

AGENDA ITEM SUMMARY

DATE: 04/27/2009 DEPARTMENT: Clerk's Office DEPT. HEAD SIGNATURE: MC

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**SUBJECT:**

Motion to approve revised Credit Card Policy as one of the City of Hailey's Financial Policies. Our auditors recommend that all financial policies and banking selections be approved by the city council. Auditors request to see current financial policies each year during the annual audit, and test to ensure that the adopted policies are complied with.

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**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

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**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

Some City department heads currently have city issued credit cards with a cumulative limit of \$50,000. Upon reviewing the current vendor and process a few key issues were identified. The intent with requesting a new vendor is to resolve these issues. One issue is with our current limit of \$1,000/per month/per card; if one individual charges more than \$1,000 per month, the balance is automatically increased and "dips" into the next individual's \$1,000 allotment for that month, which can continue on up until the \$50,000 cumulative maximum is reached. This is a concern because the "rolling limit" does not hold employees to the limits set in city policy.

The clerk's office in conjunction with the city Treasurer and Administrator have revised the credit card policy (the purchasing policy was also updated in 1<sup>st</sup> Quarter 2009) to clarify appropriate versus inappropriate usage. We seek city council approval of the Credit Card Policy as one of our Finance Policies as one agenda item, and approval of the vendor as another agenda item.

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<b><u>FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS</u></b>	
Caselle # _____	_____
Budget Line Item # _____	YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____	Estimated Completion Date: _____
Staff Contact: _____	Phone # _____
Comments: _____	

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**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

The clerk's office recommends authorizing a contract to be signed with First Bankcard by the Mayor once the City Attorney has reviewed and approved of the contract. This new company will benefit the City by directly reducing the manual tracking and approval by department heads. Other benefits to the city include - flexible payment options, email notification to management that an expense report has been reviewed and is ready for approval, firm limits (ability to temporarily raise limits for 30 days if necessary), and a maximum rewards program. The maximum rewards program earns points for every dollar spent. These points can be used towards payment or Charitable Giving.

I recommend that the city engage in the Joint and Several Liability agreement. This agreement states that both the card holder and the city are responsible for charges on the card. Credit will be pulled for both the city and the cardholder.

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**FOLLOW-UP REMARKS:**

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City of Hailey  
Credit Card Policy/Limits

Credit Cards will be issued to Division Managers and Department Heads and are intended to be used when other methods of payment are not available. Credit cards are only to be used for purchases that cannot be direct billed to the City of Hailey. It is important that all direct billing options have been exhausted prior to the use of credit cards and the steps the card holder has taken must be documented. Issuance of a credit card to the card holder for traveling is a convenience. If traveling, hotel reservations must be made in advance and direct billing must be set up with the hotel. Per diems may be obtained prior to traveling but are not an entitlement.

**The limits will be as follows:**

*All Department Head credit cards will have a \$2,000 limit*

City Administrator  
City Clerk  
Public Works Director  
Police Chief  
Fire Chief  
Building Official  
Planning Director  
Library Director

*Division Managers and Department Assistants will have a \$1,000 limit*

Street Superintendant  
Water Superintendant  
Waste Water Superintendant  
Assistant Police Chief  
Assistant Fire Chief  
Assistant Librarian

If a department head or division manager prefers not to have a city credit card, they may decline the privilege.

In the event a credit card limit would need to be increased, the department head would need to fill out a Request for Increased credit card Limit form. This form will outline the reason for the need to increase the limit and be signed by the department head, the City Clerk and the City Administrator and be submitted to accounts payable for processing. The higher limit would be in place for 30 days.

### Receipts & Statements

It is the cardholder's responsibility to obtain a transaction receipt from the merchant each time the credit card is used. Individual transaction receipts are to be attached to periodic statements and submitted to accounts payable. The clerk's office must keep statement data and proof of reconciliation, including receipts on file, for a period consistent with the record retention requirements of the law.

When the credit card statements arrive, accounts payable will distribute them to all department heads for coding. Purchase orders and receipts for each purchase on the card must accompany each statement when submitted to accounts payable for payment. **The purchase order must state plainly what was purchased for the city and why or what city business was being conducted.** If a receipt is missing, a letter must accompany the P.O. stating that the receipt was lost and it must be signed by the city employee who lost the receipt.

### Disputed Items

It is the cardholder's responsibility to follow-up on any erroneous charges, returns or adjustments to ensure proper credit is given on subsequent statements.

