipment is used; (v) use or disclose such information in the course of any actual or potential sale, reorganization, amalgamation or other change to Lessor's business or assignment under Section (A)(19)(k) above; (vi) collect, use and disclose such information when required or permitted by applicable law, regulation or legal process; and (vii) retain all such information for such periods of time as required by Lessor to perform Lessor's obligations and exercise Lessor's rights under the lease.

w. **Miscellaneous.** Lessee shall inform Lessor of any change in Lessee's name, address, billing address, telephone numbers, location of the Leased Equipment, or the DDA. If Lessee fails to comply with any provision of the lease, Lessor shall have the right, but not be obligated, to effect such compliance on Lessee's behalf upon ten (10) days prior written notice to Lessee. In such event, all monies expended by Lessor and all Lessor's expenses in effecting such compliance, shall be deemed to be additional obligations hereunder, and shall be paid by Lessee at the time of the next monthly payment hereunder. All notices under the lease shall be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors, heirs and assigns of the parties hereto. Time is of the essence of the lease. Lessee and Lessor intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable in any jurisdiction shall in any way invalidate any other provision or provisions of the lease in that jurisdiction, all of which shall remain in full force and effect. References to any legislation, statutory instrument, regulation, rule or a section thereof, unless otherwise specified, is a reference to the legislation, statutory instrument, regulation, rule or section as amended, restated or re-enacted from time to time. The lease and the personal guarantee set forth herein shall be binding on Lessee and Guarantor when accepted in writing by Lessor and shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable in such Province, except in the event that the Leased Equipment is situated in the Province of Québec, in which case the lease shall be governed by the laws of the Province of Québec and the federal laws of Canada applicable in such Province. The limitation period in the lease is extended to the greater of six years or any longer period permitted by applicable law. For greater certainty, each of the parties hereto acknowledges that the lease is a "business agreement" as defined under Section 22 of the Limitations Act, 2002 (Ontario).

x. **Security Agreement.** The following sentence is hereby added to the end of Section (A)(6)(a)(i): "The hypothec created pursuant to this Section (A)(6)(a)(i) is granted for the sum of $1,000,000 with interest at the rate of twenty-five percent (25.0%) per annum."

20. EQUIPMENT LEASING

If Merchant has elected to lease any Leased Equipment from Lessor, the following terms and conditions apply to Merchant as Lessee of the Leased Equipment:

a. **Non-Cancellable Lease. THIS LEASE IS NONCANCELABLE AND AN IRREVOCABLE AGREEMENT. THIS EQUIPMENT LEASE AGREEMENT CANNOT BE CANCELED OR TERMINATED BY MERCHANT.** Lessor, its successors and assigns, does hereby lease to Lessee and Lessee hereby rents from Lessor the Leased Equipment, on terms and conditions set forth in this Section.

b. **No Warranties by Lessor.** Lessee represents that Lessee has selected and approved the Leased Equipment leased hereunder and Lessee acknowledges Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, expressed or implied, as to any matter whatsoever, including the suitability of the Leased Equipment, its durability, its condition, and/or its quality. Lessee leases the Leased Equipment "as-is." Lessor also disclaims any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. Lessor and Lessor's assignee shall not be liable to Lessee or others for any loss, damage or expense of any kind or nature caused directly or indirectly by any Leased Equipment however arising, or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Leased Equipment or any other matter by the Leased Equipment supplier ("Equipment Vendor") identified in the Merchant Application, or elsewhere in the Agreement, or others shall be binding on the Lessor nor shall the breach of such relieve Lessee of, or in any way affect, any of Lessee's obligations to Lessor herein.

   If the Leased Equipment is not satisfactory for any reason, Lessee shall make any claim on account thereof solely against the Equipment Vendor and Lessee shall nevertheless pay Lessor all rent payable under the lease. Lessor agrees to assign to Lessee, solely for the purpose of making and prosecuting any such claim, any rights it may have against the Equipment Vendor for breach of warranty or representation respecting the Leased Equipment.

   Regardless of cause, Lessee will not assert any claim whatsoever against Lessor for loss of anticipatory profits or any other indirect, special, or consequential damages. Lessor makes no warranty as to the treatment of the lease for accounting or tax purposes. **NOTWITHSTANDING ANY FEES WHICH MAY BE PAID BY LESSOR TO EQUIPMENT VENDOR OR ANY AGENT OF THE LESSOR, LESSEE UNDERSTANDS AND AGREES THAT NEITHER THE EQUIPMENT VENDOR NOR ANY AGENT OF THE EQUIPMENT VENDOR IS AN AGENT OF LESSOR OR IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THE LEASE.**

c. **Authorization for Automatic Withdrawal of Monthly Payments.** Lessee hereby authorizes Lessor, or its designee, successor or assign to withdraw the monthly lease amount and any additional amounts, including any and all taxes now due or imposed, owed by Lessee in connection with the Leased Equipment, by initiating debit entries to the DDA indicated on the Merchant Application or the Agreement, or such other DDA as the Lessee may from time to time use. In the event of default of Lessee's obligations hereunder, Lessee authorizes the debit of its DDA for the full amount due under the lease. Lessee agrees to contest transactions that might be invalid within ninety (90) days of the transaction date, or the transaction will be deemed valid. A rental payment (whether paid by debit or other means) that is not honored by Lessee's financial institution for any reason will be subject to a returned item service fee imposed by Lessor, the amount of which may be debited from Lessee's DDA. Should it be necessary to switch to statement billing, Lessor is authorized to add a $10.00 per month service charge to Lessee's monthly payment amount as reimbursement for the added service and

processing expenses. In the event that Lessor withdraws funds erroneously from Lessee's DDA, Lessee authorizes Lessor to credit Lessee's DDA for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor and Lessee's financial institution have received written notice from Lessee of its termination in such time and in such manner as to afford Lessor and Lessee's financial institution a reasonable opportunity to act. **LESSEE REPRESENTS AND WARRANTS THAT ITS DDA HAS BEEN ESTABLISHED AS A BUSINESS-PURPOSE CHECKING ACCOUNT.**

d. **Finance Lease.** Lessor and Lessee agree that the lease is a "Finance Lease" as defined by Section 11-2A-103(g) of the GA UCC. Lessee acknowledges either (i) that Lessee has reviewed and approved any written "Supply Contract" as defined by GA UCC Section 11-2A-103(y) covering the Leased Equipment purchased from the "Supplier" as defined by GA UCC Section 11-2A-103(x) thereof for lease to Lessee or (ii) that Lessor has informed or advised Lessee, in writing, either previously or by the lease of the following: (1) the identity of the Supplier; (2) that the Lessee may have rights under the Supply Contract; and (3) that the Lessee may contact the Supplier for a description of any such rights Lessee may have under the Supply Contract.

e. **Ordering Equipment; Lessor's Right to Terminate.** Lessee requests Lessor to purchase the Leased Equipment from Equipment Vendor and arrange for delivery to Lessee at Lessee's expense. If within forty-five (45) days from the date Lessor orders the Leased Equipment, the same has not been delivered, installed and accepted by Lessee in form satisfactory to Lessor, Lessor may on ten (10) days written notice to Lessee terminate the lease and its obligations to Lessee.

f. **Term and Rent.** The sum of all periodic installments of rent indicated in the Merchant Application or the Agreement shall constitute the aggregate rent reserved under the lease. The lease term shall commence as of the date that the lease is accepted by Lessor, (the "Commencement Date"), and shall continue until the obligations of the Lessee under the lease shall have been fully performed. The installments of rent shall be payable monthly in advance as stated above or on a schedule, the first such payment being due on the Commencement Date, or such later date as Lessor designates in writing, and subsequent payments shall be due on the same day of each successive month thereafter until the balance of the rent and any additional rent or expenses chargeable to Lessee under the lease shall have been paid in full. All payments of rent shall be made to Lessor at the address set forth in the Merchant Application or the Agreement or such other address as Lessor may designate in writing. Lessee's obligation to pay such rentals shall be absolute and unconditional and is not subject to any abatement, set-off, defense of counterclaim for any reason whatsoever. Lessee hereby authorizes Lessor to insert into the lease the serial numbers and other identification data of the Leased Equipment when determined by Lessor and dates or other omitted factual matters and to correct any typographical or spelling errors. If a security deposit is indicated in the Merchant Application, or in any additional application and setup forms, the same shall be held by Lessor to secure the faithful performance of the terms of the lease and returned or applied in accordance with Section (A)(20)(q)(iv) below. In addition to the payment of monthly rent, Lessee agrees to pay Lessor an annual fee in an amount not to exceed $50.00 for the administration, billing, reconciliation, and tracking of payments due under the lease, which may generate a profit to Lessor.

g. **Assignment. (i) LESSOR MAY ASSIGN OR TRANSFER THE LEASE OR LESSOR'S INTEREST IN THE LEASED EQUIPMENT WITHOUT NOTICE TO LESSEE.** Any assignee of Lessor shall have all of the rights, but none of the obligations, of Lessor under the lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor shall not materially change Lessee's duties or obligations under the lease nor materially increase the burdens or risks imposed on Lessee. Lessee agrees that Lessor may assign or transfer the lease or Lessor's interest in the Leased Equipment even if said assignment or transfer could be deemed to materially affect the interest of Lessee. **(ii) LESSEE SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OF ALL OR ANY PART**

OF ITS RIGHTS OR OBLIGATIONS UNDER THE LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE LEASED EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. (iii) Lessee shall not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Leased Equipment or the lease or any of Lessor's interests thereunder.

h. **Title; Quiet Enjoyment**. Lessor shall at all times retain title to the Leased Equipment. All documents of title and evidence of delivery shall be delivered to Lessor. Lessee hereby authorizes Lessor, at Lessee's expense, to cause the lease or any statement or other instrument in respect to the lease showing the interest of Lessor in the Leased Equipment including Uniform Commercial Code Financing Statements, to be filed or recorded and/or refiled and rerecorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any filing, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. Lessee shall at its expense, protect and defend Lessor's title against all persons claiming against or through Lessee, at all times keep the Leased Equipment free from legal process or encumbrance whatsoever and, shall give Lessor immediate notice thereof and shall indemnify Lessor from any loss caused thereby. Lessee agrees to procure for Lessor, such estoppel certificates, landlord's or mortgagees' waiver or other similar documents as Lessor may reasonably request. Provided Lessee is not in default hereunder, Lessee shall quietly use and enjoy the Leased Equipment subject to the terms hereof.

i. **Care, Use and Location**. Lessee shall maintain the Leased Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Leased Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all Laws with respect to the use, maintenance and operation of the Leased Equipment; shall use the Leased Equipment solely for business purposes; shall not make any modification, alteration or addition to the Leased Equipment, without the written consent of Lessor, which shall not be unreasonably withheld; shall not at any time so affix the Leased Equipment to realty as to change its nature to real equipment or to a fixture regardless of how attached or installed; shall keep the Leased Equipment at the location shown in the Merchant Application or the Agreement, and shall not remove the Leased Equipment without written consent of Lessor, which shall not be unreasonably withheld.

j. **Net Lease; Taxes**. Lessee intends the rental payments hereunder to be net to Lessor, and Lessee agrees to pay all sales, use, excise, personal equipment, stamp, documentary and ad valorem taxes, license and registration fees, assessment, fines, penalties and similar charges imposed on the ownership, possession or use of the Leased Equipment during the term of the lease; shall pay all taxes (except Lessor's federal or state net income taxes) imposed on Lessor or Lessee with respect to the rental payments hereunder or the ownership of the Leased Equipment; and, shall reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessee agrees that the reimbursement of equipment tax calculation is based on an average tax rate. Unless otherwise agreed to in writing, Lessee shall file personal equipment tax returns with respect to the Leased Equipment.

k. **Indemnity**. Lessee shall and does hereby agree to indemnify and save Lessor, its agents, servants, successors, and assigns harmless from any and all liability, damage or loss, including reasonable attorney's fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition (including but not limited to latent and other defects, whether or not discoverable by Lessee), maintenance, delivery and return of the Leased Equipment. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding the termination of the lease.

l. **Insurance.** During the term of the lease, Lessee agrees to maintain, at Lessee's expense, (i)

"Special Form" property insurance protecting the Leased Equipment for its replacement value, naming Lessor as a loss payee on a "Lender's Loss Payable" endorsement; and (ii) public liability insurance, in amounts acceptable to Lessor, naming Lessor as an additional insured (together, "Required Insurance"). Lessee must provide Lessor satisfactory written evidence of Required Insurance within thirty (30) days of the Commencement Date or any subsequent written request. If Lessee does not do so, Lessor may obtain insurance from an insurer of Lessor's choosing in such forms and amounts as Lessor deems reasonable to protect Lessor's interests ("Lease Insurance"). Lease Insurance covers the Leased Equipment and the Lessor; it does not name the Lessee as an insured and may not cover all of the Lessee's interest in the Leased Equipment. Lessee agrees to pay Lessor periodic charges for Lease Insurance ("Insurance Charges") that include: a premium that may be higher than if the Lessee maintained the Required Insurance separately; a finance charge of up to 1.5% per month on any premium advances made by the Lessor or Lessor's agents; and billing and processing fees; each of which may generate a profit to Lessor and Lessor's agents. Unless Lessee provides satisfactory evidence of Required Insurance by the Insurance Charge due date, Lessor will pay such Insurance Charge by debiting Lessee's DDA under the withdrawal provision of the lease. Lessor shall discontinue billing Insurance Charges upon receipt of satisfactory evidence of Required Insurance. Lessee agrees to arbitrate any dispute with Lessor or Lessor's agents regarding Lease Insurance or Insurance Charges under the rules of the American Arbitration Association in Atlanta, Georgia; provided however, such agreement does not authorize class arbitration.

m. **Loss or Destruction of Leased Equipment**. Lessee shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Leased Equipment from any cause whatsoever after taking possession of the Leased Equipment. Lessee shall notify Lessor immediately if the Leased Equipment is lost, destroyed, stolen or taken by any other person. In the event of loss, damage or destruction of any item of Leased Equipment, Lessee at its expense (except to the extent of any proceeds of insurance provided by Lessee which shall have been received by Lessor as a result of such loss, damage or destruction), and at Lessor's option, shall either (i) repair such item, returning it to its previous condition, unless damaged beyond repair; (ii) pay Lessor all accrued and unpaid rental payments and late charges, plus an amount (the "Loss Amount") equal to (1) the value of all rental payments to become due during the remaining term of the lease, plus (2) the amount of any purchase option or obligation with respect to the Leased Equipment or, if there is no such option or obligation, the fair market value of the Leased Equipment, as estimated by Lessor in its sole reasonable discretion; or (iii) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which shall become equipment of Lessor, included within the term "Leased Equipment" as used herein, and leased from Lessor herewith for the balance of the full term of the lease.

n. **Loss or Destruction Waiver.** Lessor may waive Lessee's responsibility for loss or destruction of the Leased Equipment and for keeping the Leased Equipment fully insured during the lease term (a "Loss or Destruction Waiver"). Should Lessee fail to provide proof of insurance, Lessor may invoke the Loss or Destruction Waiver and charge a monthly fee at current rates in order that Lessor may fully insure the Leased Equipment. In the event of loss or destruction of the Leased Equipment, Lessor shall provide for its replacement with Leased Equipment of comparable value at that time provided (i) Lessee took reasonable care in preventing the loss or destruction of the Leased Equipment and (ii) Lessee has paid in a timely manner the required monthly amount for the Loss or Destruction Waiver. Lessee shall cooperate with Lessor in making any claim with respect to the Leased Equipment.

o. **Event of Default**. If any one of the following events (each an "Event of Default") shall occur, then to the extent permitted by applicable Law, Lessor shall have the right to exercise any one or more remedies set forth in Section (A)(20)(p) below: (i) Lessee fails to pay any rental or any other payment hereunder when due; (ii) Lessee fails to pay, when due, any indebtedness of Lessee to Lessor arising independently of the lease, and such default shall continue for five (5) days; (iii) Lessee fails to perform any of the terms, covenants, or conditions of the lease, other than as provided above, after ten (10) days written notice; (iv) Lessee becomes insolvent or

makes an assignment for the benefit of creditors; (v) a receiver, trustee, conservator, or liquidator of Lessee, of all or a substantial part of its assets, is appointed with or without the application or consent of Lessee; or (vi) a petition is filed by or against Lessee under the Bankruptcy Code of 1978, as amended, or under any other insolvency law(s), providing for relief of debtors.

p. **Remedies**. If an Event of Default shall occur, Lessor may, at its option, at any time (i) declare immediately due and payable and recover from Lessee, as liquidated damages for the loss of a bargain and not as a penalty, an amount equal to all accrued and unpaid rental payments and late charges, taxes, and other fees, plus the Loss Amount; provided, however, that if an Event of Default shall occur as described in Section (A)(20)(o)(iv) through (vi) above, Lessor without any notice or action shall be deemed to have made such a declaration; (ii) automatically charge any or all of Lessee's credit cards or accounts, other lines of credit or the DDA or other bank accounts for all money amounts owed; (iii) to the extent permitted by applicable Law, without demand or legal process, enter into the premises where the Leased Equipment may be found and take possession of and remove the Leased Equipment, without liability for such retaking; (iv) Lessor may hold, sell or otherwise dispose of any such Leased Equipment at a private or public sale; or (v) exercise any other remedies available under applicable Law. In the event Lessor takes possession of the Leased Equipment, Lessor shall give Lessee credit for any sums received by Lessor from the sale or rental of the Leased Equipment after deduction of the expenses of sale or rental and Lessee shall remain liable to Lessor for any deficiency. Notwithstanding the foregoing, to the extent any software included with the Leased Equipment is nontransferable or its transfer restricted, Lessee agrees that Lessor and/or the licensor of such software shall have no duty to remarket or otherwise mitigate any damages relating to such software.

Lessee shall also be liable for and shall pay to Lessor (i) all expenses incurred by Lessor in connection with the enforcement of any of Lessor's remedies including all collection expenses, that includes, but is not limited to, charges for collection letters and collection calls, charges of collection agencies, sheriffs, etc.; and all expenses of repossessing, storing, shipping, repairing and selling the Leased Equipment; and (ii) reasonable attorney's fees and court costs. Lessor and Lessee acknowledge the difficulty in establishing a value for the unexpired lease term and, owing to such difficulty, agree that the provisions of this Section represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. All remedies of Lessor hereunder are cumulative, are in addition to any other remedies provided for by Law, and may, to the extent permitted by Law, be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise and no delay in exercising any right to remedy shall operate as a waiver thereof or modify the terms of the lease.

q. **END OF LEASE TERM**. **(i) UPON EXPIRATION OF THE LEASE TERM, LESSEE SHALL HAVE THE OPTION TO PURCHASE LEASED EQUIPMENT FOR ITS RESIDUAL FAIR MARKET VALUE OR RETURN THE LEASED EQUIPMENT TO LESSOR.**

(ii) THE EXERCISE OF THIS OPTION MUST BE COMMUNICATED TO LESSOR IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE LEASE TERM. THE LEASED EQUIPMENT IS SOLD "AS IS" "WHERE IS" "WITH ALL FAULTS." EXCEPT AS PROVIDED IN THE LEASE, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED EQUIPMENT PURCHASED.

(iii) IN THE EVENT LESSEE DOES NOT ELECT TO PURCHASE THE LEASED EQUIPMENT, THEN UPON EXPIRATION OR EARLIER TERMINATION OF THE LEASE, LESSEE SHALL RETURN THE LEASED EQUIPMENT TO LESSOR IN GOOD OPERATING CONDITION AND REPAIR, SHIPPED BY PREPAID AND INSURED FREIGHT TO A LOCATION DESIGNATED BY LESSOR. IF, IN THE

JUDGMENT OF LESSOR, THE LEASED EQUIPMENT IS RETURNED DAMAGED, INCOMPLETE, OR SHOWS SIGNS OF EXCESSIVE WEAR, LESSEE AGREES TO PAY THE REPLACEMENT COST AND/OR THE REPAIR AND REFURBISHING COST (INCLUDING CLEANING), FOR AN AMOUNT DESIGNATED BY LESSOR AND PAYABLE WITHIN TEN (10) DAYS OF LESSOR'S DEMAND.

(iv) IF LESSEE DOES NOT ELECT TO PURCHASE OR RETURN THE LEASED EQUIPMENT UPON EXPIRATION OR TERMINATION OF THE LEASE AS PROVIDED HEREIN, THE LEASED EQUIPMENT SHALL CONTINUE TO BE HELD AND LEASED HEREUNDER, AND THE LEASE SHALL BE EXTENDED FOR A PERIOD OF UP TO TWELVE (12) MONTHS UPON THE EXISTING TERMS AND CONDITIONS OF THIS LEASE AGREEMENT AND AT THE SAME MONTHLY RENTAL, SUBJECT TO THE RIGHT OF EITHER THE LESSEE OR THE LESSOR TO TERMINATE THE LEASE UPON THIRTY (30) DAYS WRITTEN NOTICE, WHEREUPON THE LESSEE SHALL FORTHWITH DELIVER THE LEASED EQUIPMENT TO LESSOR AS SET FORTH IN THIS SECTION. ONCE THE LESSEE HAS FULLY PAID THE ADDITIONAL TWELVE (12) MONTHS OF EXTENDED LEASE RENTAL, SUCH PAYMENT SHALL OPERATE AS PAYMENT OF THE RESIDUAL FAIR MARKET VALUE OF THE EQUIPMENT AND LESSEE WILL BE DEEMED TO HAVE PURCHASED THE LEASED EQUIPMENT.

(v) PROVIDED LESSEE HAS FULFILLED ALL OF ITS OBLIGATIONS TO LESSOR HEREUNDER, LESSEE'S SECURITY DEPOSIT OR SECURITY RESERVE, IF ANY, AS INDICATED IN THE MERCHANT APPLICATION, OR IN ANY ADDITIONAL APPLICATION AND SETUP FORMS, (1) SHALL BE REFUNDED TO LESSEE AT THE EXPIRATION OF THE LEASE WITHOUT INTEREST OR (2) AT LESSEE'S DIRECTION, SUCH SECURITY DEPOSIT MAY BE APPLIED TO THE PURCHASE OF THE LEASED EQUIPMENT, IN WHICH EVENT THE LEASED EQUIPMENT NEED NOT BE RETURNED TO LESSOR.

r. **Entire Agreement; Changes**. The lease contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by an executive officer of Lessor and by the Lessee.

s. **Miscellaneous**. If Lessee fails to pay any rent or other amount required herein to be paid to Lessor within five (5) days of when due, Lessee agrees to pay Lessor, in addition to the payment, a late charge of 15% of the amount past due (but at least $7.50) for each late payment. Each month the past due payment remains unpaid, an additional late fee in the amount defined will be assessed. Payments are applied to late fees and service charges first and then to the lease obligation. Amounts shall be payable in addition to all amounts payable by Lessee to Lessor as a result of exercise of any of the remedies herein provided. If Lessee requests any services not provided for herein, Lessee agrees to pay an applicable fee for delivery of such services. Lessee shall inform Lessor of any change in Lessee's name, address, billing address, telephone numbers, location of the Leased Equipment, or DDA. In the event Lessee fails to comply with any provision of the lease, Lessor shall have the right, but not be obligated, to affect such compliance on behalf of Lessee upon ten (10) days prior written notice to Lessee. In such event, all monies expended by, and all expenses of Lessor in effecting such compliance, shall be deemed to be additional rental, and shall be paid by Lessee at the time of the next monthly payment of rent. All notices under the lease shall be sufficient if given personally or mailed postage prepaid to the party intended at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. The lease inures to the benefit of and is binding upon the personal representatives, successors and assigns of the parties hereto. Time is of the essence of the lease. Lessor and Lessee intend the lease to be a valid and subsisting legal instrument, and agree that no provision of the lease that may be deemed unenforceable shall in any way invalidate any other provision or provisions of the lease, all of which shall remain in full force and effect. The lease shall be binding when accepted in writing

by Lessor and shall be governed by the laws of the State of Georgia, provided however, in the event the lease or any provision hereof is not enforceable under the laws of the State of Georgia then the laws of the state where the Leased Equipment is located shall govern. Lessee consents and submits to the jurisdiction of the federal and state courts located in the State of Georgia and within Fulton County (the "Courts"), and expressly agree to such forum for the bringing of any suit, action or other proceeding arising out of the Lessee's obligations hereunder, and expressly waive any objection to venue in any such Courts and waive any right to a trial by jury so that trial shall be by and only to the Court. Lessee agrees that any process served for any court action or proceeding shall be valid if mailed by certified mail, return receipt requested.

t. **Important Information about Credit Reporting.** Lessor may report information about this account to credit bureaus. Late payments, missed payments, or other defaults on this account may be reflected in the credit report of Lessee and/or Guarantor.

21. ELECTRONIC GIFT CARDS

a. **Electronic Gift Card Services**. The following terms and conditions apply to Elavon's provision of Electronic Gift Card Services to Merchant:

i. **Merchant Responsibilities**.

aa. Merchant will comply with the Agreement and with all applicable provisions of the MOG in connection with Merchant's receipt and use of the EGC Services.

bb. Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with any and all applicable Laws governing the issuance, sale, distribution, use, and acceptance of Electronic Gift Cards (including all laws relating to purchase, service and dormancy fees, laws relating to expiration dates, and laws governing the treatment of unused or unclaimed funds or other property). Further, Merchant agrees to comply in a complete and timely manner with any such Laws, including but not limited to all escheatment, unclaimed property, money transmission and consumer protection laws, now or hereafter applicable to the issuance, sale, distribution, use or acceptance of Electronic Gift Cards.

cc. Until such time as Cardholder Data and Transaction data has been received and validated by Elavon, Merchant will maintain sufficient "backup" information and data (e.g. Transaction Receipts or detailed reporting) with respect to Electronic Gift Cards sold to reconstruct any information or data loss due to any system malfunction or error in transmission.

dd. Elavon must participate in all Electronic Gift Card Transactions. In the event that a third party must also participate in such a Transaction, Merchant will only use such third parties as have been approved by Elavon for such purposes.

ee. All Electronic Gift Cards must be printed by Elavon or an Elavon-approved vendor.

ff. Merchant agrees to comply with the Graphic Specifications and Procedures provided by Elavon and incorporated herein by reference as such may be amended from time to time by Elavon in its sole discretion.

gg. Merchant shall pay the fees for the ECG Services as set forth in the Merchant Application, and in any additional application and setup forms. In addition to any other applicable fees, Merchant is responsible for all card production and delivery costs.

ii. **Direct Settlement**. Merchant authorizes Elavon to initiate credit and debit entries among

Merchant's individual chain locations for any Transactions that change the balance of an Electronic Gift Card. In the event Elavon is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Merchant further authorizes Elavon to credit and/or debit the designated Master Account or Primary Merchant. Merchant also understands that Elavon may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or merchant location. Merchant also agrees to notify Elavon in writing of any asserted errors within forty-five (45) days of the statement date on which the asserted error first appeared and understands that any failure to do so will preclude further claims or assertion of the error. Both Merchant and the individual chain locations agree to pay related direct settlement fees.

iii. **Warranties/Liability**.

aa. Elavon is not responsible for lost, stolen or fraudulent Electronic Gift Cards.

bb. Elavon makes no warranty, express or implied, with respect to the products or Processing Services provided hereunder including, without limitation, any express or implied warranty regarding merchantability, fitness for purpose or compliance of the Processing Services or Electronic Gift Cards with any applicable Laws governing the issuance, sale, distribution, use, and acceptance of Electronic Gift Cards. This includes but is not limited to all escheatment, unclaimed property, money transmission and consumer protection Laws.

iv. **Post Termination**. Following termination, Merchant will pay Elavon a transfer fee based in part on, but not limited to, the number of issued Electronic Gift Cards that must be converted to another processor and the data specifications required.

v. **Additional Fees**. Merchant agrees to pay Elavon for Electronic Gift Card production once Merchant has approved the Electronic Gift Card design proof. Merchant accepts full responsibility for all Electronic Gift Card production costs. Merchant acknowledges that one proof per Electronic Gift Card order is included in the cost of Electronic Gift Card production and Merchant agrees to pay thirty-five dollars ($35) for additional proofs. If any order is cancelled prior to Electronic Gift Card production, Merchant agrees to pay Elavon a one hundred dollar ($100) cancellation fee.

vi. **Additional Locations**. Locations, including chain locations, added to this processing relationship will be boarded on Elavon's system pursuant to the paperwork submitted by Merchant to Elavon. However, in the event of an error or omission of fees payable by Merchant on the submitted paperwork, the Processing Services fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.

vii. **Closing Locations.** In the event that a particular location closes or changes its MID, Merchant agrees that Elavon may bill the Primary Merchant for any fees associated with subsequent Transactions processed on Electronic Gift Cards activated by the closed MID. This would apply to any system generated Transactions including, but not limited to, deduction and points conversion Transactions. Monthly fees billed for Loyalty Cards/members activated at the closed location may also be billed to the Primary Merchant.

b. **WebSuite Services**. The following terms and conditions apply to Elavon's provision of WebSuite Services to Merchant:

i. **Processing Services**. Merchant acknowledges that Elavon and Member will engage third party service providers to assist with the performance of the WebSuite Services.

ii. **Merchant Responsibilities**.

aa. Merchant will comply with the Agreement and with all applicable provisions of the MOG in connection with Merchant's receipt and use of the WebSuite Services, including, as applicable, provisions regarding the acceptance of Payment Devices and the use of EGC Services.

bb. Merchant shall pay the fees for the WebSuite Services as set forth in the Agreement. In addition, for orders placed using a Payment Device, Merchant shall pay the applicable processing fee for such Payment Device, as set forth in the Agreement. Elavon is entitled to pass through to Merchant any fee increases or new fees imposed upon Elavon by any Payment Network and any other third party vendor used by Elavon or Member to provide the WebSuite Services.

cc. Merchant must timely provide to Elavon specifications for the customization of Merchant's WebSuite site, including Customer options, web and e-mail content. Merchant modifications subsequent to the initial submission are subject to change fees.

dd. To the extent that Merchant posts any Electronic Gift Card information to Merchant's WebSuite site, Elavon and Member are not responsible for any such information.

ee. Merchant acknowledges that Elavon and Member are not responsible for incomplete or inaccurate payment information that may be provided by any Customer in connection with the WebSuite Services. Merchant further acknowledges that additional Transaction verification and fraud prevention data elements and processes may be available through a particular Payment Network, including address verification, to reduce Transaction risk and that Elavon and Member shall only be responsible for implementing any such Transaction risk controls as are specifically requested in writing by Merchant. The use of such Transaction risk controls does not constitute a guarantee of payment or prevent a Transaction from being disputed or subject to Chargeback.

ff. Merchant acknowledges that Elavon or Member may provide sample terms of use, privacy policy, and other content and disclosure for use on WebSuite site. Merchant agrees that is has an opportunity to review such sample disclosure and revise or replace such sample disclosure with language of Merchant's choice. Merchant's use of the WebSuite site confirms that Merchant has had an opportunity to review the sample disclosures and agrees to be solely responsible for all content and disclosures on the WebSuite site.

gg. Merchant is fully responsible for all Retrieval Requests and Chargebacks under the Payment Network Regulations in connection with Transactions processed using the WebSuite Services. Upon receipt of a Retrieval Request or documentation related to a Chargeback from a Payment Network, Elavon and Member will forward such request or documentation to Merchant. Merchant is responsible for responding, as appropriate, to each Retrieval Request or Chargeback.

iii. **Electronic Gift Card Order Fulfillment.** Elavon will fulfill all WebSuite Electronic Gift Card orders, and include with each order a Merchant-approved standardized letter customized with the order detail. All orders will be shipped pursuant to the method directed by the Customer.

iv. **Electronic Gift Card Loss Protection Program.** Merchant shall determine which data elements it will require its Customers to provide to establish an account or register an Electronic Gift Card on Merchant's WebSuite site. Merchant is responsible for notifying its Customers that in order to take advantage of the Electronic Gift Card loss protection program, the Electronic Gift Card must be registered prior to the loss. Once a registered

Electronic Gift Card is reported lost or stolen via the WebSuite site, Elavon will notify Merchant and freeze the unused balance of the Electronic Gift Card. Merchant is responsible for transferring the unused balance to a new Electronic Gift Card, sending a replacement Electronic Gift Card to the Customer, and notifying Elavon of the replacement Electronic Gift Card via the WebSuite site.

v. **Reloading of Electronic Gift Cards**. Merchant shall determine all Electronic Gift Card reloading options available to its Customers. While the WebSuite Services permit the anonymous reloading of Electronic Gift Cards, Elavon recommends that Merchant require its Customers to register the Electronic Gift Card in order to reload value onto the Electronic Gift Card.

vi. **Customer Information.** The WebSuite Services will permit Merchant to have access to Customer information and other data that Merchant determines is required to establish an account or register an Electronic Gift Card. Merchant is responsible for maintaining the appropriate safeguards to protect such Customer information, and to properly disclose the use of such information and its privacy policies on Merchant's WebSuite site or website. Merchant must maintain the confidentiality of all Transaction and Cardholder Data as set forth in the Agreement.

vii. **E-Certificates.** Merchant may choose to use the E-Certificate module, which delivers a "virtual gift card" electronically. The terms applicable to Electronic Gift Cards herein equally apply to E-Certificates.