### Protecting the credit card

The credit card is valuable property which requires proper treatment by the cardholder to protect it from misuse by unauthorized parties. Only the person whose name appears on the card will be allowed to sign for charges on the card. ***Both the city and the individual cardholder will be responsible for the charges on the card account. Credit will be pulled both for the city and the cardholder.***

Sign the credit card immediately upon receipt. The credit card should always be treated with the same care as personal credit cards, bankcards, cash and checks. Keep your card in an accessible, but secure location. When using the credit card for internet purchases, cardholders should ensure that the site utilizes industry recognized encryption transmission tools.

### Lost or Stolen

In the event a card is lost or stolen, it must be reported to Accounts Payable immediately. Accounts Payable will cancel the card to ensure the City of Hailey and the employee are not held responsible for any unauthorized charges. If the card is discovered to have been lost on a weekend, it will be the responsibility of the cardholder to call the bank and have the card canceled.

### Credit card violations include but are not limited to:

- \*Purchase of items for personal use
- \*Purchase of items in violation of the City of Hailey's travel policy
- \*Use of the credit card for cash advances
- \*Exceeding bank credit line limit
- \*Failure to turn in receipts or other back up documentation to accounts payable
- \*Failure to reconcile statement within 5 days of receipt for payment
- \*Lending or sharing the credit card or account number

\*Purchasing goods and services that are not approved by the City of Hailey and are not in accordance with the cities policies

**Compliance with policy violations and consequences**

All credit card bills will be received by the clerks department and reviewed for compliance with this policy. Employee violations to this agreement or to any policy regarding the purchase of goods or services will be investigated and may result in one or more of the following actions: written warning, revocation of credit card privileges, cancellation of delegation of purchasing authority, disciplinary action, and termination and/or criminal prosecution. Human error and extraordinary circumstances may be taken into consideration when investigating any violation to this agreement.

I have read and accept the terms in which the City of Hailey has put in place and is willing to take on the responsibility of having a City of Hailey credit card in my name.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Social Security #

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

At this time I am declining having a City of Hailey credit card in my name.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

AGENDA ITEM SUMMARY

DATE: 04/27/2009 DEPARTMENT: Clerk's Office DEPT. HEAD SIGNATURE: MC

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SUBJECT:

Motion to authorize Mayor to sign contract with First Bankcard (affiliated with Mountain West Bank) to be our new credit card vendor.

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AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

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BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Some City department heads currently have city issued credit cards with a cumulative limit of \$50,000. Upon reviewing the current vendor and process a few key issues were identified. The intent with requesting a new vendor is to resolve these issues. One issue is with our current limit of \$1,000/per month/per card; if one individual charges more than \$1,000 per month, the balance is automatically increased and "dips" into the next individuals \$1,000 allotment for that month, which can continue on up until the \$50,000 cumulative maximum is reached. This is a concern because the "rolling limit" does not hold employees to the limits set in city policy.

The clerk's office in conjunction with the city Treasurer and Administrator have revised the credit card policy (the purchasing policy was also updated in 1<sup>st</sup> Quarter 2009) to clarify appropriate versus inappropriate usage. We seek city council approval of the Credit Card Policy as one of our Finance Policies as one agenda item, and approval of the vendor as another agenda item.

An RFP was sent out to all local banks prior to selection of this vendor. We are recommending this vendor because of a combination of costs, electronic services, and customer service and professionalism in the presentation.

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<u>FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:</u>	
Caselle # _____	_____
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RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

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I recommend that the city engage in the Joint and Several Liability agreement. This agreement states that both the card holder and the city are responsible for charges on the card. Credit will be pulled for both the city and the cardholder.

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FOLLOW-UP REMARKS:

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Memorandum

Date: March 9, 2009

To: Mary Cone  
City Clerk

CC: Heather Dawson  
City Administrator

From: Robin Crotty  
Deputy City Clerk

RE: **Credit Card Recommendation for the City of Hailey**

On January 29, 2009 I sent out an RFP to the following banks for credit cards for the City of Hailey.

- Mountain West – responded 2/5/09
- D.L. Evans – responded 2/24/09
- Wells Fargo – resent on 2/26/09 – no response to date (Responded 3/26/09)
- Bank of America – spoke to B of A – they do not offer corporate accounts
- 1<sup>st</sup> Bank of Idaho – Individual applications available only – not thru the local branch

In the RFP the City of Hailey requested the following information:

- 6 credit cards with \$1,000 limits
- 8 credit cards with \$5,000 limits
- No rotating limits and we do not want the ability to purchase above those limits.
- The city wants the account manager to be able to increase the limit when the need arises for 30 days.
- We requested to receive the bills by the 1<sup>st</sup> of each month and to be able to pay the bills online by the 15<sup>th</sup> of each month.
- No cash advances will be allowed.
- Individual bills would need to be issued for each card holder
- We asked for a list of fees and interest rates that would be associated with the cards and all payment options that would be available (online, phone, auto draft etc.)

Attached are the two proposals received. After review of both, I recommend council approve the proposal received from Mountain West Bank (First Bankcard).

In reviewing these proposals, you will notice that Mountain West's proposal was very thorough and advises the city of many features that would benefit and protect the City of Hailey. In addition they have many features available to the city online which would help streamline the current credit card process. They have many ways of notifying the city of billing issues and alerts than does D.L. Evans Bank.

Mountain West Bank offers a number of credit card set up options that would help protect the city from any credit card fraud or misuse. They also include an email notification to management that an expense report has been reviewed and is ready for approval.

With Mountain West Bank, the City of Hailey will have the option to select their billing cycle as well as choosing either a Corporate Liability or Joint and Several Liability account. Under Corporate Liability, the city is the only liable party for all card accounts and no credit is pulled on the individuals. Under Joint and Several, both the city and the individual cardholder are responsible for charges on the card account. Credit will be pulled both for the city and the cardholder. I recommend Joint and Several Liability accounts. The department head will have the option to receive or refuse a city credit card in their name. (I have attached the updated credit card policy that will address this issue.)

- Mountain West has no annual fee. D.L. Evans has an annual fee of \$50.00 per card
- Mountain West has the ability to pay online with no fees. D.L. Evans charge \$10.00.
- Mountain West allows the ability to increase the limits of an individual card online by the card administrator. D.L. Evans will only allow a decrease in limits and information must be faxed and the decreased limit will stay in effect until another fax is sent to reinstate the original limit (cumbersome process).

After recommendation to council and council decision, please let me know which bank the City of Hailey would like me to pursue.



February 5, 2009

Robin Crotty  
Deputy City Clerk  
City of Hailey  
115 Main Street South, Suite H  
Hailey, ID 83333

Dear Robin,

Thank you for allowing First Bankcard in conjunction with Mountain West Bank, the opportunity to present the city of Hailey with this purchasing card proposal for Purchasing, Accounts Payables and Travel card programs.

- 6 Commercial Edition Charge Cards issued to Division Managers with a \$1000 limit.
- 8 Commercial Edition Charge Cards issued to Department Heads with a \$5000 limit.

Under this program, the city of Hailey will designate a **Program Administrator**. The Program Administrator will be able to manage the city's account online, in real time by accessing their account from [www.directcardaccess.com](http://www.directcardaccess.com). The Program Administrator (PA) will be able to make the following changes to the city's account:

- Change charge limits for individual cards (but not the overall company limit)
- Add or close card accounts
- Replace cards
- Add Transaction Limits or Card limits to each card accounts

In addition to the above features, [directcardaccess.com](http://directcardaccess.com) allows the PA:

- Make payments
- Receive eStatement
- Set Priority Alerts
- View accounts/statement history

The City of Hailey will have the option of utilizing 8 Priority Alerts. The Priority Alerts serve as email notification to the PA and or the cardholder. They are as follows:

- The cardholder is within X percentage or X dollar amount of the assigned limit
- Payment is due
- Payment is past due
- Payment or credit has been posted
- Statement is ready

As previously noted, card limits can be set on each account so that the cardholder cannot spend more than what has been assigned. The Priority Alert gives advance notice of the approaching limit and enables the PA to add additional funds or make a payment so as not to cause a problem for the cardholder at the point of sale.

The City of Hailey can block cash access.

Individual bills can be setup to ensure proper approval on Hailey's side. Behind our charge card program is powerful accounting tool that includes an expense management feature. This package includes email notification to management that an expense report has been reviewed and is ready for approval. There are no fees associated with this features (or any other feature of our program).

The city of Hailey will be able to select from one of several end of the month billing cycles to ensure they receive their statement(s) by the end of the month. The statement will be due 25 days after billing cycle closes. If the city so chooses, each statement can be rolled up into one statement called a Central Bill.