22. BILLER DIRECT SERVICES

The following terms and conditions apply to Elavon's provision of Biller Direct Services to Merchant:

a. **General Provisions.**

i. **Acceptance of Payment Devices.** In connection with its sale of goods or services or its receipt of bill payments, Merchant desires to accept Payment Devices in an online environment through the Elavon-sponsored Biller Direct Services. Elavon offers two types of Biller Direct Services: Bill Payment Portal (BPP) and Enterprise Billing Solutions (EBS). Merchant has selected its desired Biller Direct Services, including the desired fee funding model, if applicable, on the Biller Direct Services Enrollment Form, and in any additional application and setup forms. The terms and conditions for Merchant's use of the Biller Direct Services are set forth in the Agreement and in the MOG and the ECS MOG.

ii. **Transactions.**

aa. **Merchant Compliance**. Merchant must comply with all requirements under Laws (including, without limitation, the Electronic Signatures in Global and National Commerce Act), Payment Network Regulations and the Agreement in connection with the Biller Direct Services. Merchant must also comply with the applicable procedures set forth in the MOG, the ECS MOG, and any other guides, manuals, or rules provided in writing by Elavon or Member from time to time. For purposes of the Biller Direct Services only, Merchant will not receive Payment Device Transaction information and therefore Merchant is not obligated to comply with the requirements governing Merchant's receipt and handling of payment information from Customers.

bb. **Transaction Requirements**. Before Elavon and Member will process a Transaction on Merchant's behalf, the Customer must affirmatively agree to engage in the Transaction through the Biller Direct Services web site or via the telephone, as applicable.

1. **Customer Authentication**. In addition to satisfying the applicable requirements set forth in the Agreement, the MOG, the ECS MOG (as applicable) and any other guides, manuals or materials provided to Merchant by Elavon or Member, Merchant must provide to Elavon and Member such Customer information as may reasonably be required for Elavon and Member to perform their obligations under the Agreement. Elavon and Member will authenticate the identity of each Customer, on Merchant's behalf, based solely on the Customer information provided by Merchant to Elavon and using the authentication criteria as directed by Merchant. Merchant agrees that Elavon and Member are entitled to rely on the accuracy of the Customer information provided by Merchant and that Elavon and Member shall only be responsible for authenticating each Customer as and to the extent directed by Merchant in writing. Merchant shall be responsible for, and shall indemnify Elavon and Member against, any losses that may result from: (a) errors in the authentication of a Customer or in the processing of Transactions that result from incorrect Customer information provided to Elavon or Member; and (b) inaccurate or incomplete authentication of a Customer that does not result from Elavon or Member's errors or omissions. Merchant grants Elavon and Member and their designated agents access to and use of Customer information and such other data as is reasonably necessary for Elavon and Member to perform their obligations under the Agreement. Merchant's provision of such Customer information to Elavon and Member will not breach any agreement to which Merchant is a party or violate Laws.

2. **Transaction Risk**. Elavon and Member will attempt to collect from each Customer the payment-related information necessary for Elavon and Member to process a payment Transaction from the Customer to Merchant in connection with the Biller Direct Services. Merchant acknowledges that Elavon and Member are not responsible for incomplete or inaccurate payment information that may be provided by any Customer in connection with the Biller Direct Services. Merchant further acknowledges that additional Transaction verification and fraud prevention data elements and processes may be available through a particular Payment Network, including address verification, to reduce Transaction risk and that Elavon and Member shall only be responsible for implementing any such Transaction risk controls as are specifically requested in writing by Merchant. The use of such Transaction risk controls does not constitute a guarantee of payment or prevent a Transaction from being disputed or subject to Chargeback. Regardless of any additional Transaction risk mitigation options elected by Merchant, Merchant shall remain responsible for monitoring Customer account activity for suspicious or fraudulent activity, as more fully described in Section (A)(22)(a)(iv) hereof.

cc. **Transaction Controls**. Merchant will notify Elavon of any material change or anticipated material change in daily dollar activity or type of Transaction processing in connection with the Biller Direct Services, and Merchant will obtain Elavon's consent to any such change. Elavon and Member are not responsible for any losses or expenses incurred by Elavon, Member or Merchant arising out of any material change or anticipated material change in Transaction activity that is not promptly reported to Elavon and Member by Merchant.

dd. **Processing Limits**. Elavon or Member may impose a cap on the aggregate dollar amount or individual dollar amount of Transactions that it will process for Merchant as established by Elavon or Member from time to time. This limit may be changed by Elavon or Member, from time to time, in its sole discretion, without prior notice to Merchant. If Merchant exceeds the established limit, Elavon may suspend the processing of Transactions in excess of the cap or may process Transactions in excess of the cap but hold the excess funds in a separate account or Reserve Account.

ee. **Recurring Transactions**. For recurring Transactions (e.g., recurring or preauthorized payment of insurance premiums or subscriptions), the Customer must consent to the initiation of the recurring charges using the Customer's designated Payment Device. Recurring Transactions will not be processed by Elavon after Elavon receives: (i) a cancellation notice from the Customer provided through the Biller Direct Services interface; (ii) a notice from Merchant through the Biller Direct Services interface that authority to accept recurring Transactions has been revoked; or (iii) a response from the issuer of a Payment Device that the Payment Device is not to be honored. Merchant must immediately notify Elavon if any Customer advises Merchant that the Customer wishes to revoke its recurring payments authorization by cancelling the recurring payment instruction through the Biller Direct Services interface. Any such notices described in this paragraph that are not fully processed through the Biller Direct Services interface prior to 5:00 p.m. Eastern time one (1) business day before the day a Transaction is scheduled to be processed will not affect such Transaction but will be effective for subsequent Transactions.

ff. **Retrieval Requests and Chargebacks**. Merchant is fully responsible for all Retrieval Requests and Chargebacks under the Payment Network Requirements in connection with Transactions processed using the Biller Direct Services. Upon receipt of a Retrieval Request or documentation related to a Chargeback from a Credit Card Association, an ECS Association or an EFT Network, as applicable, Elavon and Member will forward such request or documentation to Merchant. Merchant is responsible for responding, as appropriate, to each Retrieval Request or Chargeback, including by retrieving a copy of the relevant Transaction Receipt from the Biller Direct Services interface. In addition, Merchant will cooperate with Elavon and Member in complying with the Payment Network Requirements regarding Retrieval Requests and Chargebacks.

iii. **Biller Direct Services; Fees; Other Amounts Owed; Taxes**. Elavon and Member will provide Merchant with the Biller Direct Services in accordance with the Agreement. Merchant will compensate Elavon and Member for the Biller Direct Services as indicated on the Biller Direct Services Enrollment Form, and in any additional application and setup forms.

iv. **Fraud Controls and Responsibility for Fraud**. Elavon may suspend processing of Transactions or decline to process one or more individual Transactions if, based upon fraud detection and prevention controls or other security or Transaction verification or validation procedures, Elavon reasonably believes that such Transactions submitted to Elavon are the result of fraud or error. Merchant agrees that Elavon may, within its sole discretion, suspend the disbursement of funds related to any Transaction for any reasonable period of time required to investigate suspicious or unusual Transaction or deposit activity and that Elavon and Member will have no liability for any losses Merchant may attribute to any suspension of funds disbursement. Notwithstanding the foregoing, Merchant shall be responsible for all fraudulent Transactions unless such fraud results from Elavon's failure to authenticate a purported Customer as required under the Agreement using information provided to Elavon by Merchant under Section (A)(22)(a)(ii)(bb) hereof. Elavon undertakes monitoring of certain Transactions on a systematic basis utilizing fraud and risk parameters in order to minimize Elavon's own financial exposure and such monitoring may result in a financial benefit for Merchant. Perpetrators of fraudulent Transactions may be referred to law enforcement officials.

v. **Suspension of Biller Direct Services**. Elavon reserves the right to suspend Merchant's or a Customer's access to the Biller Direct Services or to temporarily restrict any use thereof, in whole or in part, if, in Elavon's sole judgment, there is a security, credit or legal risk that may interfere with the continued provision of such Biller Direct Services. Elavon also

reserves the right to permanently terminate a Customer's access to the Biller Direct Services upon notice to Merchant if, in Elavon's reasonable discretion, such Customer is misusing the Biller Direct Services or is engaged in suspicious or possible illegal activity. Elavon reserves the right to refuse any Transaction where Elavon believes, in its reasonable discretion, that the Transaction involves a material probability of fraud, credit, or legal risk. Merchant shall cooperate in resolving any claims or errors alleged by a Customer and in investigating any claims of fraud consistent with Laws and Payment Network Regulations.

vi. **Amendments**. Elavon is entitled to pass through to Merchant any fee increases or new fees imposed upon Elavon by any Payment Network and any other third party vendor used by Elavon or Member to provide the Biller Direct Services.

b. **Payment Card Services Provisions.**

i. **General Description**. This Section sets forth additional terms and conditions of the Biller Direct Services applicable to the processing of Transactions conducted using Payment Cards, as more fully described below. Elavon and Member will process Payment Card Transactions only if Merchant has elected Processing Services with respect to Payment Cards on the Biller Direct Services Enrollment Form, and in any additional application and setup forms, and subject to the terms and conditions set forth in Section (A)(22)(a) above and this Section (A)(22)(b).

ii. **Authorization**.

aa. **Transaction Authorization**. Elavon will attempt to obtain an Authorization Code before completing a Transaction. Elavon will only process Transactions that receive a positive Authorization.

bb. **Effect**. An Authorization Code does not: (i) guarantee Merchant final payment for a Transaction; (ii) guarantee that the Transaction will not be disputed later by the Cardholder as all Transactions are subject to Chargeback; or (iii) protect Merchant in the event of a Chargeback regarding unauthorized Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the Agreement or otherwise validate a fraudulent Transaction.

iii. **Credits**.

aa. **Credit Transaction Receipt**. If Merchant agrees to grant a Cardholder a refund of a Credit Card, Debit Card, or Prepaid Card Transaction processed by Elavon and Member, Merchant must request a Credit Transaction Receipt through the Biller Direct Services interface and must issue the credit using the Credit Transaction Receipt. Merchant may not issue cash or a check as a refund for any previous Transactions processed on a Credit Card, Debit Card, or Prepaid Card. Elavon and Member will debit the DDA for the total face amount of each Credit Transaction Receipt processed by Elavon. Elavon and Member will not process a Credit Transaction Receipt relating to any Transaction Receipt not originally processed by Elavon, and Elavon and Member will not process a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt.

iv. **Interchange.** Elavon and Member bear no responsibility for the interchange category or pricing, including discount rate, fees and surcharges, applied by the Credit Card Associations, EFT Networks or otherwise owed by Merchant with respect to any Transaction processed using the Biller Direct Services, except to the extent that Merchant is obligated to pay greater Interchange with respect to a Transaction solely on account of Elavon's failure to comply with the Transaction processing requirements agreed to between Merchant and Elavon.

c. **Electronic Check and Automated Clearing House Services Provisions.**

i. **General Description**. This Section sets forth additional terms and conditions of the Biller Direct Services applicable to processing of Transactions originated and presented for clearing and payment via the ACH Network in accordance with the ECS Rules, as more fully described below. Elavon and Member will process ECS and ACH Transactions only if Merchant has elected ACH / ECS on the Biller Direct Services Enrollment Form, and in any additional application and setup forms. Processing of ECS and ACH Transactions shall be subject to the terms and conditions set forth in Section (A)(22)(a) above and this Section (A)(22)(c).

ii. **Electronic Check and Automated Clearing House Services Generally**. All costs and fees related to the Electronic Check and Automated Clearing House Services chosen by Merchant are as provided in the Merchant Application, except as otherwise provided in the Biller Direct Services Enrollment Form, and in any additional application and setup forms. The Customer must provide authorization to Elavon prior to Elavon initiating an ACH debit to the Customer's account, in accordance with the ECS MOG. Elavon will make a record of the Customer's authorization for the ACH debit. Elavon will either retain the original or a duplicate record of the Customer's authorization for the period required by the applicable ECS Rules, and will make a copy of such record available to Merchant for a fee as indicated on the Biller Direct Services Enrollment Form, and in any additional application and setup forms.

iii. **Additional Representations and Warranties**. Merchant represents and warrants, with respect to all ECS and ACH Transactions accepted and processed by Elavon and Member under the Agreement, that (i) for prearranged payment and deposit (PPD) entries or recurring debit entries, the Customer has duly authorized the debiting of the Customer's account in writing in accordance with applicable law and ECS Rules, (ii) the business transaction represents an obligation of the Customer who is initiating the ECS or ACH Transaction, and (iii) the ECS or ACH Transaction is for amounts actually owed by Customer to Merchant (including tax) and does not involve any element of credit.

SECTION B – ELECTRONIC CHECK SERVICES

If Merchant has selected Electronic Check Services, Merchant shall be subject to this Section B in addition to the terms and conditions of Section A of this TOS. The terms and conditions for ECS are set forth in the Agreement and the ECS Merchant Operating Guide (the "ECS MOG"), incorporated herein and located at our website https://www.merchantconnect.com/CWRWeb/ElectronicCheckService.do. In the course of its acceptance and use of ECS, Merchant represents, warrants and covenants the following:

1. Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, and (b) Laws, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act.

2. Merchant shall pay the fees for ECS as set forth in the Merchant Application, and in any additional application and setup forms.

3. In the event Merchant accepts for ECS certain types of Customer payments that are ineligible as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Merchant may be liable for the face value of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.

4. Merchant shall cause a Check Reader/Imager to be readily available for use at all Merchant locations where Merchant will accept Paper Checks for ECS processing.

5. Merchant must use commercially reasonable procedures to verify the identity of each Customer that submits a payment.

6. Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.

7. Merchant may use the ECS only in connection with the presentment and acceptance of certain types of Customer payments in payment for goods or services sold by Merchant, or in payment for an obligation owed to Merchant, and only in compliance with the ECS Rules. Merchant shall be the sole user of the ECS, and Merchant may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other Person.

8. Merchant represents and warrants, with respect to all ECS Transactions submitted for processing by Elavon, that (i) the Customer has duly authorized the debiting of the Customer's account for the amount of the ECS Transaction in accordance with Laws and ECS Rules, (ii) the Transaction represents an obligation of the Person who is submitting a Customer payment, and (iii) the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the Customer to Merchant, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Merchant. Merchant represents and warrants that no portion of any ECS Transaction involves any element of Merchant's extension of credit.

9. Merchant may not use ECS for merchandise returns or refunds, as ECS does not support this function. Merchandise returns or refunds must be handled outside ECS by direct negotiation between Merchant and the Customer.

10. Merchant is responsible to Elavon for any Transaction charged back by Elavon or its agent in accordance with the Agreement, including the ECS MOG, and for any fines, penalties or assessments incurred as a result of Merchant's non-compliance with Laws or the ECS Rules. Merchant agrees to immediately pay to Elavon or its agent (by means of debit or set-off initiated by Elavon or its agent, submission of payment by Merchant, or otherwise, at the sole option of Elavon),

an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.

11. Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, and errors in accordance with the ECS Rules and Laws.

12. Merchant is responsible for and will ensure that all information, including MICR data and payment amounts, are accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information is accurately reflected in the related Item Merchant sends to Elavon for processing through ECS. Merchant will not submit for clearing or settlement any physical Paper Check unless and until Elavon and Member have processed and settled a Chargeback to Merchant with respect to any Items created from such Paper Check.

13. Merchant will not disclose to third parties any information related to ECS Transactions including, but not limited to, Customer DDA information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Merchant shall keep all such information confidential and secure, in accordance with the Agreement and Laws.

14. Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.

15. Merchant must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Merchant would protect its own confidential and proprietary information and as further specified in the Agreement.

16. Merchant's Agreement and use of the ECS may be terminated immediately by Elavon for failure to comply with the terms of the TOS, the Agreement or Laws.

SECTION C – TOKENIZATION SERVICES

If Merchant has selected Tokenization Services, Merchant shall be subject to this Section C in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Tokenization Services are set forth in the Agreement and the MOG, incorporated herein. In the course of its acceptance and use of the Tokenization Services, Merchant hereby agrees to the following terms and conditions governing the Tokenization Services:

1. For the payment of fees for the Tokenization Services, Elavon shall provide Tokenization Services to Merchant**,** which shall consist of a tokenization feature pursuant to which Elavon will provide Merchant with Tokens in substitution for Credit Card and Debit Card account numbers. More specifically, under the Tokenization Services, when a Credit Card or Debit Card account number associated with a Transaction is transmitted from Merchant to Elavon, Elavon will:

a. generate a Token;

b. associate the Token with the account number; and

c. send the Token, instead of account number, back to Merchant in the Transaction authorization response message.

2. The account number associated with each Token under the Tokenization Services will be available to Merchant until three (3) years after the expiration or termination of the Agreement (the "Token Validity Period"). During the Token Validity Period, the Token, rather than the associated account number, may be submitted by Merchant to Elavon to process additional Transactions to the Credit Card or Debit Card associated with such Token across all Merchant locations. Merchant acknowledges that the Tokens will be formatted in Elavon's reasonable discretion and may not be compatible with other Merchant systems, equipment, communications devices, databases and/or services.

3. Merchant shall cause the appropriate Hardware, including POS Devices and any hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Merchant locations that are the recipients or users of the Tokenization Services.

4. Merchant acknowledges that Elavon does not store Credit Card or Debit Card expiration dates. In order to use a Token to process a Transaction, Merchant must provide the Token (in lieu of a account number) together with the expiration date for the original Credit Card or Debit Card.

5. Merchant may request a reversal of the Tokenization process as follows:

a. To reverse the Tokenization process on an individual Token basis, Merchant may access an Elavon web portal and, with appropriate authentication credentials, retrieve the account number associated with any Token.

b. To reverse the Tokenization process on a bulk basis (i.e., in excess of 100 Tokens at a time), an officer of Merchant must make a request in writing to Elavon and provide Elavon with the Tokens for which Merchant wishes to reverse the Tokenization process. Elavon will provide Merchant with an encrypted file containing the account numbers associated with such Tokens within thirty (30) days of receiving the request.

6. DISCLAIMER OF WARRANTIES. WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE, AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE TOKENIZATION SERVICES, HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, PROVIDED TO MERCHANT ARE PROVIDED "AS IS". MERCHANT ACKNOWLEDGES AND AGREES THAT IT IS NOT RELYING ON ANY STATEMENT, PROMISE, OR REPRESENTATION, EITHER ORAL OR WRITTEN, MADE BY OFFICERS, SALES

PERSONNEL, OR AGENTS OF ELAVON OR MEMBER, EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, INCLUDING THIS SECTION C, WHICH WOULD SUPPLEMENT, EXPLAIN, INTERPRET, MODIFY OR EXPAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, THIS SECTION C, OR ANY SALES LITERATURE OR WRITTEN PROPOSALS. MERCHANT ACKNOWLEDGES AND UNDERSTANDS THAT NO EXPRESS WARRANTY WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, IS CONTAINED OR CREATED IN ANY ORAL STATEMENT OR IN ANY WRITING OTHER THAN THE EXPRESS WRITTEN PROVISIONS OF THIS SECTION C.

7. LIABILITY. Except as otherwise expressly provided herein, in no event shall Elavon be liable hereunder for (a) any loss of profits or other economic loss of whatever nature, or any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement, or (b) any liabilities of Merchant to third parties resulting from any failure of Elavon, any Hardware or any software, documentation or other related materials (whether provided by Elavon or a third party) to perform as required under the terms of this Section C to the Agreement. In no event shall Elavon's licensors, contractors, service providers or third party beneficiaries have any indemnification obligations or be liable pursuant to this Section C for any damages, including, without limitation, any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement.

SECTION D – FANFARE SERVICES

If Merchant has selected Fanfare Services, Merchant shall be subject to, and shall comply with, this Section D in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Fanfare Services are set forth in the Agreement and the MOG, incorporated herein. In the course of its acceptance and use of the Fanfare Services, Merchant hereby agrees to the following terms and conditions governing the Fanfare Services:

1. GENERAL PROVISIONS

a. Elavon will host and make available to Merchant the Fanfare Web Portal.

b. Merchant must use Supported Hardware in order to make full use of the Fanfare Services, and certain or all Fanfare Services may be unavailable or may function improperly if Merchant does not use them in connection with Supported Hardware. Merchant may obtain a current list of Supported Hardware from Elavon upon request, which Elavon may update from time to time. Elavon shall have no responsibility or liability in connection with the performance or non-performance of the Fanfare Services, including in connection with any errors or malfunctions that may occur in connection with the Fanfare Services, if Merchant uses the Fanfare Services with any POS Devices that are not Supported Hardware.

c. Merchant shall not acquire any intellectual property rights and/or any goodwill, know-how or any other proprietary rights in any form whatsoever or howsoever in the Fanfare Platform or the Fanfare Services. Any and all intellectual property rights in and to the Fanfare Platform or the Fanfare Services, and related goodwill, know-how and other proprietary rights are and shall remain the absolute exclusive property of Elavon and/or its licensors.

d. Merchant will (i) cooperate with Elavon in connection with the Fanfare Services, and (ii) provide Elavon with reasonably requested information and access (which may be remote access) to equipment and to Merchant's personnel for purposes of facilitating setup of POS Devices for use in connection with the Fanfare Services.

e. Merchant shall use all reasonable means to prevent any unauthorized access to or use of the Fanfare Platform and the Fanfare Services, and if such access or use occurs, Merchant shall notify Elavon immediately.

f. Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with all Laws related to its use of the Fanfare Services and all Laws governing its relationships with Customers and use of any Customer Data in connection with the Fanfare Services, including (i) the collection, storage and use of Customer Data for promotional or marketing purposes (including the compliance of any such storage or use with Merchant's applicable privacy policies and terms and conditions), (ii) the distribution (including by e-mail or short message service (SMS)) of marketing or promotional materials to Customers (including through any use of communication or marketing services made available to Merchant through the Fanfare Platform), and (iii) the issuance, sale, distribution, use and acceptance of gift cards, gift certificates, Stored Value Cards or Prepaid Cards that may be applicable to Fanfare Gift Cards (including all laws related to purchase, service and dormancy fees, Laws relating to expiration dates, Laws governing the treatment of unused or unclaimed funds or other property and Laws related to money transmission). Further, Merchant agrees to comply in a timely manner with any such Laws.

g. Merchant acknowledges and agrees that Elavon has no responsibility for recording or storing any Customer Data or information related to the sale of any Fanfare Gift Card until such information has been received and validated by Elavon.

h. Merchant understands and agrees that its data security obligations under the Agreement apply to any Customer Data it collects or receives in connection with the Fanfare Services, and Merchant agrees to comply with such data security obligations with respect to all Customer Data Merchant may collect, access or receive in connection with the Fanfare Services.

i. Merchant will exclusively use Elavon (including Elavon-designated service providers) for services similar to the Fanfare Services, and Merchant will not receive services similar to the Fanfare Services from any third parties not approved by Elavon in writing.

j. Merchant or Elavon may terminate the Fanfare Services for any of the reasons that Elavon or Merchant, as applicable, may terminate the Agreement.

k. DISCLAIMER OF WARRANTIES. MERCHANT UNDERSTANDS AND AGREES THAT THE FANFARE PLATFORM AND THE FANFARE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING, ELAVON DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE FANFARE PLATFORM OR FANFARE SERVICES WILL COMPLY WITH ANY APPLICABLE LAWS GOVERNING THE COLLECTION OF CUSTOMER INFORMATION, THE USE OF CUSTOMER INFORMATION FOR MARKETING OR PROMOTIONAL PURPOSES, OR THE ISSUANCE, SALE DISTRIBUTION, USE OR ACCEPTANCE OF ANY FANFARE GIFT CARD. ELAVON WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY HARM TO MERCHANT'S COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM MERCHANT'S ACCESS TO OR USE OF THE FANFARE PLATFORM OR THE FANFARE SERVICES. ELAVON MAKES NO WARRANTY THAT THE FANFARE PLATFORM OR THE FANFARE SERVICES WILL MEET MERCHANT'S REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ELAVON OR THROUGH THE FANFARE SERVICES, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. ELAVON IS NOT RESPONSIBLE FOR THE UNAUTHORIZED ACCESS TO OR USE OF ANY PROMOTIONAL OFFER, REWARDS VALUE, OTHER FANFARE LOYALTY PROGRAM OFFER, OR ANY FANFARE GIFT CARD. FURTHER, ELAVON MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR PROFITABILITY FOR MERCHANT OF ANY (I) OFFER, PROMOTION OR REWARD ADOPTED BY MERCHANT IN CONNECTION WITH ITS FANFARE LOYALTY PROGRAM, OR (II) FANFARE GIFT CARD ARRANGEMENT OR SOLUTION ADOPTED BY MERCHANT IN CONNECTION WITH ITS FANFARE GIFT CARD PROGRAM, IN EACH CASE EVEN IF ELAVON PROMOTES SUCH A SOLUTION AS COMMON OR HISTORICALLY SUCCESSFUL IN MERCHANT'S INDUSTRY OR MARKET.

l. LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ELAVON AND EACH OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM MERCHANT'S ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE FANFARE PLATFORM OR THE FANFARE SERVICES, OR RESULTING FROM MERCHANT'S PROVISION OF PROMOTIONS, OFFERS, REWARDS OR FANFARE GIFT CARDS TO CUSTOMERS IN CONNECTION WITH THE FANFARE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT ELAVON HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR ANY TERMINATION OF THE AGREEMENT FOR ANY REASON WHATSOEVER AND EACH OF THE PROVISIONS OF THIS SECTION SHALL OPERATE SEPARATELY IN ITSELF AND SURVIVE INDEPENDENTLY OF OTHERS.

m. All Merchant locations, including chain locations, will be boarded on Elavon's system pursuant to the paperwork submitted by Merchant to Elavon. However, in the event of an error or omission of fees payable by Merchant on the submitted paperwork, the setup fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.

n. In the event that a particular location closes or changes its Merchant Identification Number (MID), Merchant agrees that Elavon may bill the Primary Fanfare Merchant for any fees associated with subsequent transactions processed on Fanfare Gift Cards activated by the closed MID. This would apply to any system generated transactions including, but not limited to, deduction and points conversion transactions. Monthly fees billed for Fanfare Services provided with respect to the closed location may also be billed to the Primary Fanfare Merchant.

o. Fanfare Services are not available to Merchants located in Canada or Puerto Rico.