First Bankcard offers either Corporate Liability or Joint and Several Liability. Under Corporate Liability, the city is the only liable party for all card accounts and no credit is pulled on the individuals. Under Joint and Several, both the city and the individual cardholder are responsible for charges on the card account. Credit will be pulled both for the city and the cardholder.

**Payment & Terms:**

- Charge card (which is non-revolving) 100% minimum pay
- Delinquency and Cash Finance Charge 19.99% (we want to encourage 100% minimum pay)
- Late Fee \$35 for individual accounts and \$250 for Central Bill
- Annual Fee \$0.00
- Over Limit fee \$39
- Dishonored Payment and Stop Payment fee \$35
- Document Fees (reprint of statements or sales drafts) \$5
- Foreign Transaction Fee 3%
- Expedited delivery \$5
- Lost or Stolen fee \$10

To provide maximum flexibility First Bankcard supports both the conventional check remittance process and various electronic payment processes for both individual and central billed programs. The city of Hailey may make a secure payment on line in [directcardaccess.com](http://directcardaccess.com) or send a conventional check. Additionally, the city may setup an ACH debit transfer, or a wire transfer, or they may call our Client Service Department and make a payment over the telephone.

The above mentioned program is a Maximum Rewards Program. The city of Hailey will earn one point for every dollar charged. The Rewards can be redeemed for a variety of different items including Cash Back (credit to next month's spend) and Charitable Giving.

I would be more than happy to discuss this proposal or answer any questions you might have. I can be reached at 402-636-6368 or via email at [mmckeone@fhl.com](mailto:mmckeone@fhl.com) to discuss this proposal further. We look forward to working with you.

Best Regards,

*Martha*

Martha J. McKeone  
Commercial Card Regional Manager  
First Bankcard



February 24, 2009

City of Hailey  
115 S Main St, Suite H  
Hailey, Idaho 83333

Dear Robin:

I am responding to your request for a proposal to provide the City of Hailey with credit cards as follows:

6 credit cards issued to Division Managers with a \$1,000 limit each.

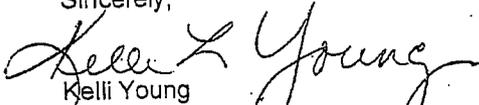
8 credit cards issued to Department Heads with a \$5,000 limit each.

Below are responses to questions and concerns you expressed in your letter:

- \* As long as the cards are paid in full each month the limit would not be rotating.
- \* The card holders will be unable to purchase above their approval limit.
- \* An adjustment to a individual limit is requested by sending a fax to D L Evans at 788-2114. The fax will address which card holder needs to be adjusted and the dollar amount of the new temporary limit. Another card holder's limit must be decreased in the like amount in order for the aggregate limit on the card not to exceed original approval. Faxes must be signed by the individual that originally authorized the credit cards. The temporary limits will be adjusted back to the original limits when the bank receives a fax requesting the change.
- \* Credit card bills sent out on the 22nd of the month to be paid in full by the 17th of the month.
- \* As requested the credit card will be setup not to allow cash advances or cash back.
- \* Each card will have individual bills along with a total of all the individuals.
- \* There is a \$50 annual fee which will be waived with a deposit relationship.
- \* Zero interest as long as paid by due date each month. If not paid in full rate is WSJP + 3.90%.
- \* Payment options available would be online payments, auto draft payments with D L Evans checking account and phone payments with \$10 fee from credit card processor.

Please call if have any question.

Sincerely,

  
Kelli Young  
Manager of D L Evans Hailey Branch

Hailey Branch      12 East Bullion Street      Hailey, ID 83333  
208-788-2130      Fax 208-788-2114      Express Banking 1-888-873-9777

## City of Hailey Credit Card Policy/Limits

Credit Cards will be issued to Division Managers and Department Heads and are intended to be used when other methods of payment are not available. Credit cards are only to be used for purchases that cannot be direct billed to the City of Hailey. It is important that all direct billing options have been exhausted prior to the use of credit cards and the steps the card holder has taken must be documented. Issuance of a credit card to the card holder for traveling is a convenience. If traveling, hotel reservations must be made in advance and direct billing must be set up with the hotel. Per diems may be obtained prior to traveling but are not an entitlement.

### **The limits will be as follows:**

*All Department Head credit cards will have a \$2,000 limit*

City Administrator  
City Clerk  
Public Works Director  
Police Chief  
Fire Chief  
Building Official  
Planning Director  
Library Director

*Division Managers and Department Assistants will have a \$1,000 limit*

Street Superintendant  
Water Superintendant  
Waste Water Superintendant  
Assistant Police Chief  
Assistant Fire Chief  
Assistant Librarian

If a department head or division manager prefers not to have a city credit card, they may decline the privilege.

In the event a credit card limit would need to be increased, the department head would need to fill out a Request for Increased credit card Limit form. This form will outline the reason for the need to increase the limit and be signed by the department head, the City Clerk and the City Administrator and be submitted to accounts payable for processing. The higher limit would be in place for 30 days.

### Receipts & Statements

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When the credit card statements arrive, accounts payable will distribute them to all department heads for coding. Purchase orders and receipts for each purchase on the card must accompany each statement when submitted to accounts payable for payment. **The purchase order must state plainly what was purchased for the city and why or what city business was being conducted.** If a receipt is missing, a letter must accompany the P.O. stating that the receipt was lost and it must be signed by the city employee who lost the receipt.

### Disputed Items

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Sign the credit card immediately upon receipt. The credit card should always be treated with the same care as personal credit cards, bankcards, cash and checks. Keep your card in an accessible, but secure location. When using the credit card for internet purchases, cardholders should ensure that the site utilizes industry recognized encryption transmission tools.

### Lost or Stolen

In the event a card is lost or stolen, it must be reported to Accounts Payable immediately. Accounts Payable will cancel the card to ensure the City of Hailey and the employee are not held responsible for any unauthorized charges. If the card is discovered to have been lost on a weekend, it will be the responsibility of the cardholder to call the bank and have the card canceled.

### Credit card violations include but are not limited to:

- \*Purchase of items for personal use
- \*Purchase of items in violation of the City of Hailey's travel policy
- \*Use of the credit card for cash advances
- \*Exceeding bank credit line limit
- \*Failure to turn in receipts or other back up documentation to accounts payable
- \*Failure to reconcile statement within 5 days of receipt for payment
- \*Lending or sharing the credit card or account number

F:\finance\procedures\creditcardpolicylimits amended 2/13/09

\*Purchasing goods and services that are not approved by the City of Hailey and are not in accordance with the cities policies

**Compliance with policy violations and consequences**

All credit card bills will be received by the clerks department and reviewed for compliance with this policy. Employee violations to this agreement or to any policy regarding the purchase of goods or services will be investigated and may result in one or more of the following actions: written warning, revocation of credit card privileges, cancellation of delegation of purchasing authority, disciplinary action, and termination and/or criminal prosecution. Human error and extraordinary circumstances may be taken into consideration when investigating any violation to this agreement.

I have read and accept the terms in which the City of Hailey has put in place and is willing to take on the responsibility of having a City of Hailey credit card in my name.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Social Security #

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

At this time I am declining having a City of Hailey credit card in my name.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