2. FANFARE LOYALTY SERVICES PROVISIONS

a. Elavon will host the Fanfare Loyalty Website.

b. Merchant acknowledges that, to enroll in the Fanfare Loyalty Program and receive promotional offers and/or rewards, a Customer must enroll with Merchant during a point-of-sale transaction at Merchant or by visiting Merchant's Fanfare Loyalty Program Website, in each case in accordance with the Customer enrollment procedures described in the MOG.

c. Merchant is responsible for creating (i) a set of terms and conditions governing its Fanfare Loyalty Program, and (ii) a privacy policy addressing Merchant's collection and usage of Customer Data. Elavon will post (which may be by cross-reference link) Merchant's terms and conditions and privacy policy, on Merchant's behalf, on the Fanfare Loyalty Website hosted by Elavon. Elavon will provide Merchant with Model Documents that Merchant may adapt and use to govern its Customers' participation in the Fanfare Loyalty Program. Elavon makes no warranties with respect to the legality or legal sufficiency of the Model Documents. In addition, Merchant acknowledges that it has sole responsibility for ensuring compliance with all applicable Laws and any pre-existing commitments or obligations of Merchant to Customers in connection with (i) Merchant's use of the Model Documents; (ii) the content of the Model Documents, and (iii) any adaptations that Merchant may make to the Model Documents in developing its own Customer-facing terms and conditions and privacy policy regarding the Fanfare Loyalty Program. Merchant acknowledges that Elavon will not review Merchant's privacy policy or terms and conditions governing its Fanfare Loyalty Program for any purpose, including specifically for purposes of assessing the legality or legal sufficiency of such disclosures, regardless of whether Merchant uses the Model Documents, in whole or in part. Merchant represents, warrants and covenants to Elavon that the Customer terms and conditions and privacy policy governing Merchant's Fanfare Loyalty Program will (i) establish sufficient rights for Merchant and Elavon to exercise all rights and perform all obligations contemplated under the Agreement, including the MOG, (ii) prevent Merchant from sharing Customer Data with any third party, affiliated or unaffiliated, except as permitted by applicable Law and (iii) not be inconsistent with any provision included in the Model Documents provided by Elavon unless Elavon has granted its prior written consent to any such inconsistency. Merchant must notify Elavon, in writing prior to the launch of Merchant's Fanfare Loyalty Program, of the Customer-facing terms and conditions and privacy policy Merchant wishes Elavon to post (by cross-reference link) to Merchant's Fanfare Loyalty Website. If Merchant does not so notify Elavon of modified or different Customer-facing terms and conditions and/or privacy policy that should govern Merchant's Fanfare Loyalty Program prior to the launch of Merchant's Fanfare Loyalty Program, Merchant will be deemed to have instructed Elavon to post the Model Documents, in the form provided by Elavon to Merchant, as Merchant's Customer-facing terms and conditions and privacy policy. Merchant agrees that it has fully reviewed and approved, as appropriate for Merchant and its Customers, the Model Documents Elavon posts to Merchant's Fanfare Loyalty Website.

d. Merchant represents and warrants that it will only use Customer Data in accordance with its Fanfare Loyalty Program privacy policy and terms and conditions. In addition, Merchant shall obtain for the benefit of Elavon and its licensor(s) any necessary consents, approvals or notifications required for Elavon or its licensor(s) to use any Customer Data for the purpose of providing Customers with services related to the Fanfare Loyalty Program. Merchant understands that Elavon will have the authority to use and share Customer Data as described in the Elavon Fanfare Privacy Policy available at www.elavon.com.

e. Merchant understands and agrees that Elavon may use the Fanfare Loyalty Website for purposes of obtaining Customer consent to use Customer Data in accordance with the Elavon Fanfare Privacy Policy. Merchant further agrees that Elavon may use Customer Data for any of the purposes permissible under the Elavon Fanfare Privacy Policy.

f. Merchant agrees that it will not share Customer Data with any third parties, including any Merchant affiliates, without Elavon's prior written consent.

g. Merchant agrees that it will not collect or receive Customer Data from any source other than directly from the Customer (including as a result of any Customer transactions at Merchant) or Elavon, and Merchant agrees that it shall not supplement or enhance any Customer Data collected in connection with the Fanfare Loyalty Program with any data or information from sources other than the Customer or Elavon.

3. FANFARE GIFT CARD SERVICES PROVISIONS

a. Merchant agrees that all Fanfare Gift Cards will be printed by Elavon or an Elavon-approved vendor.

b. Merchant agrees to comply with the Graphic Specifications and Procedures provided by Elavon, as the same may be updated by Elavon in its sole discretion from time to time.

c. Merchant authorizes Elavon to initiate credit and debit entries among Merchant's individual chain locations for any Transactions that change the balance of a Fanfare Gift Card. In the event Elavon is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Merchant further authorizes Elavon to credit and/or debit the designated Master Account or Primary Fanfare Merchant. Merchant also understands that Elavon may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or Merchant location. Both Merchant and the individual chain locations agree to pay related direct settlement fees.

SECTION E – AMERICAN EXPRESS® ACCEPTANCE PROGRAM

If Merchant has elected to accept American Express Payment Devices through the OptBlue^{SM} Program, Merchant shall be subject to, and shall comply with, this Section E in addition to the terms and conditions of Section A of the TOS, the MOG, and the American Express Merchant Operating Guide, which are incorporated herein. In the course of its acceptance of American Express Payment Devices, Merchant hereby agrees to the following terms and conditions:

1. GENERAL PROVISIONS

a. Relationship to Remainder of Agreement. Except as set forth herein, the terms of this Section E supplement, rather than displace, the terms of the remainder of the Agreement. To the extent there is any direct conflict between the terms of this Section E and the MOG or TOS, the terms of this Section E shall govern solely with respect to the Merchant's acceptance of American Express Payment Devices and solely to the extent necessary to resolve the conflict. For the avoidance of doubt, in the event that compliance with this Section E would cause you to violate the American Express Merchant Operating Guide and/or Laws, you should comply with the American Express Merchant Operating Guide and/or Laws.

b. Glossary. As used in this Section E, the capitalized terms set forth below shall have the following definitions:

i. **Advance Payment Charge:** A Charge for which full payment is made in advance of Merchant providing the goods and/or rendering the services to the Cardholder.

ii. **Affiliate:** Any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.

iii. **Agency:** Any Entity or line of business that uses Merchant's Marks or holds itself out to the public as a member of Merchant's group of companies.

iv. **Aggregated Charge:** A Charge that combines multiple small purchases or refunds (or both) incurred on a Card into a single, larger Charge before submitting the Charge for payment.

v. **American Express Payment Device:** (i) Any Card, account access device, or Payment Device or service bearing American Express or American Express Affiliate's Mark and issued by an Issuer or (ii) a Card Number.

vi. **American Express Brand:** The American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or an American Express Affiliate and the goodwill associated with all of the foregoing and with all the goods and services now and in the future provided, marketed, offered, or promoted by American Express or an American Express Affiliate.

vii. **Card Number**: The unique identifying number that the Issuer assigns to an American Express payment Device when it is issued.

viii. **Charge:** A payment or purchase made on an American Express Payment Device.

ix. **Credit:** The amount of the Charge that you refund to Cardholders for purchases or payments made on American Express Payment Devices.

x. **Customer Activated Terminals (CATs):** An unattended POS Device(e.g., gasoline pump, vending machine, check-out kiosk).

xi. **Disputed Charge**: A Charge about which a claim, complaint, or question has been brought.

xii. **Entity:** A corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

xiii. **Establishment:** Any or all of a Merchant's locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that the Merchant adopts in the future.

xiv. **Expiration Date:** The month and year on which a Payment Device expires (sometimes referred to as "valid thru" or "active thru" date).

xv. **Fraud Full Recourse Program**: one of American Express' Chargeback programs.

xvi. **Internet Electronic Delivery:** The delivery of goods or services purchased on the internet via an internet download or another file transfer process (e.g., images or software download).

xvii. **Marks:** The names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

xviii. **American Express Acceptance Program:** The American Express OptBlue[sm] Program, pursuant to which a Merchant is permitted to accept Transactions initiated with American Express Payment Devices through Elavon.

xix. **American Express Merchant Operating Guide:** The Merchant Operating Guide published by American Express containing the rules and regulations of American Express applicable to the American Express Acceptance Program, together with all technical specifications, documentation, and other policies or procedures incorporated therein and currently located at http://www.americanexpress.com/merchantopguide. For all purposes of this Agreement, the American Express Merchant Operating Guide is considered to be part of the Credit Card Rules.

xx. **Oil Fraud Protection Program:** American Express' program providing Establishments in the oil/petroleum industry protection from counterfeit fraud Chargebacks, provided both the Establishment and Charge meet certain criteria.

xxi. **Partial Immediate Chargeback Program:** One of American Express' Chargeback programs.

xxii. **Pre-Authorization:** An Authorization request that Merchant submits in advance of providing the goods or services, allowing them to submit the Approved Charge (e.g., fuel pump CATs).

xxiii. **Recurring Billing Charges:** An option offered to Cardholders to make recurring Charges automatically on their American Express Payment Device (e.g., membership fees to health clubs, magazine subscriptions, and insurance premiums).

xxiv. **Submission:** The collection of Transaction Data sent to American Express.

xxv. **Telecommunications:** The communication services, including personal communication services; cellular, paging, long distance, etc.

c. **Assignment.** Merchant shall not assign to any third party any payments due to it pursuant to this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both), free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Elavon or Member without consent of American Express.

d. **Payment Device Parity**. Merchant's policies for accepting American Express Payment Devices, including but not limited to its refund policies, must be at least as favorable as its policies for accepting any other Payment Devices. Where Merchant displays signage representing or promoting its acceptance of any Payment Device, Merchant must display American Express signage with equal representation and visibility to the signage of other Payment Devices.

e. **Establishment Closing**. If a Merchant closes any of its Establishments, Merchant must follow these guidelines:

i. Notify Elavon immediately;

ii. If Merchant is not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction Receipt and on websites and catalogs); and

iii. For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the Cardholder is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.

f. **Chargebacks.** Any Transaction not in compliance with the requirements of this chapter may be subject to Chargeback. Further, American Express may, at its sole discretion, place Merchant in any of American Express' Chargeback programs at any time, which will result in Chargebacks occurring automatically for certain Transactions. If Elavon is notified that Merchant has been placed in a Chargeback program, Elavon will communicate that information to Merchant.

i. **Immediate Chargeback Program**. American Express may Chargeback a Charge without first sending a Retrieval Request any time a Cardmember disputes a Charge for any reason other than actual or alleged fraud. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:

- Merchant chooses to enroll in this program;
- American Express determines that the Merchant has submitted a disproportionate number of Disputed Charges or has been subject to a disproportionate number of Chargebacks.
- American Express determines that the Merchant's industry has had historically high occurrences of Disputed Charges.

ii. **Partial Immediate Chargeback Program.** American Express may Chargeback any Charge below a predetermined amount without first sending a Retrieval Request any time a Cardmember disputes a Charge for any reason other than actual or alleged fraud. All disputed amounts above the predetermined amount will be processed under American Express' standard Retrieval Request and Chargeback policy. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:

- Merchant chooses to enroll in this program to avoid receiving Retrieval Requests below a specific dollar amount.
- American Express determines that the Merchant's industry has had historically high occurrences of Disputed Charges.

iii. **Fraud Full Recourse Program.** American Express may Chargeback without first sending a Retrieval Request anytime a Cardmember disputes a Charge based on actual or alleged fraud. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:

- American Express receives a disproportionately high number of Disputed Charges relative to Merchant's prior history or industry standards.
- Merchant engages or participates in illegal, fraudulent, deceptive, unfair or abusive business practices, illegal activities, or prohibited uses of American Express Payment Devices.

g. **Disputed Charges**. If Merchant submits disproportionate amounts or numbers of Disputed Charges, Merchant may be placed in a Chargeback program or Merchant's acceptance of American Express Payment Devices may be limited or terminated.

2. ACCEPTANCE.

a. **American Express Payment Device Acceptance.** Merchant must accept American Express Payment Devices as payment for goods and services (other than those goods and services prohibited under this Agreement) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's Establishments under the Agreement.

b. **Treatment of the American Express Brand.** Except as expressly permitted by Applicable Law, Merchant must not:

- indicate or imply that it prefers, directly or indirectly, any other Payment Device over American Express Payment Devices,
- try to dissuade Cardholders from using American Express Payment Devices,
- criticize or mischaracterize American Express Payment Devices or any of American Express' services or programs,
- try to persuade or prompt Cardholders to use any other Payment Device or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when American Express Payment Devices are accepted that are not imposed equally on all other Payment Devices, except for electronic funds transfer, or cash and check,
- suggest or require Cardholders to waive their right to dispute any American Express Transaction,
- engage in activities that harm American Express's business or the American Express Brand (or both),
- promote any other Payment Devices (except Merchant's own private label card that Merchant issues for use solely at Merchant's Establishments) more actively than Merchant promotes American Express Payment Devices, or
- convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by applicable Laws): (i) Merchant clearly and conspicuously discloses the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is

offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this Section E(2)(b), "Treatment of the American Express Brand".

c. **Treatment of American Express Marks**. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of American Express Payment Devices and display American Express Marks (including any American Express Payment Device application forms provided to Merchant) as prominently and in the same manner as any other Payment Devices. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from Elavon) indicate that American Express endorses Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using American Express's Marks upon termination of the Agreement.

For additional guidelines on the use of the American Express Marks, contact Elavon.

d. **Prohibited Uses of American Express Payment Devices**. Merchant must not accept American Express Payment Devices for any of the following:

- adult digital content sold via Internet Electronic Delivery,
- amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at Merchant's Establishments; for example, purchases at Merchant's Establishments by Merchant's owners (or their family members) or employees contrived for cash flow purposes, or payments that Merchant have accepted in order to advance cash to Cardholders in connection with the Transaction,
- amounts that do not represent bona fide, direct sales by Merchant's Establishment to Cardholders made in the ordinary course of Merchant's business,
- cash or cash equivalent; for example, purchases of gold, silver, platinum and palladium bullion and/or bars (collectible coins and jewelry are not prohibited), or virtual currencies that can be exchanged for real currency (loyalty program currencies are not prohibited),
- charges that the Cardholder has not specifically approved,
- costs or fees over the normal price of the goods or services (plus applicable taxes) that the Cardholders has not specifically approved,
- damages, losses, penalties, or fines of any kind,
- gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets,
- unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a Rights-holder under laws applicable to American Express, Merchant, or the Cardholders),
- overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where American Express Payment Devices are used as a payment of last resort),
- amounts that represent repayment of a cash advance including, but not limited to, payday loans, pawn loans or payday advances,
- sales made by third parties or Entities conducting business in industries other than Merchant's, or
- other items of which American Express or Elavon notifies Merchant.

Merchant must not use American Express Payment Devices to verify a customer's age.

e. **Treatment of Cardholder Data.** Any and all Cardholder Data is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Cardholder Data, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the Merchant Agreement.

3. TRANSACTION PROCESSING

a. **Completing a Transaction at the Point of Sale.** To accept American Express Payment Devices for Charges at Merchant's Establishments, at the point of sale, Merchant must:

- clearly and conspicuously, disclose all material terms of sale prior to obtaining an Authorization, and
- clearly and conspicuously inform the Cardholder at all points of interaction (e.g., sales conducted in person, over the internet, mobile or via mail or telephone order) what Entity is making the sales offer, so that the Cardholder can clearly distinguish Merchant from any other party involved in the interaction (e.g., a vendor of goods or provider of services Merchant may engage, or another Merchant seeking to conduct business with the Cardholder).

b. **Contact Chip Charges.** When presented with a Chip Card to be inserted into a Chip Card reader, Merchant must:

i. Verify that the Card is not visibly altered or mutilated;

ii. Verify that the customer is the Cardholder;*

iii. Capture Chip Card Data by inserting the Chip Card into the Chip Card reader;

iv. The POS Device will advise the Cardholder to enter the PIN (a Chip and PIN Charge) or sign for the Charge (a Chip and signature Charge);

- Chip and PIN Charges: the Cardholder will enter the PIN into the POS Device using the keypad. If the Chip and PIN Charge is unable to be completed due to a technical problem, the POS Device will show an error message.
- Chip and signature Charge: Obtain the Cardholder's signature on the Transaction Receipt and compare the signature on the Transaction Receipt to the name and signature on the American Express Payment Device. Obtaining a signature may not be required if Merchant's Establishment and the Charge qualify for the No Signature Program.

v. Obtain an Approval Code,

vi. Verify the Expiration Date on the American Express Payment Device,

vii. Match the Card Number and the Expiration Date on the American Express Payment Device to the same information on the Transaction Receipt, and

viii. Ensure the name that prints on the Transaction Receipt matches the name on the front of the American Express Payment Device.*

* Except when the Cardholder name is not captured on the Transaction Receipt or for Prepaid Cards that do not show a name on their face.

c. **Mobile Contactless Charges**. A mobile contactless Transaction is a Transaction initiated through a contactless-enabled mobile phone at a contactless-enabled POS Device. These mobile phones contain a payment application which can initiate a contactless Transaction when the phone is waved in close proximity to a contactless-enabled POS Device. Merchant must be approved by Elavon to accept mobile contactless Transactions.

When presented with a contactless-enabled mobile phone, Merchant must:

i. Capture Magnetic Stripe or Chip Card data by waving the contactless-enabled mobile phone in close proximity to the contactless reader,

ii. Obtain an Approval Code,

iii. Obtain the Cardholder's signature (excluding Charges at CATs), unless the Charge qualifies for the No Signature Required Program,

iv. Compare the signature (when obtained) on the Transaction Receipt with the signature on the companion physical American Express Payment Device or a valid form of formal identification (e.g. driver's license). Merchant must not record or store the information from such formal identification in any way.

d. Customer Activated Terminals. Charges for purchases at Merchant's Customer Activated Terminals (CATs) must meet the requirements for Transaction Receipts in the MOG as well as comply with all Payment Network Regulations and specifications. Without limiting the foregoing, Merchant must include:

- Full Magnetic Stripe data stream or Chip Card Data in all Authorization requests, and
- CAT indicator on all Authorization requests and Submissions.

American Express will not be liable for actual or alleged fraudulent Charges occurring through Customer Activated Terminals. Such Charges may be subject to Chargeback.

e. Processing a Credit. In addition to the procedures set forth in Chapter 2 of the MOG, follow these steps to issue a Credit:

i. Create a Credit Transaction Receipt.

ii. Compare the last four digits on the Transaction Receipt against the American Express Payment Device presented (when applicable).

iii. Have the Cardholder sign the Credit Transaction Receipt (when applicable).

iv. Provide a copy of the Credit Transaction Receipt to the Cardholder.

Merchant must submit all Credits under the Establishment where the Credit originated.

A Credit must be issued in the currency in which the original Charge was submitted. Merchant must issue Credits to the American Express Payment Device used to make the original purchase; however, if the Credit is for the return of a gift by someone other than the Cardholder who made the original purchase, apply Merchant's usual refund policy.

If the Cardholder indicates that the American Express Payment Device on which the purchase was originally made is no longer active or available, do the following:

- For all American Express Payment Devices except Prepaid Cards, advise the Cardholder that Merchant must issue the Credit to that American Express Payment Device. If the Cardholder has questions, advise him or her to call the customer service number on the back of the American Express Payment Device in question.
- If the inactive or unavailable American Express Payment Device is a Prepaid Card, apply Merchant's usual refund policy for returns.

If Merchant issues a Credit, Elavon will not refund the Discount or any other fees or assessments previously applied on the corresponding Charge. The Discount on Chargebacks will not be refunded.

f. Credit Transaction Receipts. Merchant must create a Credit Transaction Receipt for any Credit Merchant issues.

i. *In General*. For all Credit Transaction Receipts, Merchant must:

- Submit the credit through Elavon;

- Retain the original Credit Transaction Receipt (as applicable) and all documents evidencing the Transaction, or reproducible records thereof, for the timeframes listed below; and
- Provide a copy of the Credit Transaction Receipt to the Cardholder.

ii. *Paper Credits.* If Merchant submits Credits on paper, Merchant must create a Credit Transaction Receipt containing all of the following required data:

- full Card Number and Expiration Date (pursuant to applicable Laws), and if available, Cardholder name,
- the date the Credit was issued,
- the amount of the Credit, and
- Merchant's Establishment name and address and, if applicable, store number.

The retention time frame for Credit Transaction Receipts is twenty-four (24) months from the date of the Credit.

g. Advance Payment Charges. An Advance Payment Charge is a Charge for which full payment is made in advance of Merchant's providing the goods and/or rendering the services to the Cardholder. Purchases involving Advance Payment Charges generally carry a higher level of risk than other Charges, due to the fact that goods and services are not provided at the time the Charge is processed. For this reason, American Express may withhold settlement for part or all of such Charges until it is determined that the risk has diminished.

Merchant must follow the procedures in this Section E(3)(g), in addition to all other applicable procedures in the MOG and Section A of the TOS, if Merchant offers the Cardholder the option or requires the Cardholder to make Advance Payment Charges, including, without limitation, for the following types of goods and/or services:

- Custom orders (e.g., orders for goods to be manufactured to a customer's specifications);
- Entertainment/ticketing (e.g., sporting events, concerts, season tickets);
- Tuition, room and board, and other mandatory fees (e.g., library fees) of higher educational institutions; and
- Travel-related services (e.g., tours, guided expeditions).

For an Advance Payment Charge, Merchant must:

- State Merchant's full cancellation and refund policies, clearly disclose Merchant's intent and obtain written consent from the Cardholder to bill the American Express Payment Device for an Advance Payment Charge before Merchant request an Authorization. The Cardholder's consent must include:
  - his or her agreement to all the terms of the sale (including price and any cancellation and refund policies), and
  - a detailed description and the expected delivery date of the goods and/or services to be provided;
- Obtain an Approval Code; and
- Complete a Transaction Receipt. If the Advance Payment Charge is a Card Not Present Charge, Merchant must also:
  - ensure that the Transaction Receipt contains the words "Advance Payment," and
  - within twenty-four (24) hours of the Charge being incurred, provide the Cardholder written confirmation (e.g., email or facsimile) of the Advance Payment Charge, the amount, the confirmation number (if applicable), a detailed description and expected delivery date of

the goods and/or services to be provided and details of Merchant's cancellation/refund policy.

If Merchant cannot deliver goods and/or services (e.g., because custom-ordered merchandise cannot be fulfilled), and if alternate arrangements cannot be made, Merchant must immediately issue a Credit for the full amount of the Advance Payment Charge which cannot be fulfilled.

h. **Aggregated Charges**. An Aggregated Charge is a Charge that combines multiple small purchases or refunds (or both) incurred on an American Express Payment Device into a single, larger Charge before submitting the Charge for payment. If Merchant is classified in an internet industry, Merchant may process Aggregated Charges provided that Merchant complies with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- Merchant must clearly disclose Merchant's intent and obtain written consent from the Cardholder that purchases or refunds (or both) on the American Express Payment Device may be aggregated and combined with other purchases or refunds (or both) before Merchant requests an Authorization.
- Each individual purchase or refund (or both) that comprises the Aggregated Charge must be incurred under the same Establishment and on the same American Express Payment Device.
- Obtain a pre-Authorization of no more than $15.
- Create a Transaction Receipt for the full amount of the Aggregated Charge.
- The amount of the Aggregated Charge must not exceed $15 or the amount for which Merchant obtained pre-Authorization.
- Merchant must submit each Transaction Receipt within the Submission timeframe.
- Merchant must provide the Cardholder with an email containing:
  - the date, amount, and description of each individual purchase or refund (or both) that comprises the Aggregated Charge, and
  - the date and the amount of the Aggregated Charge.

i. **Delayed Delivery Charges**. A Delayed Delivery Charge is a single purchase for which Merchant must create and submit two separate Transaction Receipts. The first Transaction Receipt is for the deposit or down payment and the second Transaction Receipt is for the balance of the purchase, which is paid after the goods or services have shipped or been provided, as applicable and as agreed by Merchant and the Cardholder. To accept an American Express Payment Device for Delayed Delivery Charges, Merchant must comply with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- Clearly disclose Merchant's intent and obtain written consent from the Cardholder to perform a Delayed Delivery Charge before Merchant requests an Authorization,
- Obtain a separate Approval Code for each of the two Delayed Delivery Charges on their respective Charge dates,
- Clearly indicate on each Delayed Delivery Transaction Receipt that the Charge is either for the deposit or for the balance of the Delayed Delivery Charge,
- Submit the Delayed Delivery Transaction Receipt for the balance of the purchase only after the goods have been shipped, provided or services rendered,
- Submit each Delayed Delivery Transaction Receipt within the Submission timeframes. For these purposes, the Charge will be deemed "incurred":
  - for the deposit - on the date the Cardholder agreed to pay the deposit for the purchase.
  - for the balance - on the date the goods are shipped, provided or services are rendered.
- Submit and Authorize each Delayed Delivery Charge under the same Establishment, and

- Treat deposits paid using an American Express Payment Device no differently than Merchant treats deposits on all other Payment Devices.

j. **Keyed No Imprint Program**. The Keyed No Imprint Program allows Merchant to submit In-Person Charges without taking an imprint of an American Express Payment Device if Merchant complies with the procedures set forth in this Section E(3)(j), as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- the Charge must be key-entered,
- the Charge Submission must include the appropriate indicator to reflect that the American Express Payment Device and the Cardholder were present at the point of sale,
- the Charge Submission must include a valid Approval Code, and
- the CID Number must be confirmed as a positive match.

All American Express Payment Devices qualify for the Keyed No Imprint Program. Under the Keyed No Imprint Program, Charges will not be subject to Chargeback based solely on the Establishment's failure to obtain an imprint of the American Express Payment Device.

k. **No Signature Program.** Qualifying Merchants may participate in the American Express No Signature Program. For eligibility requirements and other information about participating in the American Express No Signature Program, refer to the American Express Merchant Operating Guide.

l. **Recurring Billing Charges.** If Merchant offers Cardholders the option to make Recurring Billing Charges, Merchant must comply with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- Before submitting the first Recurring Billing Charge, Merchant must obtain the Cardholder's express written consent for Merchant to bill the American Express Payment Device and must notify the Cardholder that he or she can withdraw consent at any time.
- Merchant must ensure that Merchant's process for cancellation of Recurring Billing is simple and expeditious. Merchant must fulfill Cardholders' requests that Merchant discontinue the Recurring Billing Charges immediately and provide cancellation numbers to them.
- Merchant must clearly and conspicuously disclose all material terms of the option, including, if applicable, the fact that Recurring Billing will continue until the option is cancelled by the Cardholder.
- Before submitting a Recurring Billing Charge, Merchant must obtain Authorization and complete a Transaction Receipt, except with the words "signature on file," if applicable, on the signature line and the appropriate electronic descriptor on the Transaction Receipt.
- Within twenty-four (24) hours of incurring the first Recurring Billing Charge, Merchant must provide the Cardholder written confirmation (e.g., email or facsimile) of such Charge, including all material terms of the option and details of Merchant's cancellation/refund policy, and
- Where the material terms of the option to make Recurring Billing Charges change after Submission of the first Recurring Billing Charge, promptly notify the Cardholder in writing of such change and obtain the Cardholder 's express written consent to the new terms prior to submitting another Recurring Billing Charge.

If Merchant's Recurring Billing Charge amounts vary, Merchant must offer the Cardholder the right to receive written notification of the amount and date of each Recurring Billing Charge:

- at least ten (10) days before submitting each Charge, or
- whenever the amount of the Charge exceeds a maximum Recurring Billing Charge amount specified by the Cardholder.

If a Cardholder withdraws consent to Recurring Billing Charges or does not consent to a given variable-amount Recurring Billing Charge of which such Cardholder has been notified, such Charge

may be subject to Chargeback. If an American Express Payment Device is cancelled, or if a Cardholder withdraws consent to Recurring Billing Charges, Merchant is responsible for arranging another form of payment (as applicable) with the Cardholder.

If Merchant's acceptance of American Express Payment Devices terminates for any reason, then Merchant must notify all Cardholders for whom Merchant have submitted Recurring Billing Charges that Merchant no longer accept American Express Payment Devices.

The cancellation of an American Express Payment Device constitutes immediate cancellation of that Cardholder's consent for Recurring Billing Charges. Elavon will not notify Merchant of such cancellation, and neither American Express nor Elavon will have any liability to Merchant arising from such cancellation.

Merchant must retain evidence of consent to receive updated American Express Payment Device account information from the Issuer for twenty-four (24) months from the date Merchant submits the last Recurring Billing Charge.

m. **Processing American Express Prepaid Cards**. American Express Prepaid Cards are valid through the date on the American Express Payment Device. An American Express Prepaid Card must be tendered for an amount that is no greater than the funds available on the American Express Prepaid Card. In addition to all other applicable requirements in this Agreement regarding acceptance of Transactions, when accepting Prepaid Cards, Merchants should:

- Instruct Cardholders that, before making a purchase, they must check their remaining funds by calling the twenty-four (24) hour, toll-free number on the back of the Card or checking online; and
- If Merchant receives a Declined Code when seeking Authorization, ask the customer to call the toll-free number on the back of the Prepaid Card to confirm that the purchase price does not exceed the available funds on the American Express Prepaid Card.

n. **Processing Travels/Gift Cheques.** To accept American Express Travelers and Gift Cheques:

- Watch the Customer countersign in the lower left corner of the cheque, and compare the countersignature to the signature in the upper left corner for American Express Travelers Cheques and Gift Cheques. For Cheques for Two, the customer's countersignature must match either one of the two signatures on top.
- Validate Security Features.
- Obtain authorization - American Express recommends obtaining an authorization to reduce the chances of accepting fraudulent cheques. American Express offers a variety of authorization tools. See authorization methods in the following table to determine Merchant's course of action:

If	**Then**
The signature and countersignature are a reasonable match (they look alike, but may not be identical)	Accept the cheque. There is no need to obtain any identification.
Merchant suspects that the countersignature may be false, or Merchant did not watch the customer countersign	Ask the customer to turn the cheque over and sign again across the left-hand side (in the same manner one typically endorses a check). Then take the cheque and fold up the bottom right-hand corner so that Merchant can compare the original signature with the new one.
The signatures are not the same, or if there is a question regarding the validity of the cheque	Call the Travelers Cheque/Gift Cheque Customer Service.

Merchant suspects that the Travelers cheque being presented is fraudulent	Use any of the following methods to verify that the cheque Merchant is accepting is authentic: o Perform a smudge test (see chapter 9 of the American Express Merchant Operating Guide, "Fraud Prevention" for details). o Obtain online Authorization at www.americanexpress.com/verifyamextc.

Additional information regarding Travelers Cheques and Gift Cheques, including a description of security features associated with such cheques, is available in the American Express Merchant Operating Guide.

4. AUTHORIZATIONS

a. General. For every Charge, Merchant is required to obtain an Authorization Approval Code. The Authorization must be for the full amount of the Charge except for Merchants that are classified in the restaurant industry.

An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardholder, (ii) the Charge is in fact valid or bona fide, (iii) Merchant will be paid for the Charge, or (iv) Merchant will not be subject to a Chargeback.

b. Card Identification (CID) Number. If, during the Authorization, a response is received that indicates the CID Number given by any person attempting the Charge does not match the CID Number printed on the Card, re-prompt the customer at least one more time for the CID Number. If it fails to match again, Merchant should follow its own internal policies for processing Charges without a CID match.

Note: CID Numbers must not be stored for any purpose. They are available for real time Charges only.

c. Authorization Time Limit. Authorization Approvals are valid for seven (7) days after the Authorization date. Merchant must obtain a new Approval if Merchant submits the Charge to Elavon more than seven (7) days after the original Authorization date.

For Charges of goods or services that are shipped or provided more than seven (7) days after an order is placed, Merchant must obtain an Approval for the Charge at the time the order is placed and again at the time Merchant ship or provide the goods or services to the American Express Cardholder.

The new Approval must be included in the Transaction Receipt. If either of the Authorization requests is Declined, do not provide the goods or services or submit the Charge. If Merchant does, Merchant will be subject to a Chargeback.

5. SUBMISSIONS.

a. Submission Requirements – Electronic. Merchant must submit transactions electronically except under extraordinary circumstances.

When Merchant transmits Charge Data and Transmission Data electronically, Merchant must still complete and retain Transaction Receipts and Credit Transaction Receipts.

Merchant's Establishments must submit Charges and Credits only in U.S. Dollars

b. **Charge Submissions.** Merchant must submit all Charges to us within seven (7) days of the date they are incurred. Charges are deemed "incurred" on the date the American Express Cardholder indicates to Merchant that they will pay for the goods or services purchased with the American Express Payment Device. Charges must not be submitted to us until after the goods are shipped, provided, or the services are rendered. Merchant must submit all Charges under the Establishment where the Charge originated.

For Aggregated Charges, the Charge must be submitted within seven (7) days of the date of the last purchase (and/or refund as applicable) that comprises the Aggregated Charge.

Delayed Delivery Charges and Advance Payment Charges may be submitted before the goods are shipped, provided or the services are rendered.

c. **Credit Submissions**. Merchant must submit all Credits to us within seven (7) days of determining that a Credit is due. Merchant must submit each Credit under the Establishment where the Credit originated.

6. FRAUD PREVENTION.

Chapter 9 of the American Express Merchant Operating Guide contains important information for Merchants regarding fraud deterrence and mitigation, including tips for recognizing fraudulent activity, a description of the security features associated with various types of American Express Payment Devices, means of verifying the authenticity of American Express Travelers Cheques and Gift Cheques, and additional fraud mitigation tools available to Merchants.

7. SPECIFIC INDUSTRIES

a. Auto dealers. This section applies to Merchants classified in an auto dealer industry.

The following requirements will apply to Charges for the down payment or the entire purchase price of new and used motor vehicles. Merchant may accept American Express Payment Devices for the down payment or the entire purchase price of a new or used motor vehicle, subject to the following limitations:

- Merchant must not submit a Charge for the down payment or entire purchase price of a motor vehicle unless and until Merchant has a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including down payment price (if any), purchase price, and Merchant's cancellation policy.

- Any portion of the Charge for the down payment price or purchase price of a motor vehicle which is disputed by the Cardholder may be subject to Chargeback if such Disputed Charge cannot be resolved in Merchant's favor based upon unambiguous language contained in the written agreement/bill of sale.

- Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder's agreement with Merchant or at law, Merchant shall submit a Credit promptly.

- If Merchant is classified as an auto dealer of used motor vehicles exclusively, the down payment must not exceed 50% of the full purchase price of the motor vehicle.

- The amount of the Charge must not exceed the total price of the motor vehicle after deduction of applicable discounts, taxes, rebates, cash down payments, and trade-in values.

- If the Cardholder denies making or authorizing the Charge, the Charge may be subject to Chargeback.

b. **Business-to-Business (B2B)/Wholesale Distribution.** If Merchant is classified in the business-to-business (B2B) or wholesale distribution industries, and Elavon determines that Merchant is not in the Telecommunications industry, then notwithstanding the prohibition in Section E(2)(d), "Prohibited Uses of the Card", Merchant may accept the Card for overdue amounts to the extent that acceptance of overdue amounts is a common practice in Merchant's industry and does not constitute an attempt to obtain payment from the Cardholder whose prior methods of payment have, in American Express' reasonable judgment, been difficult to collect or uncollectible. An indicator of such difficulty, for example, may be the fact that Merchant has sent an overdue customer account to collections.

For the purposes of Section E(5)(a), "Submission Requirements - Electronic", a Charge submitted by Merchant's Establishments classified in the foregoing industries will be deemed "incurred" on the date the Cardholder indicates to Merchant that the Cardholder will pay for the goods or services purchased with the Card.

Notwithstanding the restriction in Section E(5)(a), "Submission Requirements - Electronic", Merchant must not submit any Charge until the goods have been shipped or services have been provided to the Cardholder. To the extent that Merchant has clearly disclosed Merchant's intentions to the Cardholder and the Cardholder agrees, then Merchant may submit the following types of Charges before Merchant ships the goods to the Cardholder:

- Charges representing deposits on custom and special orders (so long as Merchant complies with Applicable Law) or goods not in inventory at the time the order is placed.

- Charges representing advance, partial, or full payment for goods that the Cardholder requests Merchant to ship at a later date.

c. **Insurance**. This section contains provisions specific to Establishments that are classified in the insurance industry. If any of Merchant's goods or services are sold or billed by independent Agencies, then Merchant must provide to Elavon a list of such independent Agencies and notify Elavon of any subsequent changes in the list.

Elavon may provide this list to American Express, which may use this list to conduct mailings that encourage such independent Agencies to accept American Express Payment Devices. American Express may mention Merchant's name in such mailings, and Merchant must provide American Express with a letter of endorsement or assistance as American Express may require.

Merchant must use Merchant's best efforts to encourage independent Agencies to accept the Card. From time to time, and subject to Section E(2)(A), "American Express Payment Device Acceptance", American Express may establish joint marketing campaigns that promote American Express Payment Device acceptance specifically at Merchant's Establishments or, generally, at insurance companies. A necessary purpose for which Merchant submits Cardholder Data that is responsive to such joint marketing campaigns includes American Express' use of that information to perform back-end analyses to determine the success of such joint marketing campaigns.

American Express undertakes no responsibility on Merchant's behalf for the collection or timely remittance of premiums. American Express will not be subject to any liability, under any circumstances, for any claim arising from, or related to, any insurance policy issued by Merchant or Merchant's Agencies.

If American Express Payment Devices are accepted as payment for fixed rate cash value life insurance policies or fixed rate annuities under the Agreement, Merchant represents and warrants

that the fixed rate cash value life insurance policies and fixed rate annuities for which the American Express Payment Device will be accepted for premium payments are not securities requiring registration under the Securities Act of 1933, Merchant must indemnify, defend, and hold harmless American Express and its Affiliates, successors, assigns and Issuers from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from Merchant's breach of this representation and warranty.

d. Oil/Petroleum. This section applies to Merchants that are classified in the oil and petroleum industry.

i. *Requirements*. Merchants in the oil and petroleum industry must:

- Obtain a unique Merchant Identification Number for Merchant's CAT gas pump sales. If Merchant conducts any other business at Merchant's Establishment, Merchant must obtain a unique Merchant Identification Number for those lines of Merchant's business.

- Submit dealer location data along with each Authorization request and each Submission file. Dealer location data consists of Merchant's business's:
  - Dealer number (store number),
  - Name ,
  - Street address,
  - City, and
  - Postal code.

ii. *Fraud Full Recourse Program.* Merchants in the oil and petroleum industry may be placed in the Fraud Full Recourse Program if Merchant accepts Charges originating at a CAT gas pump. However, even if a Merchant has been placed in the Fraud Full Recourse Program, American Express will not exercise Chargeback up to a certain dollar amount for Charges that qualify under the Oil Fraud Protection Program.

iii. *Oil Fraud Protection Program.* An Establishment qualifies for the Oil Fraud Protection Program, if it (i) authorizes and submits Transactions under the unique Merchant Identification Number assigned to the Establishment, and (ii) in a given month, has a counterfeit fraud to Charge volume ratio below 1%. An Establishment whose counterfeit fraud to Charge volume ratio rises to or exceeds 1% in a given month will not qualify for the Oil Fraud Protection Program until the ratio falls below 1% for three (3) consecutive months. Notwithstanding the foregoing, the Oil Fraud Protection Program does not apply to any Merchant that submits under one Merchant Identification Number consolidated Charges from multiple Establishments (i.e., central submitters) or to the Establishments that such a Merchants submits on behalf of.

Under the Oil Fraud Protection Program, Charges up to $100 will not be subject to Chargeback, provided that both the Establishment and each Charge meet the following criteria:

- the Authorization request meets the American Express data requirements listed in Section 4.3of the American Express Merchant Operating Guide,

- the Authorization request must include the correct Merchant Category Code (MCC) for "automated fuel dispensers" (5542), and

- the Issuer determines that the American Express Payment Device used to initiate the Charge was counterfeit.

Section 12.5.2 of the American ExpressMerchant Operating Guide contains recommendations for Merchants regarding mitigation of fraud associated with CAT gas pumps.

e. **Restaurants.** With respect to Transactions submitted by Merchants in the restaurant or bar industry. If the final restaurant or bar Charge is no greater than the amount for which Merchant obtained Authorization plus 20% of that amount, no further Authorization is necessary. If the final restaurant or bar Charge exceeds the amount for which Merchant obtained Authorization by more than 20%, Merchant must obtain Authorization for any amount in excess of the original Authorization. When submitting the Charge, only include the initial Approval.

f. **Telecommunications**. If Merchant is classified in the Telecommunications industry, notwithstanding anything to the contrary in the Agreement, Merchant may be placed in one or more of the following Chargeback programs:

i. Partial Immediate Chargeback Program for an amount of $50 or less; or

ii. Fraud Full Recourse Program.

Merchant must comply with any audit procedures that may be established regarding the submission of Recurring Billing Charges under the correct Merchant Identification Number.

g. **Government/Utilities/Education.** This section applies to Merchants classified in the government, utilities, or certain education industries (i.e. higher education, private school - kindergarten to grade 12).

Merchants in the government, utilities and applicable education sectors may assess convenience fees on Charges, subject to the following limitations, as well as all other applicable provisions of this Agreement:

- Merchants classified as government Entities, including government utilities, and privately owned utilities may assess convenience fees on all Charges.

- Merchants classified as educational institutions may assess convenience fees only on Charges for tuition, room and board, school lunch payments or other mandatory fees.

Any explanation, verbal or written, describing why the convenience fee is being assessed, or how it is calculated, must characterize the convenience fee as an assessment to cover the Merchant's administrative costs and not as an assessment to cover the Merchant's cost of accepting the American Express Payment Device.

h. **Internet/Online Pharmacies.** If Elavon determines that Merchant is an internet/online pharmacy Merchant that accepts American Express Payment Devices for sales of prescription medications (as defined by Applicable Law) in the Card Not Present environment:

- Merchant must be certified by the Verified Internet Pharmacy Practice Sites program of the National Association of Boards of Pharmacy (www.nabp.net), or

- Merchant or Merchant's authorized representative must attest that Merchant comply with the licensing and inspection requirements of (i) U.S. federal law and the state in which Merchant are located and (ii) each state to which Merchant dispense pharmaceuticals.

i. **Online/Mail Order Tobacco**. If Merchant is classified or it is otherwise determined that Merchant is an online or mail order (or both) tobacco or e-cigarette Merchant, then Merchant must provide the website address of the online store from which Merchant sell Merchant's tobacco products. If Merchant's website facilitates tobacco sales, Merchant will be required on request to provide an executed and notarized Affidavit of Compliance with Laws - Online/Mail Order Tobacco. If Merchant fails to complete the Affidavit, American Express Payment Device Acceptance privileges may be suspended.

8. DISPUTE RESOLUTION

ARBITRATION AGREEMENT (as to Claims involving American Express)
In the event that Merchant or Elavon is not able to resolve a Claim against American Express, or a claim against Elavon or any other entity that American Express has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.

If arbitration is chosen by any party, neither Merchant nor Elavon nor American Express will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, Merchant, Elavon, and American Express will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights Merchant, Elavon, or American Express would have in court may also not be available in arbitration.

i. Initiation of Arbitration. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the Merchant Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (*FAA*). Any arbitration hearing that Merchant attends shall take place in New York, New York unless all parties agree to an alternate venue.

ii. Limitations on Arbitration. **If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated.** The arbitrator's authority is limited to Claims between Merchant, Elavon, and American Express. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Elavon or American Express and cannot be used in any other case except to enforce the award as between Merchant, Elavon and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iii. Previously Filed Claims/No Waiver. Merchant, Elavon, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Elavon, or American Express may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-

discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Payment Device acceptance agreement, that was filed against American Express prior to the effective date of the Merchant Agreement.

iv. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have o power or authority to alter the Merchant Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.

v. Split Proceedings for Equitable Relief. Merchant, Elavon, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express shall not elect to use arbitration under this section for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for $10,000 or less, Merchant or American Express may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for $100,000 or more, or includes a request for injunctive relief, (a) any party to this Merchant Agreement shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Merchant's headquarters or Merchant's assets are located.

viii. Confidentiality. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a Claim in court. American Express will be responsible for any additional arbitration fees. At Merchant's written request, American Express will consider in good faith making a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before any arbitration award, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than $5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

xi. Definitions. For purposes of this section E(8) only, (i) *American Express* includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) *Merchant* includes any of Merchant's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) *Claim* means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Elavon or any other entity that American Express has the right to join in resolving a Claim, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

SECTION F – TRANSEND PRO HEALTHCARE SERVICES

If Merchant has selected any of the Transend Pro Healthcare Services designated on the Transend Services Merchant Application (the "Healthcare Services"), Merchant shall be subject to, and shall comply with, this Section F. The Healthcare Services include the eCashiering Services, Patient Pay Online, Patient Billing Services, Return Mail Manager and Patient Voice Pay Services described in this Section F and the Transend Services Merchant Application and any exhibits, attachments, or schedules attached thereto. Except as expressly modified by this Section F, the Healthcare Services are subject to the terms and conditions of the other applicable provisions of the Agreement.

Merchant acknowledges that it is a covered entity as defined in 45 C.F.R. § 160.103 and the regulations codified at 45 C.F.R. Parts 160 and 164 ("HIPAA Privacy Rule") promulgated under Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In connection with its performance of services other than certain Healthcare Services under the Agreement, Elavon is processing customer card transactions, not performing a HIPAA-covered function on behalf of Merchant, and is not functioning as a business associate even if Elavon has access to individually identifiable health information or protected health information ("PHI") as defined in HIPAA. Some Healthcare Services, such as healthcare administration services, may be considered "Business Associate Services" as defined in HIPAA. With respect to any Business Associate Services, the terms of Section F(2), "Business Associate Agreement" (the "BAA"), will apply. The parties agree that the BAA applies only to those Healthcare Services provided under this Section F that are business associate services, and not any Healthcare Payment Processing Services or other financial services provided by Elavon under this Section F or the rest of the Agreement.

1. **HEALTHCARE SERVICES GENERALLY**

a. **DEFINITIONS**. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Glossary. As used in this Section F, the capitalized terms set forth below shall have the following definitions:

i. **Healthcare Payment Processing Services:** The acceptance and processing of payment by cash, check, Electronic Check Service, Credit Card, or Debit Card; acceptance of scheduled payments from checking or savings accounts, Credit Cards, or Debit Cards; the maintenance of a patient portal for online payment; posting of payments to patient accounts or creation of a posting file; print, mail and electronic statements; interactive voice response; and related customer support.

ii. **Healthcare Services:** Any of the Transend Pro Healthcare Services.

iii. **Transend Pro Healthcare Services:** A hosted web based patient payment application that enables transactions at the point-of-care including a patient payment portal for online payments, streamlines back office collections, automates posting of patient accounts, advanced billing, and mail management capabilities.

iv. **Healthcare Services Effective Date:** The date on which Elavon accepts the Transend Services Merchant Application.

b. **RIGHTS AND OBLIGATIONS.**

i. **License and Restrictions.** Subject to the terms and conditions of this Section F, Elavon hereby grants Merchant a non-exclusive, non-transferable license (without the right to sublicense) to access and use, as applicable, the Healthcare Services selected by Merchant exclusively for Merchant's internal business use. Except as otherwise expressly permitted by this Section F, Merchant shall not, and will ensure that its employees, agents, contractors, and vendors do not: (i) copy (other than maintaining one backup or archival copy for Merchant's internal business use only), re-sell, republish, download, frame or transmit in any

form or by any means any Healthcare Services, or any part thereof; (ii) rent, lease, subcontract, operate or otherwise grant access to, or use for the benefit of any third party, the Healthcare Services; (iii) decompile, disassemble, reverse engineer or translate the Healthcare Services; (iv) change, modify, alter or make derivative works of the Healthcare Services; (v) without Elavon's prior written consent, grant any third party access to the computers, hardware, system or equipment on which the Healthcare Services are accessible, provided, however, that only written notice (not consent) shall be required with respect to billing services organizations acting as Merchant's agent for the collection of patient accounts; (vi) attempt to interfere with or disrupt the Healthcare Services or attempt to gain access to any other services, hardware or networks owned, maintained or operated by Elavon or its suppliers; (vii) disclose any passwords or other security or authentication device with respect to the Healthcare Services to any person other than the person to whom it was issued; (viii) remove, conceal or alter any identification, copyright or other proprietary rights notices or labels on the Healthcare Services; (ix) directly or indirectly, ship, export or re-export the Healthcare Services; (x) directly or indirectly resell or re-offer the Healthcare Services; or (xi) act as a gateway through which a third party may gain direct or indirect access to the Healthcare Services.

ii. **Implementation**. Merchant shall, at its own expense, pay for any preparation of its facilities necessary for it to access and use the Healthcare Services as set forth in this Section F.

iii. **Ownership.** Merchant acknowledges and agrees that the Healthcare Services, Elavon's Internet websites and any related tools, content, applications and utilities (including all modifications, enhancements and customizations to and compilations and derivative works of any of the foregoing) and all patents, copyrights, trademarks, trade secrets and other intellectual property rights related to or embodied therein, whether created or developed prior to, during, or after the Term (collectively, the "Intellectual Property") shall remain the exclusive property of Elavon and/or its licensors, as applicable. Merchant acknowledges and agrees that it has no right in or license grant to any source code contained in or related to the Healthcare Services pursuant to this Section F. As between Elavon and Merchant, Elavon and/or its licensors, as applicable shall retain all rights, title and interest in the Healthcare Services, and the Intellectual Property not expressly granted herein. Any information obtained or works created in violation of this Section F shall be both the Intellectual Property and the Confidential Information of Elavon and/or its licensors, as applicable, and shall automatically and irrevocably be deemed to be assigned to and owned by Elavon and/or its licensors, as applicable.

iv. **Use by Third Parties**. Elavon hereby consents to Merchant allowing one or more third parties to access and use the Healthcare Services but only for Merchant's benefit and in connection with Merchant's internal business operations and activities, including access to and use of the Healthcare Services from backup equipment at a secure off-site backup location and/or for testing purposes, subject to the restrictions of this Section F and provided such third parties have agreed to be bound by the licensing terms and restrictions of this Section F.

v. **Upgrades**. During the term of this Agreement, Elavon shall make available to Merchant any updates, upgrades or modifications to the Healthcare Services that Elavon generally makes available to its other customers, and each such update, upgrade and modification and all parts thereof shall be deemed to be part of the Healthcare Services and shall be governed by the terms of this Section F.

c. **FEES**. Merchant shall pay the fees for Healthcare Services set forth on the Transend Services Merchant Application. The fees shall remain in effect for the duration of the Initial Term; provided however, that Elavon shall be entitled to increase the fees at any time upon ninety (90) days' advance written notice to Merchant upon the occurrence of any one of the following (each a "Fee Adjustment Event"): (i) an increase in Merchant's aggregate card transaction expense greater than eight (8) basis points during any twelve (12) month period as a result of any one of

the following events: (a) fee increases in interchange and assessments; (b) increased or new fees imposed by a third party; or (c) changes in Merchant's card type, mix, or processing method; and (ii) increase in Merchant's aggregate card Transaction expense greater than twenty (20) basis points during the Initial Term or any successive Renewal Term as a result of any one event or combination of the following events: (a) fee increases in interchange or assessments; (b) increased or new fees imposed by a third party; and/or (c) changes in Merchant's card type, mix, or processing method. Elavon shall be permitted to change fees based on a Fee Adjustment Event in its discretion by giving Merchant not less than ninety (90) days' prior written notice of such change, which change shall be effective at 11:59PM on the final day of such notice period.

d. **ADDITIONAL PROVISIONS**. The following provisions (subsections i through vii) are deemed to supplement the referenced Sections in other provisions of the Agreement. The referenced Agreement Sections shall be deemed to refer to any successor provisions contained in Section A of the TOS, regardless of numbering or titling.

i. **Section (A)(4)(b) Settlement of Transactions**. Section (A)(b) of the Agreement shall be amended by adding the following new section (iv) thereto: iv. Settlement for Healthcare Payment Processing Services. Transactions settled via the Healthcare Payment Processing Services provided under the Transend Services Merchant Application are daily "net" settled (meaning that Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member in connection with the Healthcare Payment Processing Services are netted from Transaction proceeds).

ii. **Section (A)(8)(b) Indemnification**. Merchant shall indemnify and hold harmless Elavon and its licensors, directors, officers, employees, agents, shareholders, and representatives and any third party service providers from and against any and all damages arising from: (i) the use of the Healthcare Services in violation of this Section F by Merchant or any affiliate, partner, employee, agent or contractor of Merchant, or any other third party that gains access to or uses the Healthcare Services through Merchant (including through the use of any of Merchant's access credentials); (ii) any claim that the Healthcare Services as modified or altered by Merchant, its partners, employees, agents or contractors, or the use of any data submitted by Merchant, infringes the patent, copyright or other intellectual property right, or misappropriates the trade secrets, of any third party; and (iii) any inaccurate or incomplete data, or any virus, worms, spyware, back door, Trojan horse or other malicious code transmitted by Merchant.

iii. **Section (A)(8)(c) Limitation of Liability**. Any claim or cause of action arising out of, based on, or relating to this Section F not presented by Merchant within one (1) year from the discovery of the claim or cause of action shall be deemed waived. Merchant shall have the duty to mitigate damages for which Elavon may become responsible under this Section F.

iv. **Section (A)(8)(d) Performance**. ELAVON MAKES NO WARRANTIES RELATED TO OR IN CONNECTION WITH MERCHANT'S USE OF ANY THIRD PARTY SERVICES, SOFTWARE, DATA, HARDWARE OR EQUIPMENT USED IN CONJUCTION WITH THE HEALTHCARE SERVICES.

v. Section (A)(18)(d) Exclusivity. Section (A)(18)(d) of the Agreement is revised by adding the following to the end of the section: Notwithstanding the foregoing, this exclusivity provision shall not apply to any point-of-sale location of the Merchant that does not interface or interact with the Healthcare Services provided Section F of the Agreement. The parties intend that this section only applies to Merchant's Affiliated Entities set out on the Affiliated Entities Addendum to the Agreement, as such may be amended from time to time, that interface with the Healthcare Services.

vi. **Section (A)(9) Representations and Warranties**. Section (A)(9) is amended by adding the following new subsection (h): Merchant represents and warrants that, as of the Effective

Date, neither it nor its medical staff, partners, officers, directors, or employees are or have been (a) sanctioned for, or convicted of, a criminal offense related to health care or (b) barred, suspended or terminated from participation in a state or federal health care program. Either party hereto may terminate the Healthcare Services automatically upon notice to the other party should Merchant or its medical staff, partners, officers, directors, or employees become so sanctioned, convicted, barred, suspended or terminated.

vii. **Section (A)(9) Representations and Warranties**. Section (A)(9) is amended by adding the following new subsection (i) thereto: (i) **Elavon and Member Covenants**. If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of 4 years after the termination of the Transend Services Merchant Application, Elavon shall make available, upon written request by the HHS Secretary or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided hereunder. Elavon further agrees that, in the event it carries out any of its duties under the Transend Services Merchant Application through a subcontract with a related organization with a value or cost of $10,000.00 or more over a 12 month period, such subcontract shall contain a similar requirement for the subcontractor.

e. **TERMINATION.** In addition to obligations of the parties related to termination as set forth in Section A, the parties agree as follows:

i. **Termination of Individual Healthcare Services**. In addition to the termination provisions set forth in Section A, Elavon and Merchant agree that any Healthcare Services may be individually terminated by Elavon or Merchant upon ninety (90) calendar days' prior written notice. Without limitation, should all of the Healthcare Services be terminated for any reason, this entire Section F, with the exception of the BAA, shall become inapplicable concurrently with the last individual Healthcare Service to be terminated.

ii. **Effect of Termination**. Upon termination or expiration of any individual Healthcare Service, all rights granted to Merchant to use, access and/or receive the Healthcare Services outlined in such corresponding subsection of this Section F shall immediately cease, Merchant shall discontinue any and all use thereof and Merchant shall return to Elavon or shall delete and destroy any and all copies, complete or partial, of any documentation and any licensed software or application services utilized in connection with such Healthcare Services (including any and all copies maintained on Merchant's or its agent's computers, hardware, equipment and systems), and, upon Elavon's request, Merchant shall certify in writing to Elavon that all such materials have been returned, destroyed or deleted in accordance with the terms of this Section F.

iii. **Early Termination Fee**. If Merchant terminates all of the Healthcare Services at any time during the Initial Term, Merchant will pay to Elavon any termination fee specified on the Transend Services Merchant Application. Merchant agrees that the Early Termination Fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Elavon will use commercially reasonable efforts to debit Merchant's account in the amount of the Early Termination Fee within sixty (60) days of receipt of Merchant's written notice of termination.

iv. **Transition Assistance**. At the request of Merchant, Elavon shall provide Merchant with up to ninety (90) days of assistance in transitioning the Healthcare Services provided under this Section F to Merchant or a provider designated by Merchant, which transition assistance shall begin on the termination date of each specific Healthcare Service (or such earlier date following notice of termination as may be requested by Merchant) (the "Transition Period"). Elavon shall continue to perform, and Merchant shall continue to pay Elavon, in accordance with this Agreement during any such Transition Period. In addition, Merchant shall pay Elavon, at Elavon's then-standard rates, for any additional services performed by Elavon at

Merchant's request in connection with transitioning the Healthcare Services. Notwithstanding the foregoing, Elavon shall not be obligated to provide transition assistance to Merchant if Elavon terminates any of the Healthcare Services for cause or following the natural expiration or non-renewal by either party of the Agreement in accordance with its terms. Each party shall continue to fully comply with all provisions of the Agreement during any Transition Period.

f. **NOTICES**. For notices provided pursuant to this Section F only:

i. **If to Elavon**. In addition to the Notice Section (A)(18)(h) of the Agreement, a copy of the notice shall be sent to Attn: Vice President Healthcare Payment Solutions, Elavon, Inc., 9359 East Nichols Avenue, Englewood, CO, 80112.

2. **BUSINESS ASSOCIATE AGREEMENT**

a. **DEFINITIONS**. The following terms used in this BAA shall have the same meaning as those terms in HIPAA: Breach; Designated Record Set; Disclosure; Health Care Operations; Individual, Minimum Necessary; Notice of Privacy Practices; Required by Law; Secretary; Security Incident; Subcontractor; Unsecured Protected Health information; and Use.

i. **"Business Associate"** shall mean U.S. Bank National Association and Elavon, Inc.

ii. **"Covered Entity"** shall mean the Merchant signing the Transend Services Merchant Application, and, if applicable, any and all affiliates listed in the Affiliated Entities Addendum, to the Agreement for which Business Associate is providing services that require the execution of a Business Associate Agreement under HIPAA.

iii. "**Disclose**" and "**Disclosed**" shall mean, as appropriate, the present or past release, transfer, provision of access to, or divulging of information outside the entity holding such information.

iv. **"HIPAA"** shall mean the Standards for Privacy and Security of Individually Identifiable Health Information at 45 CFR part 160 and part 164.

v. "**Protected Health Information**" shall have the same meaning as the term "Protected Health Information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity in connection with services that require the execution of a Business Associate Agreement under HIPAA.

b. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

i. Business Associate agrees not to Use or Disclose Protected Health Information other than as permitted or required by the Agreement, this BAA, or Required by Law.

ii. Business Associate agrees to use appropriate safeguards to prevent the Use or Disclosure of the Protected Health Information other than as provided for by this BAA. With respect to any and all electronic Protected Health Information, Business Associate agrees to comply with Subpart C of 45 CFR part 164 and implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information it receives, maintains, or transmits on behalf of Covered Entity.

iii. Business Associate agrees to report to Covered Entity within 15 days any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 CFR §164.410, and any Security Incident. For the purposes of this reporting requirement, a Security Incident shall not include inconsequential incidents that occur on a daily basis such as scans or "pings" that are not allowed past Business Associate's or its Subcontractor's

firewall.

iv. Business Associate agrees to ensure that any Subcontractor to whom it provides Protected Health Information agrees in writing to the same restrictions and conditions with respect to such information that apply through this BAA to Business Associate.

v. Upon reasonable notice, Business Associate agrees to make Protected Health Information and books and records relating to the Use or Disclosure of Protected Health Information available to the Secretary in a reasonable time and manner, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

vi. Business Associate agrees to document Disclosures of Protected Health Information to the extent required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR § 164.528. Business Associate agrees to provide to Covered Entity, in a reasonable time and manner, information collected in accordance with this paragraph to the extent required to permit Covered Entity to respond to the Individual's request for an accounting. Business Associate shall refer to Covered Entity all requests by Individuals for information about or accounting of Disclosures of Protected Health Information. The parties agree to work together in good faith to resolve any disagreement over the requirements of 45 CFR § 164.528.

vii. Business Associate agrees to provide access to Covered Entity of Protected Health Information maintained in a Designated Record Set to enable Covered Entity to meet the requirements of 45 CFR § 164.524. Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that Covered Entity agrees to pursuant to 45 CFR § 164.526. If Business Associate receives a request from an Individual for a copy of his or her Protected Health Information or to amend his or her Protected Health Information, Business Associate will forward each such request to Covered Entity within five business days to enable Covered Entity to respond to the Individual's request.

c. **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

i. Except as otherwise provided in this BAA, Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of Covered Entity, provided that the Use or Disclosure would not violate HIPAA if undertaken by Covered Entity and is consistent with applicable Minimum Necessary requirements of HIPAA.

ii. Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.

iii. Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate, provided that the Disclosures are Required by Law, or that Business Associate obtains reasonable assurances from any person to whom the information is Disclosed that (i) such information will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and (ii) that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

iv. Business Associate may Use and Disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

d. **OBLIGATIONS OF COVERED ENTITY.**

i. Covered Entity shall notify Business Associate of any changes in Covered Entity's notice of privacy practices that may affect Business Associate's Use or Disclosure of Protected Health

Information. Business Associate shall have a reasonable period of time to act on such notice.

ii. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, if such changes affect Business Associate's permitted or required Uses and Disclosures thereof. Business Associate shall have a reasonable period of time to act on such notice.

iii. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information prior to acceptance of such restriction by Covered Entity in accordance with 45 CFR § 164.522 so that Business Associate can determine whether it is feasible to comply with such restriction. Once agreed to, Business Associate shall have a reasonable period of time to act on such notice.

iv. Covered Entity will not Disclose any Protected Health Information to Business Associate unless Covered Entity has obtained any consents and authorizations that may be Required by Law or otherwise necessary for such Disclosure.

v. Covered Entity shall not use the names of Elavon or Member, or any trademark or tradename of Business Associate in any written or oral communication to the public, including any notices provided under HIPAA, without the advance written consent of an authorized representative of Business Associate, which consent shall not be unreasonably withheld or delayed.

e. **TERM AND TERMINATION**.

i. This BAA shall be effective as of the effective date of the Agreement, and shall survive the termination of this Agreement and any Healthcare Services, remaining in effect until such as time that all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

ii. Upon Covered Entity’s knowledge of a material breach of this BAA by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach in accordance with the Agreement. Covered Entity may terminate this BAA and the Agreement between Covered Entity and Business Associate which is the subject of any material breach of this BAA by Business Associate if Business Associate does not cure the breach as provided in the Agreement. If Business Associate has breached a material term of this BAA and cure is not possible, Covered Entity may immediately terminate this BAA. This provision shall be in addition to and shall not limit any rights of termination or obligations set forth in the Underlying Agreement.

iii. Except as otherwise provided in this BAA, upon termination of this BAA for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Except as otherwise provided this BAA, Business Associate shall retain no copies of the Protected Health Information.

iv. If Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible, extend the protections of this BAA to such Protected Health Information, and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such Protected Health Information.

f. **MISCELLANEOUS**.

i. The provisions of this BAA shall supersede the provisions of the Agreement only to the extent the provisions herein are inconsistent with the Agreement, and only to the extent necessary to resolve any such inconsistency. Further, this BAA shall supersede in its entirety any existing Business Associate Agreement or addendum between the parties with respect to the Agreement.

ii. Covered Entity represents and warrants that: (i) it is a duly authorized agent of the Merchant's affiliated entities identified on the Affiliated Entities Addendum to the Agreement and it is signing for itself and on behalf of those entities in its authorized capacity; (ii) it has taken all action required by all relevant organizational documents to enter into this BAA for itself and on behalf of all the entities on the Affiliated Entities Addendum to the Agreement; and (iii) each of Merchant's affiliated entities identified on the Affiliated Entities Addendum to the Agreement is a covered entity as defined under 45 CFR § 160.103. This BAA shall be null and void with respect to any entity listed on the Affiliated Entities Addendum to the Agreement that does not meet, or ceases to meet, the definition of a covered entity under HIPAA, or to which Business Associate is not providing services that require a Business Associate Agreement under HIPAA.

3. **ECASHIERING SERVICES**

a. **SERVICE OFFERING**. Pursuant to the terms and conditions of this Section F(3) and the Agreement, Merchant hereby agrees to purchase and Elavon hereby agrees to provide to Merchant Elavon's hosted electronic payment application services, the eCashiering Services, which enable web-based collection and processing of: (A) credit card and physical payments by Merchant employees from any computer with Internet access, and (B) eCheck debit transactions through the ACH Network (together, the "eCashiering Services"). Elavon agrees to support an unlimited number of users and transactions (subject to the applicable transaction fees) through th eCashiering Services, to provide web-based user administration and management, and to process Credit Cards through the Merchant's designated merchant processing relationship. All payment activity will be managed and reported through eCashiering Services' real-time reporting mechanism, and through daily batch reports formatted and delivered per mutually agreed upon specifications. The eCashiering Services include:

i. Web-based self-service user administration module for managing user accounts;

ii. Web-based access to all patient accounts, searchable by patient name or account number;

iii. Web-based payment mechanism capable of accepting "card present", "card not present" and eCheck transactions, as well as all forms of physical payment;

iv. Web-based access to each account's current and previous activity, viewable as a PDF;

v. Web-based recurring payment management for Credit Card and eCheck payment (one merchant account supported – support for additional merchant processing accounts may require additional fees);

vi. Web-based virtual cash drawer;

vii. Automatic creation and delivery of payment files formatted per mutually agreed upon requirements;

viii. Web-based reporting, providing the ability for users to download CSV files of payment activity based on date range for cash, physical check, eCheck and credit card transactions;

ix. Web-based reporting, providing real-time access to the status of electronic transactions (eCheck, credit card and check card), including electronic aggregation of transactions by

batch; and

x. Web-based refund/void management.

Additional eCashiering Services functionality may be added, upon the mutual agreement of Elavon and Merchant, to improve the service. Any new services that may be added may have additional charges associated therewith. If such additional charges will apply, such new services will not be implemented until Merchant has agreed in writing to receive such new services from Elavon.

b. **FEES**. Merchant shall pay Elavon an implementation fee as set forth on the Transend Services Merchant Application for the eCashiering Services. This amount shall be billed during the implementation phase.

c. **MERCHANT RESPONSIBILITIES**.

i. Merchant will transmit, at its expense, to Elavon and/or Elavon's agents patient financial data in a mutually agreed upon format, for the purpose of integrating information into the eCashiering Services. Merchant shall bear the risk of loss resulting from such transmission. In the event that an additional file is incorporated, Merchant will use the same HIPAA-compliant data communication channel and methodology used to transfer existing patient letter and/or statement data to Elavon.

ii. Merchant will work in cooperation with Elavon to develop integration with existing Merchant applications.

d. **ELAVON RESPONSIBILITIES**.

i. Elavon will provide a hosted web application that enables real-time processing through a supported browser.

ii. Elavon will provide programming to facilitate electronic payment and processing services.

iii. Elavon will provide a daily file of payments processed across payment channels by Merchant. This file will be available for secure downloading from a designated secure site as a Data file. It will also be provided in mutually agreed upon custom file format(s) for uploading directly into Merchant's healthcare information system.

iv. Elavon will provide real-time access to all transactional activity via Elavon's web-based reporting infrastructure.

v. Elavon will provide web-based training to designated Merchant employees on payment processing methods, reporting, and administration.

vi. Elavon will provide first-level phone and email support for eCashiering Services. Online support is available for payment processing related issues through Elavon's online reporting tools.

e. **PROVISION OF INFORMATION.** Merchant hereby acknowledges that the eCashiering Services incorporate Elavon's ACH processing services. Merchant shall promptly provide all identifying information and technical data as necessary or otherwise requested by Elavon in order to provide the eCashiering Services and for Elavon to comply with all applicable Law, including all regulations and operating rules of any credit card association, the National Automated Clearinghouse Association, or any other authority governing the receipt or provision of the eCashiering Services.

f. **RESPONSIBILITY FOR PAYMENT AMOUNTS/FEES**. Merchant agrees that, with respect to the eCashiering Services provided hereunder, Merchant shall be fully liable for the underlying amount of Transactions processed by Elavon that are charged back or for which

final settlement does not occur. Merchant shall be fully liable for any fees, adjustments, NSF or other charges, fines, assessments, or other penalties imposed upon Elavon with respect to such Transactions. Elavon is hereby authorized to offset and to debit via ACH from a designated Merchant account the underlying amount of any such Transactions and any fees related thereto.

4. **PATIENT PAY ONLINE**

a. **SERVICE OFFERING.**

i. Pursuant to the terms and conditions of this Section F(4) and the Agreement, Merchant hereby agrees to purchase and Elavon hereby agrees to provide to Merchant Elavon's Patient Pay Online Services which consist of: (a) development of a Merchant-branded "Online Billing Center" using existing Merchant patient financial data, (b) management and hosting of the Online Billing Center, (c) online reporting and administration for the Online Billing Center, (d) integration of the Online Billing Center to facilitate (i) Credit Card and Debit Card payments and (ii) eCheck transactions through the ACH Network (the "Patient Pay Online Services"). Elavon will customize all fixed text components of Merchant's Online Billing Center, including the naming convention and presentation of account data on the main "My Account" page.

ii. In addition to incorporating existing patient financial data into the development of the Online Billing Center, Elavon also agrees to incorporate a daily data feed that contains any additional patient account activity occurring for each account between statement cycles.

b. **FEES**. Merchant shall pay Elavon an implementation fee as set forth on the Transend Services Merchant Application for the Patient Pay Online Services. This amount shall be billed during the implementation phase.

c. **ELAVON RESPONSIBILITIES**.

i. Elavon will provide programming to facilitate the electronic presentment of account summary, account detail, online payment, and demographic updates for each enrolled patient.

ii. Elavon will provide programming to enable Merchant's patients to access electronic payment services to pay their accounts online through the Online Billing Center.

iii. Elavon will receive authentication data from Merchant, and make accounts available for enrollment into the Online Billing Center based on the mutually agreed upon authentication requirements.

iv. Elavon will provide Online Billing Center summary and detail activity reporting through Patient Pay Online Administration.

v. Elavon will provide daily payment files from the Online Billing Center through Patient Pay Online in the mutually agreed upon format.

vi. Elavon will provide web-based training to designated Merchant employees on Online Billing Center usage and administration.

vii. Elavon will design an email notification for all new enrollees, to be delivered to each enrollee following each new statement or other update to each enrollee's account.

viii. Elavon will provide first-level phone and email support for Online Billing Center services. Online support is available for payment processing related issues through Elavon's online reporting tools.

d. **MERCHANT RESPONSIBILITIES**.

i. Merchant will transmit, at its expense, to Elavon and/or Elavon's agents patient financial data in a mutually agreed upon format, for the purpose of displaying patient account information through Patient Pay Online. Merchant shall bear the risk of loss resulting from such transmission. In the event that an additional file is incorporated, Merchant will use the same HIPAA-compliant data communication channel and methodology used to transfer existing patient letter and/or statement data to Elavon.

ii. Merchant will send Elavon the patient account information necessary for patient authentication.

iii. Merchant will work in conjunction with Elavon to establish the static text for the Online Billing Center informational pages.

iv. Merchant will promote usage of the Online Billing Center, including, but not limited to admissions, statement messaging, and other communication vehicles to drive adoption of the Online Billing Center.

v. Merchant will provide enrollment information from its existing merchant processor (if not Elavon) to Elavon necessary for integration of the Patient Pay Online Services with Merchant's systems.

e. **PROVISION OF INFORMATION**. Merchant shall promptly provide all identifying information and technical data as necessary or otherwise requested by Elavon in order to provide the Patient Pay Online Services and for Elavon to comply with all applicable Law, including all regulations and operating rules of any credit card association, the National Automated Clearinghouse Association, or any other authority governing the receipt or provision of the Patient Pay Online Services.

f. **RESPONSIBILITY FOR PAYMENT AMOUNT/FEES**. Merchant agrees that, with respect to the Patient Pay Online Services provided hereunder, Merchant shall be fully liable for the underlying amount of any Transactions processed by Elavon that are charged back or for which final settlement does not occur. Merchant shall be fully liable for any fees, adjustments, NSF or other charges, fines, assessments, or other penalties imposed upon Elavon with respect to such Transactions. Elavon is hereby authorized to offset and to debit via ACH from a designated Merchant account the underlying amount of any such Transactions and any fees related thereto.

5. **PATIENT BILLING SERVICES**.

a. **SERVICE OFFERING**. The Patient Billing Services provide design, processing, printing and mailing of statements including postal pre-sorting and United States Postal Service ("USPS") delivery as well as design, setup and implementation of electronic patient statements.

b. **DUTIES OF ELAVON.**

i. Pursuant to the terms and conditions of this Section F(5) and the Agreement, Merchant hereby agrees to purchase and Elavon hereby agrees to provide to Merchant the Patient Billing Services selected on the Transend Services Merchant Application. In furtherance thereof, Elavon will develop and maintain a file delivery method to enable delivery of such selected Patient Billing Services. In addition, Elavon will provide the necessary programming, forms management, laser printing, folding, inserting and delivery to the USPS (including pre-sorting and first class postage). Elavon will manage the accuracy of Merchant's customers' addresses via Elavon's standard address correction and suppression procedures.

ii. Merchant shall pay Elavon the fees for Patient Billing Services (including the Document Archive Services and/or electronic document delivery services, if selected) as set forth on the Transend Services Merchant Application.

c. **DUTIES OF MERCHANT**.

i. Merchant will assist Elavon with interface development, either by allowing access to Merchant's information system or by providing Elavon with all necessary data requested by Elavon. Merchant may be required to provide Elavon with technical assistance during interface setup and custom programming development.

ii. Merchant agrees to provide data in an agreed upon format. Major file layout changes may require an amendment to this Section F(5), or issuance of a new agreement. Elavon reserves the right to bill the Merchant at Elavon's then prevailing rate for any modifications to the original data file layout or other account maintenance performed by Elavon after Elavon's receipt of Merchant's first live file data transmission. Elavon will provide Merchant a written quotation of any such modification fees. Any variance from the agreed upon format may require manual intervention and lead to processing delays.

iii. Merchant agrees to deposit with Elavon one (1) month's postage in advance, based upon Merchant's estimated monthly statement volume, according to the Postage Deposit Formula outlined on the Transend Services Merchant Application. Merchant agrees that Elavon will not be required to commence the Patient Billing Services until Elavon has received the full postage amount. Merchant agrees to pay for any postal increases instituted by the USPS. Merchant agrees to pay for additional postage required for any mail pieces in excess of one (1) oz. Any postage deposit amount remaining after the last mailing and after payment for any unused preprinted material will be returned to Merchant within thirty (30) days following Elavon's receipt of written request for refund from Merchant, provided that all amounts then due to Elavon are paid by Merchant in full. Merchant agrees Elavon shall have a right of offset against the postage deposit for application to any outstanding invoice in connection with final payment.

iv. Merchant acknowledges and agrees that Merchant is solely responsible for complying with all USPS regulations, including, without limitation, the Move Update requirements, as defined by USPS, that allow Merchant to receive USPS presort mail discounts (e.g. utilizing a USPS approved national change of address product or service to update Merchant's mailing lists and regularly updating Merchant's mailing lists based on information provided to Merchant by the change of address product or service Merchant utilizes). In addition, Merchant shall provide Elavon with an annual certification stating that Merchant is in compliance with the foregoing obligations. Merchant acknowledges that Merchant's failure to comply with applicable USPS regulations, including, but not limited to, failure to use an appropriate postal endorsement and a Move Update compliant method to verify addresses, may result in USPS fines, penalties, assessments or increased postage rates (i.e., loss of pre-sort mail discounts), any and all of which will be charged to and payable by Merchant. In addition, Merchant shall pay upon demand from Elavon any fines, penalties or assessments levied against Elavon by USPS arising from Merchant's failure to comply with applicable USPS regulations, including but not limited to failure to use an appropriate postal endorsement and a Move Update compliant method to verify addresses. In the event that Merchant has selected the NCOA^{Link} Service from USPS, Merchant shall be deemed to have satisfied the requirement that Merchant use a USPS approved national change of address product or service.

v. Merchant will give Elavon at least thirty (30) days' advance written notice for changes to, or discontinuation of, any custom preprinted material and agrees to purchase or use any preprinted material in the event of format changes or canceling of contract. Preprinted material will not exceed a three (3) month supply, based on average usage, and Merchant will be contacted upon each reordering cycle to confirm preprinted format.

vi. Merchant will pay Elavon for the Patient Billing Services in accordance with the pricing outlined on the Transend Services Merchant Application.

vii. In the event that any document received from Merchant and processed through the Patient Billing Services is not accurate solely as a result of Elavon's failure to perform the Patient Billing Services in accordance with the terms of this Section F(5), and such failure results in damage to Merchant, then Elavon's sole obligation and liability to Merchant for such event shall be limited to re-printing and, if applicable, re-mailing the inaccurate document. Any claim under this Section must be asserted by Merchant in writing within sixty (60) days after the mailing of the inaccurate information on which such claim is based. Merchant further agrees that Elavon shall not be liable in any way for any inaccuracy which can be attributed to or demonstrated as resulting from errors or omissions or negligent, wrongful or other acts of Merchant, Merchant's affiliates or any of their respective employees, representatives or agents

d. **RETURN MAIL MANAGER SERVICE OFFERING.** The Return Mail Manager Service automates the skip tracing process of undeliverable mail eliminating 100% of return mail handling. Eligible items are automatically remailed and detailed reporting of the status of each account is provided. Pursuant to the terms and conditions of this Section F(5) and the Agreement, Merchant hereby agrees to purchase, and Elavon hereby agrees to provide to Merchant, the Return Mail Manager Services. Merchant hereby grants Elavon authority to process and redistribute documents that are returned to Elavon via the Return Mail Manager Services. The Return Mail Manager Services consist of the receipt, data harvesting, integrated skip tracing, reprinting, and re-mailing of any document identified as having a verifiable new address by Elavon's skip tracing vendor. In addition, the Return Mail Manager Services consist of the receipt, data harvesting, integrated skip tracing, and categorization as undeliverable any document identified as having an address that cannot be identified as having a verifiable new address. Elavon agrees to provide web-based reporting of the results of the Return Mail Manager Services, including newly identified address information and categorization of each returned mail piece as either "Active" or "End of Life".

e. **RETURN MAIL MANAGER PRICING OF SERVICES.** During the term of this Agreement, Elavon hereby agrees to perform the Return Mail Manager Services for Merchant for the fees set forth on the Transend Services Merchant Application. The price for printing and mailing the document with the verifiable new address will be as set forth on the Transend Services Merchant Application. A document is defined as "handled" when it is returned by the USPS to Elavon's return mail processing center. A document is defined as having a verifiable new address when a positive match is identified and reported by Elavon's skip tracing vendor. All positive matches must contain an exact match of the social security number provided by Merchant and an absence of any previous match to this same address in the previous ninety (90) days.

6. **PATIENT VOICE PAY SERVICES.**

a. **SERVICE OFFERING.** Pursuant to the terms and conditions of this Section F(6) and the Agreement, Merchant hereby agrees to purchase and Elavon hereby agrees to provide Merchant with the following services: (a) development of a branded telephonic payment acceptance system integrating Merchant patient financial data, (b) management and hosting of this payment acceptance system, (c) reporting and administration for this payment acceptance system, (d) integration of this payment acceptance system with Elavon to facilitate (i) Credit Card and Debit Card payments and (ii) eCheck transactions (collectively, the "Patient Voice Pay Services"). Elavon will customize all spoken text components of the payment acceptance system, including the naming convention and presentation of account data.

b. **FEES**. Merchant shall pay Elavon an implementation fee for the Patient Voice Pay Services as set forth on the Transend Services Merchant Application. This fee includes designation of an inbound toll-free telephone line for Merchant use, and setup of the initial scripts and workflows.

This amount shall be billed during the implementation phase.

c. **ELAVON RESPONSIBILITIES**.

i. Elavon will provide an inbound toll-free telephone line to enable Merchant's patients to access and to pay their accounts through the Patient Voice Pay Services.

ii. Elavon will receive authentication data from Merchant, and make accounts available for payment acceptance through the Patient Voice Pay Services based on the mutually agreed upon authentication requirements.

iii. Elavon will provide summary and detail activity reporting through the Patient Voice Pay Services.

iv. Elavon will provide daily payment files for all payments received through the Patient Voice Pay Services in a mutually agreed upon format.

v. Elavon will provide phone and email support for Patient Voice Pay Services during its normal business hours. Online support is available for payment processing related issues through Elavon's online reporting tools.

d. **MERCHANT RESPONSIBILITIES**.

i. Merchant will transmit, at its expense, to Elavon and/or Elavon's agents, patient financial data in a mutually agreed upon format, for the purpose of conveying and verifying patient account information through the Patient Voice Pay Services. Merchant shall bear the risk of loss resulting from such transmission. In the event that an additional file is incorporated, Merchant will use the same HIPAA-compliant data communication channel and methodology used to transfer other data to Elavon.

ii. Merchant will send Elavon the patient account information necessary for patient authentication. Authentication information shall be made up of any two (2) provided data elements, including, but is not limited to, patient date of birth, social security number, medical record number, patient account number and/or guarantor account number.

iii. Merchant will work in partnership with Elavon to establish the spoken text scripts for the Patient Voice Pay Services.

iv. Merchant will develop a campaign through admissions, statement messaging, and other communication vehicles to drive adoption and usage of the Patient Voice Pay Services.

v. Merchant will provide Elavon with all information needed by Elavon for integration through Elavon.

e. **PROVISION OF INFORMATION**. Merchant hereby acknowledges that the Patient Voice Pay Services incorporate Elavon's ACH processing services. Merchant shall promptly provide all identifying information and technical data as necessary or otherwise requested by Elavon in order to provide the Patient Voice Pay Services and for Elavon to comply with all applicable Law, including all regulations, and operating rules of any credit card association, the National Automated Clearinghouse Association, or any other authority governing the receipt or provision of the Patient Voice Pay Services.

f. **RESPONSIBILITY FOR PAYMENT AMOUNTS/FEES.** Merchant agrees that, with respect to the Patient Voice Pay Services provided hereunder, Merchant shall be fully liable for the underlying amount of any Transactions processed by Elavon that are charged back or for which final settlement does not occur. Merchant shall be fully liable for any fees, adjustments, NSF or other charges, fines, assessments, or other penalties imposed upon Elavon with respect to such Transactions. Elavon is hereby authorized to offset and to debit via ACH from a designated Merchant account the underlying amount of any such Transactions and any fees related thereto.

SECTION G – SAFE-T SERVICES

If Merchant has elected to receive the SAFE-T Services, Merchant shall be subject to, and shall comply with, this Section G in addition to the terms and conditions of Section A of this TOS. The terms and conditions for the SAFE-T Services (as defined hereunder) are set forth in the Agreement and the MOG, incorporated herein. In the course of its acceptance and use of the SAFE-T Services, Merchant hereby agrees to the following terms and conditions:

1. **DESCRIPTION OF SAFE-T SERVICES**. Subject to the terms and conditions of this Section G and the Agreement, Elavon shall provide Merchant with the following services (collectively, the "SAFE-T Services"):

   a. **Encryption Services**. Transaction Receipts properly encrypted by Merchant using Elavon-provided encryption software and Elavon-approved Hardware will be decrypted by Elavon in accordance with the terms and conditions of this Section G and the Agreement (such services, the "Encryption Services").

   b. **Tokenization Services**. Elavon will provide Merchant with Tokens in substitution for Credit Card, Debit Card and Gift Card account numbers. More specifically, when a Credit Card, Debit Card or Gift Card account number associated with a Transaction is transmitted from Merchant to Elavon, Elavon will:

      i. Generate a Token;

      ii. Associate the Token with the account number in a secure manner; and

      iii. Send the Token, instead of the account number, back to the Merchant in the Transactions authorization response message.

      As long as Merchant is receiving the SAFE-T Services, Merchant may submit the Token, rather than the associated account number, to Elavon to process additional Transactions to the Credit Card, Debit Card or Gift Card associated with such Token at any of Merchant's locations.

2. **MERCHANT RESPONSIBILITIES**.

   a. Merchant shall cause the appropriate Hardware, including POS Devices and any other Hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Merchant locations that are the recipients or users of the SAFE-T Services. Merchant shall be solely responsible for ensuring that, for every Transaction, (i) it utilizes only such Hardware that is included on Elavon's then-current list of Hardware compatible with the SAFE-T Services for every Transaction and (ii) the SAFE-T Services are enabled on such Hardware.

   b. Merchant acknowledges that Elavon does not store Payment Device expiration dates. In order to use a Token to process a Transaction, Merchant must provide the Token (in lieu of an account number) together with the expiration date for the original Payment Device, if available.

3. **LIABILITY; DISCLAIMER OF WARRANTIES**.

   a. MERCHANT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES CONTAINED IN SECTION A OF THIS TOS SHALL APPLY WITH RESPECT TO THE SAFE-T SERVICES AND TO ANY HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T SERVICES. ALL HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T SERVICES IS PROVIDED "AS IS". NOTWITHSTANDING THE FOREGOING, THE TERMS OF ANY EXPRESS LIMITATION OF LIABILITY OR DISCLAIMER OF WARRANTIES CONTAINED IN ANY ADDENDUM TO THE AGREEMENT SHALL CONTROL WITH RESPECT TO THE SERVICES AND PRODUCTS (INCLUDING HARDWARE AND SOFTWARE), IF ANY, PROVIDED PURSUANT TO

SUCH ADDENDUM TO THE AGREEMENT.

b. Notwithstanding the forgoing, subject to the eligibility requirements provided in Section A of this TOS, Merchants that have selected the Silver level of the SAFE-T Services will be eligible for Data Breach Reimbursement up to a maximum amount of $100,000, and Merchants that have selected the Gold Level of SAFE-T Services will be eligible for Data Breach Reimbursement of up to a maximum amount of $250,000.

4. **TERM AND TERMINATION**.

a. **Term**. Unless terminated as set forth below, the terms of this Section G will remain in effect from the date of acceptance of the Merchant Application or other form by which Merchant elects to receive the SAFE-T Services, as applicable, by Elavon and Member until the expiration or termination of the Agreement.

SECTION H: GLOSSARY

ABA Routing Number: The ABA number that uniquely identifies the bank on which a check is drawn.

ACH: Automated Clearing House.

ACH Network: The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically. A Merchant's DDA is debited and credited via ACH.

ACH Rules: The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

Agreement: The TOS, including the Merchant Application, the Merchant Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), any Merchant Agreement or Merchant Processing Agreement, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

American Express: The American Express Company or Amex Bank of Canada and, to the extent applicable in Canada, The American Express Company.

Authorization Code: The code sent by the Issuer in response to an Authorization request that indicates whether the Transaction is approved. Responses may include: "Approved," "Declined," "Declined Pick-Up," or "Referral" ("Call Auth").

Automated Clearing House (ACH): The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

Bankruptcy Proceeding: With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

Biller Direct Services: The services offered by Elavon described herein pursuant to which Transactions are presented for authorization, clearing and settlement in accordance with the Agreement.

Canadian Payments Association (CPA): The national association that establishes standards, rules, and procedures and maintains a funds transfer system to enable depository financial institutions to exchange electronic payments.

Cardholder: (i) The individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

Cardholder Data: One or more of the following data elements pertaining to a Cardholder's account: card number, Cardholder name (if applicable), card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's card program.

Cardholder Information Security Program (CISP): Visa's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for CISP can be found at www.visa.com/cisp.

Chargeback: A Transaction disputed by a Customer or Issuer pursuant to the Payment Network Regulations. For purposes of Section B, "Chargeback" means (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee warranty provisions or ECS Rules; (ii) for all Service Levels other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS Association to Elavon unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Merchant's obligations, representations and warranties under the Agreement or the TOS.

Check Reader/Imager: A device certified by Elavon that electronically captures the MICR line and/or an image of the Paper Check.

Confidential Information: All information or items proprietary to Elavon or Member, of which Merchant obtains knowledge or access as a result of Merchant's relationship with Elavon and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

Credit Card: A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant or to obtain cash advances. A "Credit Card" includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.

Credit Card Associations: (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; (vii) UnionPay; and (viii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

Credit Card Rules: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

Credit Transaction Receipt: A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to the Cardholder's account and debited from Merchant's DDA. This is also known as a credit slip or credit voucher.

Customer: A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder) and/or who participates in Merchant's Fanfare Loyalty Program.

Customer Data: Any information or data related to a Customer, including personal information, personally identifying information and Customer Transaction Information, collected by Merchant and provided to Elavon or received by Elavon from a Customer in connection with the Fanfare Loyalty Program or Elavon's provision of the Fanfare Loyalty Services.

Customer Transaction Information: Information about a Customer's purchase Transactions at Merchant.

Debit Card: A card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder's designated deposit account. A "Debit Card" includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.

Debit Card Rules: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

Demand Deposit Account (DDA): The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement. In the instance of a Debit Card or ATM Card, this refers to the Cardholder's deposit account.

Diners: Diners Club International Ltd.

Discover: DFS Services LLC.

Discover Network: Discover Network, Inc.

Drawee Bank: The financial institution where a Customer maintains a checking account on which a Paper Check that serves as the source document to generate an Item at the POS Device or payment for a Transaction is drawn.

EFT Networks: (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; (ii) (i) Interac and the Interac Direct Payment service; and (iii) any other organization or association that hereafter authorizes the Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

Elavon: As applicable, Elavon, Inc., a Georgia corporation, Elavon Canada Company, a company validly existing and organized in Nova Scotia, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.

Elavon Fanfare Privacy Policy: Elavon's privacy policy applicable to Elavon's use of Customer Data obtained from consenting Customers in connection with Merchant's Fanfare Loyalty Program.

Electronic Check Service (ECS) Association: NACHA, any regional ACH association or network, and any other organization or association used by Elavon and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.

Electronic Check Service (ECS) Primer: The detailed information relating to ECS processes and implementation provided by Elavon to Merchant, which must be used by Merchant in conjunction with the technical specifications and certification requirements provided by Elavon to promote integrated point of sale system connectivity and integration between Merchant and Elavon.

Electronic Check Service Rules (ECS Rules): All applicable rules and operating regulations of or applicable to the ECS Associations (including the ACH Rules) and the ECS MOG, in each case including without limitation, all amendments, changes, and revisions made thereto from time to time.

Electronic Check Service (ECS) Transaction: Any purchase, reversal/void, decline, Chargeback, or representment/resubmit pursuant to the Electronic Check Service Rules.

Electronic Gift Card (EGC): A special card purchased by a Customer or provided by Merchant to a Customer that is redeemable for merchandise, services or other Transactions, and includes any electronic gift card, gift certificate, Loyalty Card or Stored Value Card, as may be applicable, and/or as offered by Merchant to Customers from time to time.

Electronic Gift Card Services: The Processing Services provided by Elavon to Merchants with respect to Electronic Gift Cards offered by such Merchants, as more fully described herein and the MOG.

Fanfare Enrolled Customer: A Customer of Merchant that has enrolled (as further described herein) to participate in Merchant's Fanfare Loyalty Program.

Fanfare Gift Card: A special card, code or device purchased by or provided to a Customer that is redeemable for merchandise, services or other Transactions with Merchant.

Fanfare Gift Card Program: A program established and managed by Merchant using the Fanfare Platform in accordance with the Agreement, including applicable provisions of the MOG.

Fanfare Gift Card Services: Fanfare Gift Card Program setup and Processing Services provided by Elavon and Member to Merchant as described in the Agreement and in the MOG.

Fanfare Loyalty Program: A program established and managed by Merchant, using the Fanfare Platform, through which Merchant may endeavor to promote Customer loyalty and increased spending by offering promotions, rewards and incentives to Fanfare Enrolled Customers.

Fanfare Loyalty Services: A loyalty program platform that supports Merchant establishment of a Fanfare Loyalty Program, Customer enrollment in the Fanfare Loyalty Program at Merchant's point-of-sale, establishment and maintenance of the Fanfare Loyalty Website, the ability to generate marketing campaigns and offer promotions to Customers, and Processing Services related to redemption of Customer rewards, in each case as described in the Agreement, including applicable provisions of the MOG.

Fanfare Loyalty Website: A Customer-facing website hosted by Elavon and co-branded by Elavon (Fanfare) and Merchant through which (i) Customers that have not enrolled in Merchant's Fanfare Loyalty Program may enroll online as part of the registration process, (ii) Fanfare Enrolled Customers may access Merchant's Fanfare Loyalty Program disclosures, (iii) Fanfare Enrolled Customers may un-enroll in the Fanfare Loyalty Program, or (iv) Fanfare Enrolled Customers that have registered through the website may manage their Fanfare Loyalty Program accounts, in each case as described in the Agreement, including the MOG.

Fanfare Platform: The systems hosted directly or indirectly by Elavon through which (i) Merchant establishes its Fanfare Loyalty Program and/or Fanfare Gift Card Program, and (ii) the Fanfare Services are provided to Merchant.

Fanfare Services: The Fanfare Loyalty Services and/or Fanfare Gift Card Services provided by Elavon and Member and used by Merchant in accordance with the Agreement.

Fanfare Web Portal: A web-based portal provided by Elavon through which Merchant may obtain information and guides pertaining to the Fanfare Services and Fanfare Platform, and may access Merchant-specific program metrics via dashboards, view Customer Transaction Information, create additional Customer offers and retrieve reports regarding Merchant's Fanfare Gift Card Program and/or Fanfare Loyalty Program, in each case as applicable to the Fanfare Services elected by Merchant.

GA UCC: Georgia Uniform Commercial Code.

Glossary: This Section H of the TOS.

Graphic Specifications and Procedures: The requirements, specifications and procedures applicable to standard and custom Electronic Gift Cards, including all artwork appearing or permitted to appear on Electronic Gift Cards, as may be provided by Elavon to Merchant from time to time.

Guarantor: A Person that executes a Personal Guaranty for the benefit of Elavon and Member.

Hardware: POS Devices and other similar Hardware used by Merchant to accept Payment Devices, including any Hardware provided by Elavon.

Interac: Interac Association.

Interac Direct Payment: The service provided by Interac to permit Customers to pay for goods and services by debiting money directly from their accounts using a POS Device equipped with a PIN pad with PIN verification.

Issuer: The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

JCB: JCB International Co., Ltd.

Laws: All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

Leased Equipment: The equipment and/or software and related license agreement(s) described in the Merchant Application or the Agreement with all replacement parts, repairs, additions and accessories included therein and/or affixed thereto.

Lessee: Merchant, when applicable.

Lessor: Elavon dba LADCO Leasing.

Loyalty Card: A device used to hold a currency and/or points value in a stored value program (also referred to as a "Stored Value Card").

Master Account: The account (e.g. funds pool) that is used to hold the value of Electronic Gift Cards or Fanfare Gift Cards, as applicable, that have been issued among a group or chain of merchants. Alternatively, this may refer to the back-up account used to offset electronic payment, ACH or Canadian Payments Association rejects or returns, if applicable.

MasterCard: MasterCard International Incorporated.

MasterCard Merchant Agreement: The Merchant Agreement that is a part of the Agreement and is between Merchant, the Member of MasterCard and Elavon, if as part of the Program Merchant has requested the ability to accept MasterCard Credit Cards. The Member of MasterCard is a party to the MasterCard Merchant Agreement for purposes of compliance with the MasterCard Credit Card Rules while Elavon is a member service provider of MasterCard and as such is also a party to the MasterCard Merchant Agreement. The Member of Visa is not a party to the MasterCard Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the MasterCard Merchant Agreement, including any actions of Elavon or the Member of MasterCard thereunder. The MasterCard Merchant Agreement is contained within the Agreement and is identical to the Visa Merchant Agreement except as set out herein

Member: A financial institution designated by Elavon that is a principal, sponsoring affiliate or other member of Visa, MasterCard or other member of the applicable Payment Network. References to "Member" in the MasterCard Merchant Agreement shall refer to the Member of MasterCard and references to "Member" in the Visa Merchant Agreement shall refer to the Member of Visa. For purposes of Transactions in Canada only, as of the date of distribution of the TOS, the Visa Member is U.S. Bank National Association, acting through its Canadian branch, the MasterCard Member is Elavon Canada Company, and the Discover Network Member is Elavon Canada Company. The Member may be changed by Elavon at any time and Merchant will be provided notice of same.

Merchant: The business entity indicated on the Merchant Application that provides goods and/or services to Customers, or that accepts payments from Customers.

Merchant Agreement (Merchant Processing Agreement): Any agreement that Merchant has entered into for Processing Services, which agreement is either with Elavon or another entity that, directly or indirectly, transferred its rights under such agreement to Elavon.

Merchant Application: The Merchant Application, the Transend Services Merchant Application and any additional document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for Processing Services, including any additional location form(s) and any documents submitted by Merchant as a part of the bid process, if applicable.

Merchant Operating Guide (MOG): The operating manual provided by Elavon to its Merchant that prescribes rules and procedures governing the Transactions. The Merchant Operating Guide may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Merchant.

MICR: The magnetic ink character read line encoded on a Paper Check that contains information about the Customer's checking account, including the ABA Routing Number and checking account number.

Model Documents: A sample set of customer terms and conditions and a privacy policy provided by Elavon to Merchant for Merchant's use in developing its own Customer-facing terms and conditions and privacy policy governing Customer participation in the Fanfare Loyalty Program.

NACHA – The Electronic Payments Association: The national association that establishes standards, rules, business practices, and procedures governing the ACH Network, including the ACH Rules.

OFAC – The United States Department of the Treasury's Office of Foreign Assets Control.

Paper Check: A Customer's paper check presented to Merchant for payment to Merchant, which check will serve as the source document for Items.

Payment Card Industry Data Security Standard (PCI DSS): The data security regulations, including maintaining Cardholder account data in a secure environment, and other data security best practices endorsed by the major card associations including Visa, MasterCard and Discover, as such may be amended from time to time. Visa requires that Merchants and their agents comply with CISP, MasterCard

requires that Merchants and their agents comply with SDP and the PCI DSS regulations of Discover Network.

Payment Device: Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, Stored Value Card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.

Payment Network: Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.

Payment Network Regulations: Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and or the Electronic Check Service Rules.

PCI Compliance Program: Elavon's program for validation of Merchants' compliance with the PCI-DSS requirements.

Person: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.

Personal Guaranty: Any written guaranty of Merchant's duties and obligations to Elavon and Member by a Person that is given in connection with the Agreement including, without limitation, as part of this TOS, the Merchant Application, any Merchant Agreement or Merchant Processing Agreement, or any other document signed by the Person in favor of Elavon and Member.

PIN: A number that must be entered by a Cardholder in order to complete certain types of Transactions (e.g., online debit, EBT).

POS Device: A terminal, software, or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.

Prepaid Card: A card having available funds paid for in advance by the Cardholder.

Primary Merchant: The Merchant Identification Number (MID)/location originally enrolled for Electronic Gift Cards and set up to be billed for the card orders placed or designated as the corporate or headquarter location.

Primary Fanfare Merchant: The Merchant Identification Number (MID)/location originally enrolled for the Fanfare Services and set up to be billed for all Fanfare Services provided by Elavon.

Processing Services: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

Program: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

Reserve Account: The account established pursuant to Section (A)(6).

Retrieval Request: A request initiated by a Cardholder or Issuer that requires Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

Servicer: See "Elavon."

Site Data Protection Program (SDP): MasterCard's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for SDP can be found at https://sdp.mastercardintl.com.

Stored Value Card: A device used to hold a currency and/or the points value in a stored value program (also referred to as a "Loyalty Card").

Supported Hardware: The equipment, systems and hardware, including POS Devices, necessary for Merchant to make use of Merchant's selected Fanfare Services.

Terms of Service (TOS): These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

Token: A numerical token provided by Elavon in substitution of a Payment Device account number.

Tokenization Services: Those services described in paragraph 1 of Section C of this Agreement.

Transaction: Any action by a Customer using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, return, or debit).
Transaction Receipt: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Customer using a Payment Device.

UnionPay: China UnionPay Co., Ltd.

Value Added Servicer: Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission.

Visa: As applicable, Visa U.S.A., Inc. and Visa Canada, Inc.

Visa Merchant Agreement: The Merchant Agreement that it a part of the Agreement and is between Merchant, the Member of Visa and Elavon, if as part of the Program Merchant has requested the ability to accept Visa Credit Cards. The Member of Visa is a party to the Visa Merchant Agreement for purposes of compliance with the Visa Credit Card Rules while Elavon is a registered independent sales organization of Visa and as such is also a party to the Visa Merchant Agreement. The Member of MasterCard is not a party to the Visa Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the Visa Merchant Agreement, including any actions of Elavon or the Member of Visa thereunder. The Visa Merchant Agreement is contained within the Agreement and is identical to the MasterCard Merchant Agreement except as set out herein.

WebSuite Services: An electronic commerce solution provided by Elavon's third party service providers that permits Customers to purchase or add value to Electronic Gift Cards through Merchant's WebSuite site. Customers submit payment for the Electronic Gift Card via a Payment Device via the Processing Services.

GOVERNMENT ENTITIES AND INSTITUTIONS ADDENDUM

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services for government entities and institutions, as such services are further described in this Addendum and the Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Addendum, all terms and conditions of the Agreement remain in full force and effect and shall govern the relationship among the parties to this Addendum.

Capitalized terms used and not otherwise defined in this Addendum shall have the meanings ascribed to them in the Agreement (including the Terms of Service) or in the Merchant Operating Guide ("MOG"), which are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Government Entities and Institutions Addendum to the Agreement.

_____

MERCHANT

By:_____

Name:_____

Title:_____

ELAVON, INC.

By:_____

Name:_____

Title:_____

Date:_____
(Addendum "Effective Date")

MEMBER

By:_____

Name:_____

Title:_____

Section A – General Provisions Applicable to All Merchants under this Addendum

1) The following provisions hereby replace the like-numbered provisions of the Terms of Service ("TOS") or are hereby inserted or deleted from the TOS, as indicated, for Merchants operating under this Addendum.
   a) **Section (A)(4)(d) Chargebacks** is revised to read as follows:
   "d. **Chargebacks**. Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason under the Payment Network Regulations. Merchant authorizes Elavon and Member to offset from funds due Merchant for Transaction activity or to debit the DDA or the Reserve Account for the amount of all Chargebacks including, as applicable, any currency fluctuations. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks."
   b) **Section (A)(5)(d) Indemnity** is deleted.
   c) **Section (A)(6)(a)(i) Security Agreement** is deleted.
   d) **Section (A)(6)(a)(ii) Perfection** is deleted.
   e) **Section (A)(8)(a) Accuracy of Information** is revised to read as follows:
   "a. **Accuracy of Information.** Merchant represents and warrants to Member and Elavon that all information provided to Elavon in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. Merchant must promptly notify Elavon in writing of any material changes to such information, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services provided under this Addendum, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to the Merchant's business information. Merchant will be responsible for all losses and expenses incurred by Elavon or Member arising out of Merchant's failure to provide proper notice or requested information for any such change, and will not make any claims against Elavon or Member for any losses sustained by Merchant as a result of such failure. Elavon may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by Elavon. "
   f) **Section (A)(8)(b) Indemnification** is deleted and replaced with the following two sections:
   "i. **Merchant Responsibilities.** As between Merchant, Elavon and Member, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with (A) any dispute with a Customer, Cardholder or any third party relating to any Transaction, (B) any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or (C) any breach by Merchant of any obligation under this Agreement. Merchant will not make any claims against Elavon or Member for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages."
   "ii. **Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (A) Elavon's breach of the Agreement, or (B) Elavon's negligence, gross negligence or willful misconduct."
   g) **Section (A)(9)(a) Organization** is revised to read as follows:
   "a. **Organization.** Merchant is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all necessary authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Merchant conducts business."
   h) **Section (A)(10)(a) Audit** is revised to read as follows:
   "a. **Audit.** In the event that Elavon or Member reasonably suspects that they are subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes Elavon and Member to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at Elavon's or Member's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by Elavon or Member. Further, Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations."
   i) **Section (A)(10)(b)(i) Authorizations** is revised to read as follows:
   "i. **Authorizations.** Merchant authorizes Elavon and Member to make, from time to time, any business credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon."
   j) **Section (A)(10)(b)(ii) Financial Information** is revised to read as follows:

"ii. **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish Elavon and Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time."

k) **Section (A)(13) Personal Guaranty** is deleted.

l) **Section (A)(14)(a) Products or Services** is revised to read as follows:
"a. **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any Value Added Servicer. Neither Elavon nor Member is responsible for the Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon."

m) **Section (A)(15)(b)(i) Termination, Merchant,** the following is added as **Section (A)(15)(b)(i)(cc)**:
"cc. The Agreement may be terminated by Merchant in the event that sufficient legislative appropriation is not available, provided that Merchant gives Elavon and Member sixty (60) days notice prior to termination."

n) **Section (A)(15)(c)(iii) Return to Elavon** is revised to read as follows:
"iii. **Return to Elavon.** All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within thirty (30) days after termination of the Agreement."

o) **Section (A)(16)(d) MATCH™ and Consortium Merchant Negative File** is revised to read as follows:
"d. **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed and updated by Visa and American Express, to the Consortium Merchant Negative File maintained by Discover, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by Elavon and Member, the listing itself, and Merchant waives all claims and liabilities Merchant hay have as a result of such reporting."

p) **Section (A)(16)(e) Security Program Compliance** is revised to read as follows:
"e. **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Merchant shall also ensure that all Value Added Servicers from whom Merchant procures services or third party POS Devices comply with the requirements of the Security Programs. Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by Merchant or any of Merchant's Agents."

q) **Section (A)(17)(a) Use of Trademarks** is revised to read as follows:
"a. **Use of Trademarks.** Merchant may use and display the promotional materials provided by Elavon on Merchant's premises as may be required or requested by the Payment Networks. Merchant's use of Visa, MasterCard and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Merchant's right to use all such marks will terminated upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials provided by Visa, MasterCard, Discover Network, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network, or such other Payment Networks endorse any goods or services other than their own

and Merchant may not refer to Visa, MasterCard, Discover Network or any other Payment Networks in stating eligibility for Merchant's products or services."

r) **Section (A)(17)(c) Passwords** is revised to read as follows:
"c. **Passwords.** If Merchant receives a password from Elavon to access any of Elavon's databases or services Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be responsible for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and be responsible any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords."

s) **Section (A)(18)(b) Governing Law in the United States** is deleted.

t) **Section (A)(18)(c) Jurisdiction and Venue; Governing Law in Canada** is deleted.

u) **Section (A)(18)(d) Exclusivity** is deleted.

v) **Section (A)(18)(f) Assignability** is revised as follows:
"f. **Assignability.** The Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. Elavon will not transfer or assign the Agreement without the prior written consent of Merchant, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon shall merge or consolidate, or who may acquire substantially all of Elavon's stock or assets."

w) **Section (A)(18)(g) Arbitration** is deleted.

x) **Section (A)(18)(k) Attorney's Fees** is deleted.

y) **Section (A)(18)(p) Amendments** is revised as follows:
"p. **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be in writing and signed by the parties. Notwithstanding the foregoing, Elavon and Member may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. Elavon or Member will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided."

z) **Section (A)(19)(d) Personal Guaranty** is deleted.

aa) **Sections (A)(19)(f)** through **(A)19)(x)** and **Section (A)(20)** regarding equipment leasing, are hereby deleted. If Merchant desires to lease equipment, a separate agreement is required.

bb) **Section (A)(22)(a)(ii)(bb)(1) Customer Authentication** is replaced as follows:
"1. **Customer Authentication**. In addition to satisfying the applicable requirements set forth in the Agreement, the MOG, the ECS MOG (as applicable) and any other guides, manuals or materials provided to Merchant by Elavon or Member, Merchant must provide to Elavon and Member such Customer information as may reasonably be required for Elavon and Member to perform their obligations under the Agreement. Elavon and Member will authenticate the identity of each Customer, on Merchant's behalf, based solely on the Customer information provided by Merchant to Elavon in the Bill Load File uploaded into the Bill Payment Portal and using the authentication criteria as directed by Merchant. Merchant agrees that Elavon and Member are entitled to rely on the accuracy of the Customer information provided by Merchant and that Elavon and Member shall only be responsible for authenticating each Customer as and to the extent directed by Merchant in writing. Merchant shall be responsible for any losses that may result from: (a) errors in the authentication of a Customer or in the processing of Transactions that result from incorrect Customer information provided to Elavon or Member; and (b) inaccurate or incomplete authentication of a Customer that does not result from Elavon or Member's errors or omissions. Merchant grants Elavon and Member and their designated agents access to and use of Customer information and such other data as is reasonably necessary for Elavon and Member to perform their obligations under the Agreement. Merchant's provision of such Customer information to Elavon and Member will not breach any agreement to which Merchant is a party or violate Laws."

Section D – Government/Public Institution Service Fees
(MasterCard Convenience Fee Program for Education and Government Merchants or Visa Tax Payment Program Only; all other Convenience Fees are governed by the Merchant Operating Guide)

2) The following provisions are added to the TOS for Merchants instituting a Government/Public Institution Service fees under this Addendum.
   a) **Government/Public Institution Service Fees.** If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined on Exhibit B hereto) and has elected on Exhibit A to manage or to have Elavon manage Government/Public Institution Service Fees, then Merchant shall comply with the Government/Public Institution Service Fee Terms and Conditions attached hereto as Exhibit B.

[continued on next page]

EXHIBIT A
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE ENROLLMENT

ENROLLMENT FORM FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE PROGRAMS

Date:	Pricing Quote #:	☐ New Location ☐ Add/Update Service	Rep Name:	Rep Phone #:

Merchant Information

Existing MID:	Chain #:
DBA Name:	DBA Phone #:
Contact Name (first & last):	DBA Fax #:
DBA Address:	City, State, Zip:
Contact Name (First and Last):	Training Phone # (if different):
Goods or Services Sold:	Federal Tax ID:

Processing Options

Processing Options:

Government/Public Institution Service Fee Funding Model (check one if Merchant elects Government/Public Institution Service Fees (GPISF) assessment):
☐ Elavon-managed[1]
☐ Merchant-managed[2]

Government/Public Institution Service Fee Services Programs (check all that apply, but only if Merchant elects GPISF assessment):
☐ MasterCard Convenience Fee Program for Education and Government Merchants
☐ Visa Government and Higher Education Payment Program

Government/Public Institution Service Fee Pricing (applicable only if Merchant elects GPISF assessment):
Card Service Fee % _____
ACH (via Electronic Check Services): $ _____
Minimum Annual Fees (if applicable): $_____
Implementation Fee (if applicable): $_____

Payment/Transaction Types for GPISF Assessment (not all payment/transaction types are supported for all programs) (check all that apply, but only if Merchant elects GPISF assessment):
☐ Credit – (check all that apply): ☐ Visa ☐ MasterCard ☐ Discover (available if Elavon-acquired)
☐ Signature Debit – (check all that apply): ☐ Visa ☐ MasterCard ☐ Discover (available if Elavon-acquired)
☐ PIN-Based Debit
☐ ACH (via Electronic Check Services)

Elavon Product Supporting GPISF Assessment to be Used by Merchant (check all that apply):
☐ Biller Direct Services - Bill Payment Portal (Enrollment Form required if checked)
☐ Service Fee Terminal (VeriFone vx570 or equivalent)
  ☐ Limited Acceptance (Visa, MasterCard, and Discover credit cards only)
  ☐ MasterCard and Discover credit cards and signature debit cards
☐ Merchant Proprietary Solution or Value-Added Servicer
☐ Other _____

Merchant Acknowledgment

By signing below, Merchant warrants the truthfulness and accuracy of the information provided, agrees to pay the fees set forth herein and agrees to abide by the Terms & Conditions for Assessment of Government/Public Institution Service Fees. This Enrollment Form for Government/Public Institution Service Fee Programs is made a part of the Agreement.

_____	_____	_____
Signature	Name & Title	Date

1. "Elavon-managed" means that Elavon establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee in lieu of Merchant's obligation to pay Elavon the per transaction fees as set forth in the Agreement.
2. "Merchant-managed" means that Merchant establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee. Merchant pays Elavon the per transaction fees as set forth in the Agreement for all such Transactions.

EXHIBIT B
TERMS AND CONDITIONS FOR ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES

ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. Terms and Conditions ("T&Cs") for Assessment of Government/Public Institution Service Fees.

1) APPLICABILITY OF AGREEMENT. If Merchant has requested authority to charge or to have Elavon charge a Government/Public Institution Service Fee to its Customers for Eligible Transactions, the following provisions apply to such Eligible Transactions and the related Government/Public Institution Service Fees charged. Any other Transactions or fees, including Convenience Fees, are governed by the standard provisions set forth in the Agreement, as modified by the applicable Schedules or Addenda thereto. Merchant agrees to the following provisions, as and to the extent applicable, in addition to the terms and conditions of the Agreement.

2) RULES OF CONSTRUCTION. These T&Cs are intended to complement and are subject to your Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the MOG. In the event of a conflict between these T&Cs and other terms of the Agreement or the MOG, the terms of these T&Cs shall prevail.

3) DEFINITION OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE. The fee charged by Elavon or Merchant, at Merchant's election, to Customers conducting Eligible Transactions (as described herein, as applicable) at Merchants operating in certain designated merchant category codes ("MCCs"). For the avoidance of doubt, fees referred to as a "service fee" or "convenience fee" (in the context of the MCCs described herein) as used in the applicable rules of the Credit Card Associations, where the fee is processed as a separate Transaction from the underlying purchase or payment Transaction, are included within the definition of, and are referred to herein, as a "Government/Public Institution Service Fee."

4) GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE SERVICES.

a) <u>Government/Public Institution Service Fee Services</u>. At Merchant's election, Merchant may choose to charge a Government/Public Institution Service Fee (a Merchant-managed Government/Public Institution Service Fee) or to have Elavon charge a Government/Public Institution Service Fee (an Elavon-managed Government/Public Institution Service Fee) to its Customers for Eligible Transactions, in each case provided that Merchant is in compliance with the Payment Network Regulations and Laws, including the Electronic Fund Transfer Act and Regulation E. If Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that any Government/Public Institution Service Fee collected in connection with an Eligible Transaction will be retained by Elavon and Member and that such amount constitutes Elavon's and Member's property, and Merchant has no right, title or interest in such amounts. Further, if Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that Elavon may adjust the Government/Public Institution Service Fee amount from time to time as necessary or appropriate to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, Elavon may immediately terminate the Processing Services for Government/Public Institution Service Fees if Merchant's Chargeback rates materially exceed industry averages. If Merchant elects a Merchant-managed Government/Public Institution Service Fee, Merchant will receive and retain the Government/Public Institution Service Fee collected in connection with Eligible Transactions and will pay regular per transaction fees to Elavon and Member for the Processing Services provided by Elavon and Member with respect to such Transactions. Merchant agrees that the minimum annual Transaction fees (which includes any Elavon-retained Government/Public Institution Service Fees) paid to Elavon and Member for Transactions processed under this Addendum shall be at least equal to the "Minimum Annual Fees" amount identified on Exhibit A hereto. For any partial period of less than a full year during the term of this Addendum, the actual amount of fees paid by Merchant to Elavon for Transactions processed under this Addendum shall be annualized to determine if Merchant has satisfied this obligation. At the end of each year (the first of which shall begin on the Addendum Effective Date and each successive year of which shall begin immediately upon the conclusion of the preceding year), Elavon may notify Merchant if the actual Transaction fees paid by Merchant in respect of this Addendum is less than the Minimum Annual Fees amount. In the event that Merchant's actual Transaction processing fees under this Addendum for any such period are less than the Minimum Annual Fees, Merchant shall promptly pay Elavon and Member the difference.

b) <u>Conflict of Laws</u>. To the extent Merchant's state or other governing body has passed legislation that requires assessment of Government/Public Institution Service Fees by government agencies as a component of card acceptance, such laws will control in the event of any conflict with Payment Network Regulations. To the extent that assessment of any Government/Public Institution Service Fees or other fees or charges by government agencies as a component of card acceptance is not required by law, Merchant bears all responsibility and liability associated with the assessment of such fees in connection with the Agreement, including all assessments, fees, fines and penalties levied by the Payment Networks.

5) REQUIREMENTS FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. This Section 5 sets forth the requirements of the Credit Card Associations applicable to Government/Public Institution Service Fees. Where a Merchant accepts both Visa and MasterCard-branded Credit

Cards and/or signature Debit Cards for Eligible Transactions (as defined herein), the Merchant must comply with the most restrictive of these Credit Card Association requirements for all Transactions so as not to discriminate among different Payment Devices or Payment Networks. A Merchant may assess or have Elavon assess a Government/Public Institution Service Fee to Transactions involving Discover Network Payment Devices on the same terms as Government/Public Institution Service Fees are assessed to the other Payment Devices the Merchant accepts. Elavon may update or revise the provisions of this Section 5 upon written notice to Merchant.

a) Merchants Accepting Visa Cards for Eligible Transactions. The following requirements apply to Merchants accepting Visa Credit Cards and/or Visa signature Debit Cards that desire to charge or to have Elavon charge a Government/Public Institution Service Fee on certain Transactions.

i) Eligible Merchants. Merchants operating in MCC 8220 (College Tuition), 8244 (Business), 8249 (Trade Schools), 9211 (Court Costs), 9222 (Fines), 9311 (Tax) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(a)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee on any Transaction involving payment for goods or services (including tax payments) to the Eligible Merchant (each an "Eligible Transaction").

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(a).

1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon's registration of Merchant in the "Visa Government and Higher Education Payment Program" and the convenience fee program of Discover Network, in each case to the extent applicable and required.

2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.

3) Merchant may not also assess a separate Convenience Fee (as such term is defined in Visa's Payment Network Regulations).

4) The Government/Public Institution Service Fee must be disclosed as a fee assessed by Merchant or Elavon.

5) Merchant must accept Visa as a means of payment in all channels (i.e., face-to-face, mail/telephone, and Internet environments, as applicable).

6) Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.

7) Merchants accepting Visa cards for Eligible Transactions must include the words "Service Fee" in the "Merchant name" field of the Visa Transaction clearing record for the collection of the Government/Public Institution Service Fee.

b) Merchants Accepting MasterCard Cards for Eligible Transactions. The following requirements apply to Merchants accepting MasterCard Credit Cards and/or signature Debit Cards that desire to charge or to have Elavon charge Government/Public Institution Service Fees on Eligible Transactions.

i) Eligible Merchants. Merchants operating in MCCs 8211 (Elementary Schools), 8220 (Colleges/Universities), 9211 (Courts), 9222 (Fines), 9311 (Taxes) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(b)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee only in connection with the following "Eligible Transactions":

1) Payments to elementary and secondary schools for tuition and related fees, and school-maintained room and board;

2) Payments to colleges, universities, professional schools and junior colleges for tuition and related fees, and school-maintained room and board;

3) Payments to federal courts of law that administer and process court fees, alimony and child support payments;

4) Payments to government entities that administer and process local, state and federal fines;

5) Payments to local, state and federal entities that engage in financial administration and taxation; or

6) Payments to Merchants that provide general support services for the government.

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(b).

1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon's registration of Merchant in the "MasterCard Convenience Fee for Eligible Government and Education Payments" program and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.

2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.

3) The Government/Public Institution Service Fee must apply in the same amount regardless of the Credit Card or signature Debit Card type accepted for payment of a given Eligible Transaction within a particular payment channel. This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.

4) The Government/Public Institution Service Fee must not be advertised or otherwise communicated as an offset to the merchant discount rate.

c) Additional Requirements for Merchants Utilizing Proprietary Solutions or Value Added Servicers.

i) POS Devices. Merchant is responsible for ensuring that its software, POS Devices and card acceptance procedures fully comply with Elavon's instructions, including with respect to programming of software and POS Devices to handle Eligible Transactions to ensure proper assessment of Government/Public Institution Service Fees. If the Government/Public Institution Service Fee is Elavon-managed, Merchant is further responsible for complying with

all requirements as provided by Elavon from time to time to appropriately process the Eligible Transactions to qualify for optimal Interchange rates within five (5) days of Elavon's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or card acceptance procedures requested by Elavon within five (5) days of the request, Elavon may, in its discretion, discontinue the program or suspend a certain payment type. Further, if Merchant fails to make such changes and the Government/Public Institution Service Fee is Elavon-managed, Elavon may adjust the Government/Public Institution Service Fee amount, bill the Merchant for charges in excess of the Government/Public Institution Service Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or for applicable Credit Card Associations' reimbursement programs, including, but not limited to, losses related to Merchant's failure to distinguish between pricing of Visa signature Debit Cards and all other card types for transactions processed within the Visa Government and Higher Education Payment Program.

ii) Approval Required to Charge or Adjust Government/Public Institution Service Fee. Merchant may not charge or adjust Government/Public Institution Service Fees unless Merchant has disclosed such fees to Elavon previously in writing and Merchant has been approved by Elavon to charge or adjust such Government/Public Institution Service Fees. If Merchant charges or adjusts a Government/Public Institution Service Fee without having disclosed such fee or adjustment previously in writing and obtained Elavon's consent, Merchant will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to pursuing any other remedies available under the Agreement, Laws and Payment Network Regulations.

iii) Value Added Servicer. If the Merchant uses a Value Added Servicer to manage and assess the Merchant's Government/Public Institution Service Fee, the "Merchant name" field of the Visa Transaction clearing record must include the name of the Value Added Servicer (rather than the name of Merchant).

6) ADDITIONAL PROCESSING REQUIREMENTS. If Merchant voids an underlying Eligible Transaction, the associated Government/Public Institution Service Fee must be voided as well. If Merchant processes a refund for an underlying Eligible Transaction, Merchant must disclose to Customers that Government/Public Institution Service Fees are non-refundable. Merchants that desire to charge or to have Elavon charge Government/Public Institution Service Fees will be assigned separate MIDs for use in connection with Eligible Transactions and related Government/Public Institution Service Fees. MIDs assigned for use with Eligible Transactions and/or Government/Public Institution Service Fees may not be used to process Transactions that are not Eligible Transactions.

7) PAYMENT AND TRANSACTION TYPES SUPPORTED. Government/Public Institution Service Fee capability for Credit Cards and/or signature Debit Cards depends on the Merchant's MCC, as described above, and the Payment Network Regulations of the applicable Credit Card Association. Government/Public Institution Service Fee capability is supported only through Elavon products specified on Exhibit A hereto. Not all payment and transaction types are supported for all products. Additionally, Merchant proprietary software, POS Devices, or Value Added Servicers may be certified to process Elavon-managed Government/Public Institution Service Fee Transactions. Closed network prepaid cards, electronic benefits transfer, and dynamic currency conversion are not supported for Government/Public Institution Service Fee processing.

MEMORANDUM

April 26, 2016

TO: Honorable Mayor and City Commissioners

VIA: Kenneth Fields, City Manager

FROM: Tina Peak, Director of Library and Historic Resources

RE: Commission Appointment of Polk County Library Cooperative Governing Board Member

STAFF RECOMMENDATION:

It is recommended that the City Commission take the following action:

1. Approve the appointment of an alternate member to the Polk County Library Cooperative's Governing Board effective immediately.

BACKGROUND:

In 1997 thirteen Polk County cities entered into an Interlocal Agreement with the Polk County Board of County Commissioners to provide public library services to residents of unincorporated Polk County. The 1997 Interlocal Agreement stipulated that library service to non-city residents by provided by the 16 municipally funded public libraries.

The Polk County Library Cooperative is led by a policy-making board, the Polk County Library Cooperative Governing Board. This board consists of one Commission appointed representative from each participating municipality and one representative from the Polk County Board of County Commissioners. Additionally, each participating municipality may appoint alternates to attend meetings of the Governing Board when the primary member is unable to attend.

The City of Lake Wales currently has one primary PCLC Governing Board member, Tina Peak and one alternate, Marcia Loveman. Both were appointed by the Lake Wales City Commission in 1997.

Staff requests a second alternate be appointed. The recommendation is that Margaret Barthe, administrator of the PCLC Bookmobile, serves at the City Commissions pleasure as an alternate representative of the City of Lake Wales on the Polk County Library Cooperative's Governing Board.

Staff recommends approval.

OTHER OPTIONS: None

FISCAL IMPACT: No fiscal impact.

CITY OF LAKE WALES PROJECT TRACKING LIST 2015-2016

PROJECT NAME	BUDGET	COMMISSION APPROVAL	SCHEDULED COMPLETION	CURRENT STATUS	STATUS UPDATED
AIRPORT					
Runway Extension	$5,300,000 - $4,300,000	Yes		Plans at 90%. Project going out to bid. Will submit FAA Grant application June 1st. Begin Construction October 1st.	4/26/2016
RECREATION					
New park signage in all City parks	$13,000			New Park signs have been ordered but some materials are delayed. They will be installed by May 6.	4/26/2016
SEWER SYSTEM					
C Street Project	$6,695,751	yes -11/3/2015 phase 2		Close out Documents have been submitted for Phase I. Bid opening was 10/7/2015. Grant application ranked too low for funding. Will submit again in March. Award of Bid to commission on 11/3/2015. Contracts sent to Contractor for signature. Grant application approved by commission on 2/16. Grant application was submitted April 25.	4/26/2016
Relocation of Water/Sewer Lines on HWY 27 near Vanguard	$300,000	10/20/2015		Preconstruction meeting held on 11/12/2015.	4/26/2016
Other items approved or discussed at Commission Meetings					

Spook HIll Sign		12/18/12 - Sign		Delivered the bas relief to the Walesbilt. The draftsman is meeting with builder any day now, then engineer approves drawings for stamps-permits.	4/26/2016
Street Resurfacing	$100,000			A section of Russell Ave., including the intersection at Delmar St. was resurfaced in February, 2016. Commission approved on 4/6 to move forward with the repair of the Central Avenue railroad crossing and the surrounding street. Project will be completed in Mid June. Capital Streets funds are depleted for this year.	4/26/2016
ADA sidewalk access on 3rd street	$15,000			Staff will bring this project to the commission for approval during the 5/3 commission meeting.	4/26/2016
Network Server Virtualization	$40,000	4/6/2016	8/1/2016	VMware license and software have been obtained. Commission approved purchase on 4/6. The hardware components have been ordered and staff is already in possession of the software components.	4/26/2016
Live Streaming of Commission meetings	$7,000		7/1/2016	Staff is working out the contract details with the vendor. Once the details are worked out the hardware components will be shipped and installed.	4/26/2016
Preservation of Spook Hill				Sunrise Apartments have planted oaks along the retention pond and roadway. In Phase 2, they will build the emergency entrance and fence, and put in additional landscaping with the rest of the buffer.	4/26/2016

Library Statistics (Mar)				Total Circulation Books-by-Mail: 34,714 Total Circulation BookMobile: 5,024 Total In-house circulation: 134,244 Total new borrowers: 790 Total attendance at programs: 7,440 Computer users: 23,732 People Counter: 83,942	4/21/2016
COMPLETED PROJECTS					
Skate Park Improvements	$50,000	7/15/2014	9/30/2015	This project is complete.	4/26/2016
ADA access and handicap parking installation at the soccer complex.	$30,000		2/29/2016	Completed	4/26/2016
Airfield Improvements (Task Order #15)	$161,000	yes - 7/2/13	9/30/2015	Final reimbursement received March 8. This Project is complete.	4/26/2016
Road Improvements (N Market ST & W. Central Ave.)	$91,253	7/7/2015	8/17/2015	Project is completed.	4/26/2016
Cemetery			4/30/2015	Project complete	4/26/2016
Resurfacing of the Scenic Highway from Mt. Lake Cutoff to Ray Martin Rd.			10/31/2015	This Project is complete.	4/26/2016

Gym Floor Replacement	$68,212	6/2/2015	9/30/2015	Project is Complete. Gym is reopened.	4/26/2016
Electrical system upgrades to event area of Lake Wailes park	$20,000			Project Complete	4/26/2016
Additional exercise stations in Lake Wailes park.	$10,000			Project Complete	4/26/2016

CITY COMMISSION ITEMS - STATUS REPORT

TASK	MEETING DATE	RESPONSIBLE PERSON	REQUEST MADE BY	COMMENTS	DATE OF STATUS
Building Official assessing city's recreation/community buildings	10/30/2012	Cliff Smith, Don Porter & James Slaton	Commission	Due to recent organizational restructuring, the scope of the remaining facility assessments will be re-evaluated. A new schedule of assessments will be presented later in the year.	4/26/2016

Renaming of Washington Avenue to Obama Avenue	12/2/2014	James Slaton	Howell	Commission voted to approve a street to be named after Obama but voted down the resolution to change Washington Avenue. Suggestions for alternative streets for renaming are being solicited.	4/26/2016
Depot Museum	3/2/2015	Kenneth Fields	Thornhill	2 Strategy meetings were held on Feb 6th & Feb 13th to develop a vision, mission statement & goals for the museum. Museum will reopen May 31	4/26/2016
COMPLETED ITEMS					

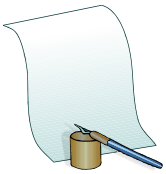
STRATEGIC PLAN ITEMS - STATUS REPORT

TASK	MEETING DATE	RESPONSIBLE PERSON	REQUEST MADE BY	COMMENTS	DATE OF STATUS

Green Initiatives	1/12/2013	Slaton		1. Police department arrest packets are now digitally transmitted. 2. Traffic crash reports are now digitally transmitted. 3. Traffic citations are in the testing phase of being digitally transmitted. (These will save paper & eliminate the need to drive to Bartow to deliver them) 4. Human Resources/Finance is has transitioned to electronic time sheets.	4/26/2016
Capital Replacement Policy	1/12/2013	Ecklund		Deferred by City Manager so as to include capital financing approaches. Will be revisited during the budget process.	4/26/2016

Approximate Seating Capacity:

- Commission Chamber **110**
- Employee Break Room **30**
- CM Conference Room **10**



CITY COMMISSION MEETING CALENDAR

[Regular City Commission meetings are held at 6:00 p.m. on the first and third Tuesday of each month in the Commission Chambers. Workshops & Special meetings to be scheduled accordingly. Meeting dates & times are subject to Change.]

Budget workshops to be scheduled

City Commission Meetings – May 2016

Tues, May 3, 2016	Regular	6:00 p.m.	Commission Chambers
Tues, May 17, 2016	Regular	6:00 p.m.	Commission Chambers

(*Tuesday, May 3, 2016 Oath of Office ceremony for Seat 3 and Seat 5 Commissioners)

City Commission Meetings – June 2016

Tues, June 7, 2016	Regular	6:00 p.m.	Commission Chambers
Tues, June 21, 2016	Regular	6:00 p.m.	Commission Chambers

City Commission Meetings – July 2016

Tues, July 5, 2016	Regular	6:00 p.m.	Commission Chambers
Tues, July 19, 2016	Regular	6:00 p.m.	Commission Chambers

City Commission Meetings – August 2016

Tues, August 2, 2016	Regular	6:00 p.m.	Commission Chambers
Tues, August 16, 2016	Regular	6:00 p.m.	Commission Chambers

City Commission Meetings – September 2016

Tues, September 6, 2016	Regular	6:00 p.m.	Commission Chambers
Tues, September 20, 2016	Regular	6:00 p.m.	Commission Chambers

For City Commission meeting information please contact the City Clerk, 863-678-4182, ext. 228 or cvanblargan@cityoflakewales.com

City Commission Agenda Packets for workshop and regular meetings are generally posted on the City's website by 12:00 p.m., the Wednesday before the scheduled meeting.

Minutes of City Commission meetings can be obtained from the City Clerk's Office. The minutes are recorded, but are not transcribed verbatim. Persons requiring a verbatim transcript may arrange with the City Clerk to duplicate the recording, or arrange to have a court reporter present at the meeting. The cost of duplication and/or court reporter will be the expense of the requesting party.

In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk's office no later than 5:00 p.m. on the day prior to the meeting.

Appeals concerning decisions on issues requiring a public hearing:
Persons who wish to appeal any decision made by the City Commission with respect to any matter considered during a public hearing at this meeting will need a record of the proceedings, and for such purpose may need to ensure that verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

OTHER MEETINGS & EVENTS

DATE	TIME	TITLE	DESCRIPTION	LOCATION	Event/Location Map; Agendas
Regular BOCC Meetings & Hearings	9am reg. meetings & 1:30pm public hearings	Polk County Board of County Commissioners Meetings	Regular BOCC meetings & public hearings are usually held Monthly; 1st & 3rd Tuesdays	Neil Combee Administration Bldg., 330 West Church Street, Bartow	Public Hearing / Work Session List (Note: Check Website Daily for Updates) Information: 863-534-6090) http://www.polk-county.net
Monday July 4th	2pm-9pm, Fireworks 915pm	4th of July Celebration	Vendors, music, games and fireworks	Lake Wailes Park	
October 28-30, 2016	Sat. 9-5, Sun 11-4	Pioneer Days	Vendors, Car Parade, Carriage Tour	Lake Wailes Park	
November 4-5, 2016	Friday 6pm Saturday 7am & 5:30pm	Quivering Quads Races Sponsored by the Rotary Club of Lake Wales	4 races over 24 hours	Kiwanis Park & Lake Wailes Park. Includes Rails to Trails & Lake Wailes Trail	
December 2nd - 3rd, 2016	6pm -10pm Friday; 10am - 10pm Saturday	Orange Blossom Revue	BBQ Competition Sponsored by the Rotary Club of Lake Wales	Lake Wailes Park	
December 9th, 2016	4-8:30pm	Make it Magical	Downtown Holiday Event	Downtown Lake Wales Stuart, Park, Marketplace	

RESIDENT REQUIREMENTS, CURRENT MEMBERS & VACANCIES
CITY BOARDS, COMMISSIONS, COMMITTEES

The Mayor makes appointments to various citizen advisory and regulatory boards, commissions, committees, and authorities with the advice and consent of the City Commission (City Charter, Sec. 3.06).

Airport Authority (City Code Sec. 2-41) – The board consists of seven (7) voting members and one (1) non-voting member who is a City Commissioner. At least four (4) voting members must be qualified electors of the City (3-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 vacancies

Current Members:	Charles Keniston, resident	03/06/12 - 07/01/18, 2
	Katherine Rogers, resident, chairman	09/18/12 - 07/01/18, 2
	Vacant, resident	- 07/01/16,
	Robert Kelly, resident	07/03/07 - 07/01/16, 3-Final
	Dale Marks, resident	06/17/08 - 07/01/17, 3
	Vacant, resident	- 07/01/17,
	Erick Farewell, resident	08/18/15 - 07/01/18, 1
	Commissioner Perez, non-voting member	05/19/15 - 05/02/17, 1

Airport Manager (City Code Sec. 2-41(f)(5)) - City Manager

Meetings (City Code Sec. 2-41(r)) - The Lake Wales Airport Authority shall hold regular meetings at least once every month and at such other times as the authority shall determine to be reasonably necessary from time to time.

Current Meeting Schedule: - 1st Monday @ 5:30 PM; Commission Chamber

Duties/Powers (City Code Sec. 2-41(f)) - The Lake Wales Airport Authority exercises its powers and jurisdiction over the property known as the Lake Wales Airport and properties in addition to the Lake Wales Airport so long as they are exercised pursuant to contract with other governmental entities for the operation and supervision of other airports, airfields, and related facilities. The Lake Wales Airport Authority, subject to approval by the Lake Wales City Commission, is hereby authorized and empowered:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business.
2. To adopt an official seal and alter the same at pleasure
3. To maintain an office at such place or places as may be designated by the City of Lake Wales.
4. To sue and be sued in its own name, plead, and be impleaded.
5. To provide oversight of airport operations for the purpose of input and advice to the city manager in his capacity as Airport Manager.
6. To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain, and operate any airport which may be located on the property of the authority. Nothing in Ordinance 2007-07 shall exempt the Lake Wales Airport Authority from the provisions of chapter 333, Florida Statutes.
7. To issue bonds of the authority, as hereinafter provided, to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement, or equipment.
8. To issue refunding bonds of the authority as hereinafter provided.
9. To fix and revise from time to time and to collect rates, fees, and other charges for the use of or for the services and facilities furnished by any airport facilities or tenant.

10. To acquire in the name of the authority by gift, purchase, or the exercise of the right of eminent domain, in accordance with the laws of the state which may be applicable to the exercise of such powers by municipalities, any lands or rights in land, and to acquire such personal property as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, or operation of any airport facilities, and to hold and dispose of all real and personal property under its control.
11. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Ordinance, including a trust agreement or trust agreements securing any bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, and attorneys, and such employees and agents as may, in the judgment of the authority, be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Ordinance.
12. To accept grants or money or materials or property of any kind for any airport or other facilities from any federal or state agency, political subdivision, or other public body or from any private agency or individual, upon such terms and conditions as may be imposed.
13. To issue revenue certificates of the authority as hereinafter provided.
14. To do all acts and things necessary or convenient to carry out the powers granted by this Ordinance.
15. To contract with other governmental entities to operate airports, airfields, and other related facilities and services, including providing all personnel, tools, equipment, supervision, and other materials and services required therefore.

Bicycle/Pedestrian Advisory Commission (City Code Sec. 2-199) – The commission consists of seven (7) regular members and three (3) alternate members. The city manager, planning and development director, and police chief or their respective designees shall serve as ex officio members. At least five (5) regular members and two (2) alternate members must reside within the City limits. Members who are not City residents must reside within the City's utilities service area in a residence served by the City's utilities system, receiving either water or sewer service. (3-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 3 regular vacancies; 2 alternate vacancies; 1 expired term

Current Members: Jacqueline Williams, resident 09/16/08 – 07/01/15, P+2
Evelyn Pabon, resident 08/21/12 – 07/01/16, P+1
Lorraine McIntosh, resident 06/15/10 – 07/01/16, 2
Roberto Maldonado, resident 07/17/12 – 07/01/17, 2
Jaime Rivera, resident 03/05/13 – 07/01/16, 1
Evelyn Pabon, resident 08/21/12 - 07/01/16, P+1
Jose Fco Joglar-Gaya, resident (alt) 06/18/13 – 07/01/15, 1
Vacant, Regular – 07/01/15
Vacant, Regular – 07/01/17
Vacant, Regular – 07/01/17

Meetings (City Code Sec. 2-199.2) - The commission shall meet at regular intervals, but in any event at least once each quarter. Meetings shall be called by the chairperson. The mayor and the city manager shall have the authority to call special meetings of the commission.

Current Meeting Schedule: 1st Thursday @ 5:30 PM; Commission Chamber
[The Bicycle/Pedestrian Advisory Commission is not currently meeting]

Duties (City Code Sec. 2-199.3) – The Commission shall:

1. Make recommendations regarding implementation of roadway and transportation improvements as it pertains to bicycle and pedestrian needs;

2. Promote safe and convenient enjoyment of the city's bicycle/pedestrian facilities through safety/educational programs and activities, community events and clinics, and other activities as necessary;
3. Promote communication and exchange of ideas and concerns among users of the city's bicycle/pedestrian facilities, city staff and the city commission;
4. Make reports and recommendations to the city commission and city staff with respect to the development and management of bicycle/pedestrian facilities;
5. Receive public input pertaining to bicycle and pedestrian transportation and infrastructure issues;
6. Make recommendations regarding the allocation of funds for capital expenditures relating to bicycle and pedestrian transportation;
7. Assist the planning & development department and the planning board in the preparation and adoption of an up-to-date bicycle/pedestrian facilities master plan;
8. Assist in the design of the Lake Wales Trailway and provide a public forum for citizens to participate in the planning effort for the trail;
9. Help ensure that the Lake Wales Trail (around Lake Wailes) continues to serve the needs of the many citizens who use it;
10. Suggest changes in the land development regulations that ensure that we become a city that welcomes walking and bicycling;
11. Have such other duties and responsibilities granted by the mayor and city commission consistent with the bicycle and pedestrian needs of the city.

Board of Zoning Adjustment and Appeals (BOA) (City Code Sec. 23-206.1) – The board consists of five (5) members. Members must be residents. (3 year term)

- An interview process is necessary for new applicants only.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 vacancies

Current Members:	James Boterf, resident	10/04/11 – 07/01/17, 2
	Harold Weigand, resident	06/20/06 – 07/01/17, 4-Final
	Sue Marino, resident	02/02/16 – 07/01/19, P+1
	Vacant, resident	- 07/01/16
	Vacant, resident	- 07/01/16

Meetings (City Code Sec. 23-206.2(c)) - The board of appeals shall hold regular meetings at the call of the chairman and at such other times as the board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice.

Current Meeting Schedule: 3rd Thursday @ 9:00 AM; Commission Chamber
[The meeting time can be changed to accommodate members who work during the day.]

Duties (City Code Sec. 23-206.3) – The Board of Appeals shall:

1. Hear and decide appeals where it is alleged that there is an error in any order, decision or determination of the administrative official in the enforcement of these zoning regulations;
2. Authorize such variance from the terms of these zoning regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these zoning regulations would result in unnecessary and undue hardship. A variance from the terms of these zoning regulations shall not be granted until a public hearing is held before the board of appeals;
3. Hear and decide appeals where the planning board has denied an application for a special exception use permit or site plan approval;
4. Perform any other duties which are lawfully assigned to it by the city commission.

Citizens & Police Community Relations Advisory Committee (Resolution 2012-03) – The committee consists of three (3) members with a quorum requirement of two (2) members. One (1) member shall be an

active Lake Wales police officer appointed by the Police Chief and two (2) members must be residents serving no more than two consecutive terms. (2-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 1 vacancy

Current Members:	Nathan Minton, resident	05/03/11 – 07/01/16, P+2
	Vacant, resident	– 07/01/18
	Joseph VanBlarcom, police officer	05/03/11 – 07/01/17, 3

Meetings – Regular meetings shall be held monthly in the Municipal Administration Building or other locations as deemed appropriate by the committee.

Current Meeting Schedule: 3rd Thursday @ 6:00 PM; City Hall Lunch Room

Duties - The Committee shall:

1. Provide a forum for citizens to express their opinions about police procedures, and to receive informal information from the police department regarding police procedures;
2. Provide a forum for citizens and the police department to openly and respectfully discuss issues of concern with the hope that concerns can be positively resolved;
3. Provide a forum for citizens and the police department to engage in a dialogue that will be positive and productive and that will continue to foster a climate of trust and mutual respect.

Code Enforcement Board (City Code Sec. 2-56) – The board consists of seven (7) members. Whenever possible, membership shall include an architect, a businessperson, an engineer, a general contractor, a subcontractor and a realtor. Members must be residents. (3-year term)

- An interview process is necessary for new applicants only.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 vacancies

Current Members:	Melissa Konkol, resident	01/19/10 – 07/01/18, 3
	Wilena Vreeland, resident	10/04/11 – 07/01/18, P+2
	Murray Zacharia, resident	06/18/13 – 07/01/16, 1
	William Follett, resident	07/03/07 – 07/01/16, 3-Final
	Jean Kincaid Scott, resident	06/17/08 – 07/01/17, 3
	Vacant, resident	– 07/01/18
	Vacant, resident	– 07/01/18

Current Meeting Schedule: 2nd Monday @ 5:00 PM; Commission Chamber

Powers (City Code Sec. 2-57) - The Code Enforcement Board imposes administrative fines and other noncriminal penalties to enforce city health and sanitation, local business tax receipt, fire, building, zoning and sign ordinances when it finds that a pending or repeated violation continues to exist.

In accordance with F.S. 162.08, The Code Enforcement Board has the power to:

1. Adopt rules for the conduct of its hearings.
2. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.
3. Subpoena evidence to its hearings.
4. Take testimony under oath.
5. Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Community Redevelopment Agency (CRA) Board – The city commission serves as the CRA board. However, the CRA and City Commission are entirely two separate entities. The CRA Board is created in accordance with F.S. ch. 163, part III for the purpose of implementing the community redevelopment plan for the expanded community redevelopment area approved by Resolution 99-6 of the city commission.

Governing body as CRA Board of Commissioners (City Code Sec. 2-72):

1. The city commission serves as the CRA Board and exercises all rights, powers, duties, privileges, and immunities vested in a community redevelopment agency by Chapter 163, Part III, Florida Statutes, as it may be amended from time to time;
2. In its capacity as CRA board, the commission constitutes the head of a legal entity that is separate, distinct and independent from the city commission as governing body of the City of Lake Wales.
3. The CRA board meets annually to designate a chairperson and vice-chairperson from among its members.
4. The CRA board meets as necessary to conduct the business and exercise the powers of the agency.
5. A majority of the members of the CRA Board shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the CRA Board upon the vote of a majority of the members present.

Current Members: City Commission

CRA Citizen Advisory Committee (City Code Sec. 2-73) – The committee consists of five (5) members. One member is nominated by each city commissioner. Members must reside, own property or operate a business within the voting district represented by the commissioner provided that the property, residence or business of the nominee is within the boundaries of the CRA. (2 year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 3 vacancies (Seat 1; A-Large; Seat 4, District 27, Seat 5, District 28)

Current Members:	Mark Bennett, chair (Seat 2 – District 19)	04/21/15 – 07/01/16, 1
	Narvell Peterson, vice-chair (Seat 3–District 122)	12/07/10 – 07/01/17, P+3
	Vacant (Seat 5 – District 28)	- 07/01/16
	Vacant (Seat 1 – At Large)	– 07/01/16
	Vacant (Seat 4 – District 27)	– 07/01/17

Meetings (City Code Sec. 2-73) - The CRA citizen advisory committee shall meet at the call of the chairman of the CRA board or upon the request of city staff but shall meet no less than once each year.

Current Meeting Schedule: 2nd Thursday @ 3:30 PM; Commission Chamber

Duties (City Code Sec. 2-73) – The Committee assist the CRA board in implementing redevelopment activities within the redevelopment area and to provide advice and recommendations to the CRA board on redevelopment matters as necessary.

Drug & Prostitution-Related Nuisance Abatement Board (City Code Sec. 15-10) – The board consists of seven (7) members. Members must be residents. (3-year term)

- An interview process is necessary for new applicants only.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 7 residents

Current Members: None / Inactive Board

Vacant, resident	– 12/01/15
Vacant, resident	– 12/01/15

Vacant, resident – 12/01/15
Vacant, resident – 12/01/15
Vacant, resident – 12/01/15
Vacant, resident – 12/01/16
Vacant, resident – 12/01/16

Meetings (City Code Sec. 15-10(g)) – The members of the drug and prostitution-related nuisance abatement board shall meet annually and elect a chair, who shall be a voting member, from among the members of the board. The presence of four (4) shall constitute a quorum.

Current Meeting Schedule: Inactive Board

Powers (City Code Sec. 15-10) - Adopt rules for the conduct of its hearings and establish procedures; issue orders having the force of law consistent with authority contained herein; and take testimony under oath.

Enterprise Zone Development Agency (City Code Sec. 2-194; Sec. 2-191, F.S 290.001 – 290.016 (2001)

The Agency consists of eight (8) commissioners with a quorum requirement of five (5) members, and at minimum; six (6) commissioners must be residents of the City of Lake Wales. The commissioner seats shall be designated as seat #1 through #8 respectively. Each agency commissioner shall be appointed to a specific designated seat by majority vote of the city commission. A certificate of appointment or reappointment of any commissioner shall be filed immediately with the city clerk (3 year term)

The city commission shall appoint one (1) representative from each of the following groups: (One (1) individual may represent more than one (1) of the groups.) (3-year term)

a. The local Chamber of Commerce;
b. A local financial or insurance entity;
c. The businesses operating within the area;
d. The residents residing within the area;
e. A non-profit community-based organization operating within the area;
f. The local private industry council;
g. The local police department;
h. The local code enforcement agency.

- An interview process is necessary for new applicants only.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 8 vacancies (Seats 1–8)

Current Members: None / Inactive Board

Vacant, (Seat 1) – 12/01/15
Vacant, (Seat 2) – 12/01/15
Vacant, (Seat 3) – 12/01/18
Vacant, (Seat 4) – 12/01/18
Vacant, (Seat 5) – 12/01/17
Vacant, (Seat 6) – 12/01/16
Vacant, (Seat 7) – 12/01/16
Vacant, (Seat 8) – 12/01/16

(City Code Sec. 2-194(3,4),
(3). The city commission may, by majority vote, remove a commissioner for inefficiency, neglect of duty, or misconduct in office, providing the commissioner has been given a copy of written charges at least ten

(10) days prior to a hearing in which the commissioner is given an opportunity to be heard on said charges in person or by counsel.

(4) A seat on the agency shall be deemed vacant when a member has more than three (3) consecutive absences or five (5) absences within a calendar year, or because of death, resignation, removal, or completion of the term by any commissioner. A seat vacated prior to the expiration of its term shall be filled for its unexpired term by majority vote of the city commission.

Meetings (City Code Sec. 2-195(c):

a. A majority of the appointed commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action taken by the agency shall be upon a vote of a majority of the commissioners present.
b. The city commission, by majority vote, shall designate a chairperson and vice chairperson of the agency, and the chair and vice chair shall serve in such capacity for one (1) year. The chair and vice chair may succeed themselves.
c. In addition to the foregoing, the agency shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of the article. Meetings shall be held at the call of the chairperson and at such other times as a majority of the commissioners may determine. All meetings shall be open to the public. The agency shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record and be immediately filed with the city clerk for the agency.

Current Meeting Schedule: Inactive Board

Powers & Responsibilities (City Code Sec. 2-196):
The agency may only exercise those powers and responsibilities expressly granted to it by the city commission and/or state law. Absent from such an express grant, the city commission hereby reserves all other powers and duties including, but not limited to those powers delegated to the city commission under the Act. The agency shall have the following powers and responsibilities:

1. To assist in the development and implementation of the strategic plan for the area (*A Strategic plan shall mean the enterprise zone development plan adopted by the city commission in accordance with the Act*);
2. To oversee and monitor the implementation of the strategic plan. The agency shall make quarterly reports to the city commission evaluating the progress in implementing the strategic plan;
3. To identify and recommend to the city commission ways to remove regulatory barriers; and
4. To identify to the city commission the financial needs of, and local resources or assistance available to, eligible businesses in the area.

Expenditure of Funds (City Code Sec. 2-197):
The expenditure of funds by the agency shall comply with the following requirements:

1. The agency shall have no authority to obligate or expend any funds, including grant funds, without the authorization of the city commission.
2. The agency shall perform its functions and responsibilities within the resources made available by the city, and shall not exceed its budget approved by the city.
3. The agency shall not incur any expense, debt, or obligation to be paid by the city, unless such expense, debt, or obligation is previously authorized by the city commission.
4. The agency commissioners shall not receive any compensation for service, but are entitled to payment of necessary and reasonable expenses incurred in the discharge of their duties if said expenses comply with the agency's approved budget.

Historic District Regulatory Board (City Code Sec. 23-208.2) – The board consists of five (5) regular members (appointed in accordance with section 2-26). At least 50% of the members shall reside or own property within the City. Members shall be chosen to provide expertise in the following disciplines to the extent such professionals are available in the community: historic preservation, architecture, architectural

history, curation, conservation, anthropology, building construction, landscape architecture, planning, urban design, and regulatory procedures. (3-year term)

- An interview process is necessary for new applicants only.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 1 vacancy, resident or own property in City

Current Members:	Lawrence (Larry) Bossarte, business owner	11/01/11 – 07/01/17, 2
	Diane Armington, owns property in the City	03/15/11 – 07/01/16, 2
	Leah Bartholomay, resident	05/06/14 – 07/01/18, P+1
	Erika B. Schindler, business owner	10/06/15 - 07/01/18, 1
	Vacant	– 07/01/18

Meetings (City Code Sec. 23-208.3(c)) – The historic board shall hold regular meetings at the call of the chairman and at such other times as the board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice. No less than four (4) meetings shall be held each year.

Current Meeting Schedule: 3rd Thursday @ 5:30 PM; Commission Chamber

Functions, powers, and duties (City Code Sec. 23-208.4)

1. To hear and decide upon applications for certificates of appropriateness as required under this chapter;
2. To adopt guidelines for the review and issuance of certificates of appropriateness consistent with the purposes of this chapter, the historic preservation element of the comprehensive plan, and the Secretary of the Interior's standards for historic properties;
3. To make recommendations to the city commission on matters relating to the establishment of historic districts and regulation of such districts;
4. To make recommendations to the planning board and the city commission for amendments to the code of ordinances and the comprehensive plan on matters relating to historic preservation;
5. To make recommendations to the planning board and city commission regarding special permits for properties within an historic district in cases in which the special permit involves work requiring a certificate of appropriateness;
6. To perform any other duties which are lawfully assigned to it by the city commission

Historic Preservation Board (City Code Sec. 2-182) – (inactive) The board consists of nine regular members. At least four (4) members must be residents of the City. Up to four (4) members may be non-residents but must own property within the City limits or hold an occupational license issued by the City as required by sec 2-26). One member shall be a member of the City Commission. Up to four ex-officio members who are not residents and do not meet the other requirements of section 2-26 may also serve on the Board provided they meet the professional qualifications requirement of paragraph (c) of sec. 2-182. Appointments shall be for three years or until their successors are qualified and appointed. The Commissioner member shall be appointed for the duration of his or her term on the City Commission. Ex-officio members shall be appointed for three years. (3 year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 9 vacancies

Current Members: None

Meetings (City Code Sec. 2-185(a)) – The board shall hold regular meetings, but no less than four (4) times per year.

Current Meeting Schedule: Inactive Board

Powers & duties (City Code Sec. 2-185) - Make recommendations on applications for nomination to National Register of Historic Places; conduct ongoing survey and inventory of historic buildings, areas and sites in the city; make recommendations to city commission on potential landmark sites in the city.

Reporting (City Code Sec. 2-185(b)) – The board shall, on a bi-annual basis, make a written report to the city commission on its activities.

Housing Authority (F.S. 421.04) – The board consists of five (5) members. Members must reside in the City, own property in the City, or hold a valid occupational license issued by the City. One (1) member must be a resident of the housing project who is current in rent payment or a person of low income who is receiving a rent subsidy through a program administered by the Authority. No member may be an officer or employee of the City. (4-year term)

- An interview process is necessary for new applicants only.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: None

Primary Duties: Manage and control the city's low-rent housing units.

Current Meeting Schedule: 3rd Wednesday @ 6:00 PM; Housing Authority

Current Members:	Janice Snell, resident	04/17/12 – 07/01/18, 2
	Eddye Rivers, resident	07/01/08 – 07/01/16, 2
	Wanda Lawson, resident	06/18/13 – 07/01/17, 1
	Mellissa Montgomery, resident of housing project	06/21/11 – 07/01/17, 2
	Helen Walters, resident	11/04/14 – 07/01/18, 1
	Albert Kirkland, Jr., Ex-officio	n/a
	Commissioner Jonathan Thornhill, City Liaison	06/04/13 – 05/02/17

Lakes Advisory Commission (City Code Sec. 2-171; 2-172) - The commission consists of seven (7) members. City Manager or his designee serves as an ex officio member. At least six (6) members must reside in the City. (3-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 6 residents; 1 non-resident with city utilities

Meetings (City Code Sec. 2-173) - The Board shall meet at regular intervals, but in any event at least once each quarter. Meetings are called by the chairman. Special meetings are called by the Mayor.

Current Meeting Schedule: Inactive Board

Duties (Sec. 2-174) - Advise the City Commission on matters involving the restoration, preservation or maintenance of lakes and waterways found within the city; To seek and solicit and make applications for any grants or funds offered by any entity, public or private, if such funds could be used by the city in the preservation, restoration and maintenance of the lakes and waterways found in the city. Any decision to accept offered funds or grants shall remain within the city commission.

Library Board (City Code Sec. 2-26,(b)) – The board consists of five (5) members. Four members must reside in the City, own property in the City or hold a valid business tax receipt issued from by the City. One member shall be a resident of the unincorporated Greater Lake Wales area having a Lake Wales address or a resident of the City of Lake Wales if the Lake Wales Public Library is a member of the Polk County Cooperative and receives operating funds from Polk County Board of County Commissioners (Ordinance 2008-07; 02/19/08). (5-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are **not** required to file an annual Form 1, Statement of Financial Interests

- Current Vacancies: 1 vacancy, reside in the City, own property in the City or hold a valid business tax receipt issued from by the City

Current Meeting Schedule: 2nd Wednesday @ 11:00 a.m.; Lake Wales Library

Primary Duties: Operate the public library; control expenditures of all monies collected or donated to the Library Fund; appoint the library staff and establish rules and regulations for operation and use of the Library subject to the supervision and control of the City Commission.

Current Members:	Glenda Morgan, outside	08/06/96 – 07/01/16, 4-Final
	Donna Geils, resident	12/02/14 – 07/01/17, 1
	Michalkiewicz, Brystal, resident	08/04/15 - 07/01/16, P
	Vacant	– 07/01/18
	Beverly Lamar, resident	07/01/04 – 07/01/19, 3-Final

Parks and Community Appearance Advisory Board (City Code Sec. 2-131) - The board consists of seven (7) members. A majority of the members shall reside or own property within the City limits. The Director of Planning or designee and Public Services Director or designee shall serve as ex-officio members. The board shall elect a chairman at its first meeting after the first day of July in each year. (3-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 5 vacancies

Meetings (2-133) – The Board shall meet at regular meetings at least six (6) times per year.

Current Meeting Schedule: - 4th Monday @ 5:00 PM; Commission Chamber
[INACTIVE BOARD – The Parks Board is not currently meeting]

Current Members:	Heidi Gravel, outside, business owner	05/15/07 – 07/01/16, 3-Final
	Jean Kincaid Scott, resident	09/16/08 – 07/01/17, 3-Final
	Vacant	– 07/01/16
	Vacant	– 07/01/16
	Vacant	– 07/01/17
	Vacant	– 07/01/18
	Vacant	– 07/01/18

Duties (Sec. 2-134) - The parks and community appearance advisory board shall, in coordination with the planning board and other boards, committees and civic groups of the city, prepare plans and make recommendations to the city manager and city commission regarding the following matters:

1. *Lake Wailes Park System.* Maintaining and upgrading the park around Lake Wailes and nearby parks including adjacent athletic facilities, Crystal Lake Park, North Lake Wailes Park, and Lake Alta.

2. *Neighborhood park system.* Maintaining and expanding the neighborhood park system to provide neighborhood and mini parks to all existing neighborhoods within the city in compliance with the policies of the comprehensive plan; establishing guidelines for developers regarding neighborhood and mini parks required in new developments.

3. *Community parks.* Maintaining and upgrading existing community parks and facilities; developing new community parks and facilities to serve the expanding population of the city in compliance with the policies of the comprehensive plan; budgeting recreation impact fees in compliance with city ordinances and policies; securing grants and other funding to provide such facilities.

4. *Streets and city entrances.* Upgrading the appearance of city streets through landscaping, signage control and other measures; creating attractive entrances to the city through landscaping and signage; providing consistent and attractive signage to guide visitors to landmarks, parks, civic buildings, and other features throughout the city.

5. *Maintenance programs.* Systems for regular maintenance of parks, streetscapes, and entrances, including facilities, landscaping, and signage to ensure high quality appearance; regulations for use of parks.

Planning & Zoning Board (City Code Sec. 23-205.2) – The board consists of seven (7) members. At least four (4) members must reside in the City and three (3) members must either reside in or own real property in the city. (3 year term)

- An interview process is required for new applicants only.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: None

Current Members:	Joanne Fuller, resident	09/19/06 – 07/01/18, 4-Final
	Mark Bennett, resident	05/07/13 – 07/01/18, 2
	Charlene Bennett, resident	02/16/10 – 07/01/16, 2
	Sharon Allen, resident	07/01/04 – 07/01/17, P+4-Final
	Warren Turner, resident	07/21/15 – 07/01/17, 1
	John Gravel, property owner	05/06/14 – 07/01/16, 1
	Mathew Cain, own real property in city	03/15/16 – 07/01/19, P+1

Meetings (2-133) – The planning board shall hold regular meetings at the call of the chairman on the fourth Tuesday of each month and at such other times as the planning board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice.

Current Meeting Schedule: - 4th Tuesday @ 5:00 p.m.; Commission Chamber

Rules of procedure (City Code Sec. 23-205.3):
The planning board shall elect from its **membership** one (1) member to serve as chairman and one (1) to serve as vice-chairman.

a. The term of the chairman and vice-chairman named by the planning board shall be for a period of one (1) year with eligibility for re-election.
b. The planning board shall hold regular meetings at the call of the chairman on the fourth Tuesday of each month and at such other times as the planning board may determine. Special meetings may be called by the chairman or vice-chairman with twelve (12) hours of notice.
c. The planning board shall adopt rules for transaction of its business and shall keep a public record of its resolutions, transactions, findings and determinations which record shall be filed with the official records of the city. The planning board may set a limit on the number of applications which may be scheduled for review on an agenda.

Functions, powers and duties (City Code Sec. 23-205.4) - To act as Local Planning Agency pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, F.S., ch 163, part II, and perform all functions and duties prescribed therein:

1. To advise and make recommendations to the city commission regarding applications for amendments to the official zoning map and comprehensive plan, rezoning of property, preliminary planned development projects and subdivisions;
2. To consider the need for revision or addition of regulations in these land development regulations and recommend changes to the city commission;
3. To hear and decide applications for special exception use permits and site plans in compliance with these regulations;

4. To perform any other duties which are lawfully assigned to it by the city commission

Recreation Commission (City Code Sec. 2-161) – The recreation commission consist of thirteen (13) members from community organizations providing a recreation program for the community and three (3) citizen members representing the citizens at large. A quorum shall consist of six (6) members. (3-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 citizen vacancies

Current Meeting Schedule: - 3rd Monday; 12:00 p.m., City Manager's Conference Room
A quorum shall consist of six (7) members.

Current Members:	Keri Hunt, citizen	11/01/11 - 07/01/17, 2
	Vacant	– 07/01/18
	Vacant	– 07/01/18
	Eileen Farchmin, Webber Internt'l University	09/19/11 - 07/01/17, 2
	Robbie Shields, Lake Wales Soccer Club	09/19/11 - 07/01/17, 2
	Patty McKeeman, Lake Wales Pram Fleet	09/19/11 - 07/01/17, 2
	Deborah Rheiner/Linda Kimbrough, PAL	09/19/11 - 07/01/17, 2
	Helen Petersen, Green & Gold Foundation	09/19/11 - 07/01/17, 2
	Norm Rainey, Tennis Program	09/19/11 - 07/01/17, 2
	John Abel, YMCA/Softball	09/19/11 - 07/01/17, 2
	Clark Heter, YMCA	10/17/11 - 07/01/17, 2
	Mimi Hardman, Historic Lake Wales Society	09/19/11 - 07/01/17, 2
	Curt, Boys & Girls Club	09/19/11 - 07/01/17, 2

Membership (City Code Sec. 2-161):

Each community organization named in this paragraph shall be entitled to a seat on the recreation commission and shall appoint one (1) delegate who shall serve for a term of three (3) years. A citizen member shall serve no more than three (3) consecutive terms.

(1) Green and Gold Foundation
(2) Historic Lake Wales Society
(3) Lake Wales Boys and Girls Club
(4) Lake Wales Charter Schools
(5) Lake Wales Little League
(6) Lake Wales PAL
(7) Lake Wales Pram Fleet
(8) Lake Wales Public Library
(9) Lake Wales Soccer Club
(10) Lake Wales YMCA
(11) Polk County School Board
(12) Steelers Football and Cheerleading
(13) Webber International University

A Community organization that is formed for the purpose of providing a recreation program for the youth of the community shall be entitled to one (1) delegate on the recreation commission provided that a majority of the existing members vote to expand the commission to include a delegate from said organization. (3-year term)

Powers (City Code Sec. 2-161) - The recreation commission shall have the power to adopt by-laws, set meeting times and dates, and decide other matters of procedure.

Duties (City Code Sec. 2-162):

(a) During budget cycles when the city funds a municipal recreation program that includes a recreation director, the recreation commission shall:

(1) In coordination with public school officials, all local church organizations, all local service organizations and all local civic clubs, assist in any manner possible the recreation director in matters of public relations between all organizations and the general public.
(2) Aid and assist the recreational director in the carrying out of all of the director's powers and duties.

(b) During budget cycles when the city is unable to fund a municipal recreation program that includes a recreation director, the recreation commission shall:
(1) Serve as a steering committee to:
a. Coordinate publication of and participation in recreation programs currently run by various parent, church, or other community organizations;
b. Identify recreation needs that are not currently being met; and
c. Facilitate development of programs by various parent, church, or other community organizations to meet those unmet needs.
(2) Serve as liaison between the various parent, church, and other community organizations that provide recreation programs and city staff for the maintenance and improvement of the city's recreation facilities.
(3) Make recommendations to city staff for recreation improvements to be included in the city's capital improvement plan.
(4) Make recommendations to city staff for program funding assistance to be included in the city's operating budget.

(c) The recreation commission shall also have the duty to review rules and regulations for use of recreation facilities and make recommendations to the city commission for approval or disapproval of said rules.

PENSION BOARDS

Firefighters' Retirement Board (City Code Sec. 16-163) – The board consists of five (5) trustees. Two (2) members must be legal residents of the City and two (2) members must be full-time firefighters employed by the Lake Wales Fire Department. Resident members are appointed by the Mayor with the advice and consent of the City Commission; firefighter members are selected by a majority of the firefighters who are members of the plan. The fifth member is chosen by a majority of the other four members and appointed by the Mayor. (4-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 1 vacancy, 5th Seat

Current Members:	***Vacant***, 5th Seat	- 09/30/19,
	Glen Gest, resident	01/04/07 - 09/30/18, 3
	James (Jerry) Brown, resident	03/18/14 - 09/30/18, 1
	Joe Jenkins, Fire Chief	10/01/98 - 09/30/18, 4
	Christopher Whidden, Firefighter	09/15/14 - 09/30/18, 1

Meetings (City Code Sec. 16-163,(O)) – The board shall hold meetings, at least quarterly, determining the notice, place and time of each. A majority of its members shall constitute a quorum.

Current Meetings – Quarterly @ 4p.m.; Fire Department meeting room

Powers and duties (City Code Sec. 16-163 (I)) – The powers, duties and responsibilities of the board shall include the power and duty to:
(1) Construe the provisions of the system and determine all questions arising thereunder;
(2) Determine all questions relating to eligibility and participation;
(3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
(4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
(5) Distribute to members at regular intervals information concerning the system;
(6) Receive and process all applications for participation and benefits;

(7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
(8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;
(9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city;
(10) Enforce the terms of the plan and the rules and regulations it adopts;
(11) Direct the crediting and distribution of the trust;
(12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;
(13) Furnish the city with information which the city may require for tax or other purposes;
(14) Engage the services of an investment manager or managers (as defined in § 3(38)) of the act, each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;
(15) Establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;
(16) Perform such other duties as are specified in this document; and
(17) Appoint an administrator of the system if deemed appropriate by the board.

General Employees' Retirement Board (City Code Sec. 16-43) – The board consists of five (5) trustees. Two (2) members must be employees of the plan elected by a majority of the actively employed members of the retirement system, two (2) members must be a resident of the City, own property in the City or have a business tax issued from the City of Lake Wales, and one member is a voting Mayor and/or City Commissioner. (4-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 1 expired term

Current Members:	Linda Kimbrough, resident	06/17/08 - 04/01/19, 3
	Violeta Salud, resident	04/01/04 - 04/01/16, 4
	Sarah Kirkland, general employee	01//05/10 - 04/01/19, 3
	James Slaton, general employee	04/26/12 - 04/01/20, 1
	Commissioner Jonathan Thornhill, voting member	03/18/14 - 05/07/17, 1

Meetings (City Code Sec. 16-43(O)) – The board of trustees may hold meetings, determining the notice, place and time of each. A majority of its members shall constitute a quorum.

Current Meetings – Quarterly @ 8:30 a.m.; City Manager's conference room

Powers & Duties (City Code Sec. 16-43 (I)): The powers, duties and responsibilities of the board of trustees shall include the power and duty to:

(1) Construe the provisions of the system and determine all questions arising thereunder;
(2) Determine all questions relating to eligibility and participation;
(3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
(4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
(5) Distribute to members at regular intervals information concerning the system;
(6) Receive and process all applications for participation and benefits;
(7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
(8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;

(9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city.
(10) Enforce the terms of the plan and the rules and regulations it adopts;
(11) Direct the crediting and distribution of the trust;
(12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;
(13) Furnish the city with information which the city may require for tax or other purposes;
(14) Engage the services of an investment manager or managers (as defined in act section 3(38)), each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;
(15) Establish and maintain a funding standard account and make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;
(16) Perform such other duties as are specified in this document.

Police Officers' Retirement Board (City Code Sec. 16-233) – The board consists of five (5) trustees. Two (2) members must be legal residents of the City and two (2) members must be full-time police officers' employed by the Lake Wales Police Department. Resident members are appointed by the Mayor with the advice and consent of the City Commission; police officer members are elected by a majority of the police officers who are members of the plan. The fifth trustee member is chosen by a majority of the previous four members and as a ministerial duty, such person is appointed by the City Commission. (4-year term)

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: None

Current Members:	Joe Elrod, 5th Trustee	02/03/15 - 09/30/19
	Robert Plummer, resident	11/17/15 - 09/30/18
	Anthony Elrod, resident	04/01/14 - 09/30/18
	Joseph VanBlarcom, police officer	09/16/14 - 09/30/18
	William Raebig, police officer	05/05/14 - 09/30/18

Meetings (City Code Sec. 16-233 (O)) – The board shall hold meetings, at least quarterly, determining the notice, place and time of each. A majority of its members shall constitute a quorum.

Current Meetings – Quarterly @ 4p.m.; Fire Department meeting room

Powers & Duties (City Code Sec. 16-233 (I)) - The powers, duties and responsibilities of the board shall include the power and duty to:

(1) Construe the provisions of the system and determine all questions arising thereunder;
(2) Determine all questions relating to eligibility and participation;
(3) Determine and certify the amount of all retirement allowances or other benefits hereunder;
(4) Establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system;
(5) Distribute to members at regular intervals information concerning the system;
(6) Receive and process all applications for participation and benefits;
(7) Authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund;
(8) Have performed actuarial studies and annual actuarial valuations and make recommendations regarding any and all changes in the provisions of the system;
(9) Select a secretary, who shall keep a complete minute book of the actions, proceedings, or hearings of the board and who shall keep a record of all persons receiving pension payments, noting the time of commencement and cessation thereof. Minutes prepared by the secretary shall be filed with the city clerk and made part of the official records of the city;
(10) Enforce the terms of the plan and the rules and regulations it adopts;

(11) Direct the crediting and distribution of the trust;
(12) Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the plan;
(13) Furnish the city with information which the city may require for tax or other purposes;
(14) Engage the services of an investment manager or managers (as defined in § 3(38)) of the act, each of whom shall have such power and authority to manage, acquire or dispose of any plan asset under its control as authorized by the board;
(15) Establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code;
(16) Perform such other duties as are specified in this document; and
(17) Appoint an administrator of the system if deemed appropriate by the board.

FINANCE BOARDS

Finance Committee – The committee consists of the City Manager, Finance Director and Finance staff, and two City Commissioners. City Commissioners serve for the duration of their term as a Commission or until no longer desire to serve, whichever comes first.

- There is no interview process requirement for applicants applying for appointment to this board.
- Members are required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 city commissioners

Current Members: Kenneth Fields, City Manager
Dorothy Ecklund, Finance Director
Finance Staff
*****Vacant***, city commissioner – 07/01/17**
*****Vacant***, city commissioner – 07/01/17**
*****Vacant***** Commissioner Jonathan Thornhill (commission term ended 5/5/2015, will need to be reappointed)
*****Vacant***** (Betty Wojcik served until 5/5/2015, duration of term as city commissioner)

Establishment & Duties - In 2002, the Finance Committee was established to review the City's financial position on a monthly basis to closely monitor the progress in resolving the City's current financial problems. Close monitoring was to facilitate a more timely identification of new problems should they occur. The establishment of the Finance Committee was endorsed by the City's auditors.

Meetings - Right now, the Finance Committee has only been meeting annually to review the annual City Auditor's Report.

Investment Committee - The committee consists of the City manager, a City Commissioner, the Finance Director, and two (2) members of the public who are residents of the City of Lake Wales or owners of property located in the City of Lake Wales or persons having a business tax receipt issued from the City of Lake Wales. (Public members serve 4-yr terms)

- There is no interview process requirement for appointment to this board.
- Members are not required to file an annual Form 1, Statement of Financial Interests
- Current Vacancies: 2 residents, or property owners, or has business tax receipt ; 1 city commissioner

Current Members: Inactive Board

*****Vacant***, resident – 07/01/19**
*****Vacant***, resident – 07/01/17**
*****Vacant***, city commissioner – 07/01/17**

Commissioner Jonathan Thornhill served for duration of his term as city commissioner. Term ended 5/5/2015. New appointment is necessary

Meetings – The board meets when necessary if there is a quorum. **[INACTIVE BOARD]**

Establishment & Duties – In 2009, the Investment Committee was established in accordance with City Code Section 2-502 for the purpose of formulating alternative investment strategies and short-range directions and for monitoring the performance and structure of the portfolio within established policies. The committee will formulate and recommend change, if necessary, to the investment policies.