# A Card for Every Business



	Visa Business Card 	Business Secured Card 	Corporate Card (formerly ExpressOne) 	WellsOne Commercial Card (formerly PCard) Not Available
<b>Customer Profile Guidelines</b>	Small Businesses <ul style="list-style-type: none"> <li>&lt; \$1 million in sales. (Includes newly established businesses, small annual revenues, sole proprietors, all with satisfactory personal credit)</li> <li>Up to 5 Cards</li> </ul>	Small Businesses establishing or rebuilding business credit <ul style="list-style-type: none"> <li>Up to 5 cards</li> </ul>	Larger Small Businesses <ul style="list-style-type: none"> <li>\$1-\$20 million in Sales</li> <li>6 - 200 Cards</li> </ul>	Mid Mkt and Lg Corp <ul style="list-style-type: none"> <li>&gt; \$20 million in Sales</li> <li>Spend of &gt; \$100,000/month</li> </ul>
<b>Terms and Conditions</b>	<ul style="list-style-type: none"> <li>Up to \$50,000</li> <li>Annual Fee= \$0 for each card used at least 12 times (based on anniversary year); otherwise, \$25 per card inactive account fee</li> <li>APR on purchases: Prime + 4-10% (based on credit evaluation)</li> <li>Up to 25 days grace period</li> </ul>	<ul style="list-style-type: none"> <li>\$1,000 to \$100,000 (100% collateralized by cash deposit) earns 2.5% interest first 12 months (rate subject to change)</li> <li>\$25 Annual Fee per card (waived first year with Basic Business Services Pack)</li> <li>APR of Prime + 9.9%</li> </ul>	<ul style="list-style-type: none"> <li>Annual fee = \$10/card for 1-50 cards, or \$0 annual fee on all cards if 51+ cards are issued</li> </ul>	<ul style="list-style-type: none"> <li>Credit line varies based on need</li> <li>No Revolving Payment in Full required each month</li> <li>Pricing by quote</li> </ul>
<b>Additional Benefits</b>	<ul style="list-style-type: none"> <li>Optional BusinessMiles Rewards program (\$50 annual fee), 5,000 Bonus Points for new cards</li> <li>Quarterly &amp; Annual Management Reports</li> <li>Access through WF Business On-Line</li> <li>Part of Basic Business Services Pack</li> </ul>	<ul style="list-style-type: none"> <li>Same basic features (such as BusinessMiles, Reports and Additional Cards)</li> <li>Opportunity to graduate to unsecured card (after 1 year)</li> </ul>	<ul style="list-style-type: none"> <li>Free Web-based reporting                             <ul style="list-style-type: none"> <li>37 standard reports</li> <li>Download or export data into a file (i.e. Excel) or Program (i.e. QuickBooks)</li> </ul> </li> <li>Cardholder controls employee spend, merchants</li> </ul>	<ul style="list-style-type: none"> <li>Consult RM or TMSO</li> <li>Extensive Reporting Capability</li> </ul>
<b>Billing</b>	Individual	Individual	<ul style="list-style-type: none"> <li>Consolidated</li> <li>Individual</li> </ul>	Consolidated



## Wells Fargo® Corporate Credit Card

To Learn More 1-800-752-4197 [How to Apply](#)



Need a card that multi-tasks as hard as you do? If you are a business with \$1 to \$20 million in annual sales, the *Wells Fargo* Corporate Credit Card may be right for your business.

Businesses can access up to \$100,000<sup>1</sup> in working capital and create customized, online reporting to meet their financial and accounting requirements.

### Customer Service

**New account information:**  
1-800-752-4197  
[Email us](#)

### Support for existing accounts:

Please call the number on the back of your Corporate Card.  
[Email us](#)

### [Frequently asked questions](#)

#### Education

[Interest rates and foreign exchange](#)  
Know how much you'll pay for goods in another country.

#### [A Lease on Your Terms](#)

As you plan your move, review the lease terms to ensure the best deal for your business.

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### Account Details:

<b>Ideal for</b>	Businesses with more than \$1 million in sales
<b>Credit Line</b>	Up to \$100,000 <sup>1</sup>
<b>APR on Purchases and Cash Advances</b>	Prime + 2.8% up to Prime + 9.8% (depending on credit evaluation)
<b>Number of Cards</b>	3 to 200
<b>Annual Fee</b>	<ul style="list-style-type: none"> <li>• 3-50 total cards: \$10 each</li> <li>• 51+ total cards: \$0</li> </ul>
<b>Billing Options</b>	<ul style="list-style-type: none"> <li>• Consolidated (company receives and pays one bill) or</li> <li>• Individual (each card holder receives and pays his or her own bill)</li> <li>• Free <a href="#">Automatic Payment</a></li> </ul>

### Other Information:

<b>Grace Period</b>	Up to 25 days
<b>Reporting</b>	<ul style="list-style-type: none"> <li>• <a href="#">MasterCard Smart Data OnLine™</a> delivers up to 25 standardized reports</li> <li>• Customized reporting and 15-month data retention</li> <li>• Ability to download transactions into your accounting software</li> </ul>
<b>More Benefits</b>	<ul style="list-style-type: none"> <li>• <b>WellsProtect® Program:</b> A free service that protects you when unauthorized transactions are reported promptly</li> </ul>

- **MasterCoverage®:** Helps protect your company from employee misuse
- **Discounts:** Discounts on goods and services through [MasterCard® Worldwide](#)
- **Travel Accident Insurance:** \$100,000 per card
- **Purchase Protection:** Secondary theft/damage coverage
- **Extended Warranty:** Doubles manufacturer's warranties up to one additional year
- **Auto Rental Insurance:** Coverage for collision and theft

[Compare our credit cards](#) side by side.

To Learn More 1-800-752-4197 [How to Apply](#)

<sup>1</sup> For amounts greater than \$100,000, please contact your Business Banker.

\* Requires Adobe® Flash™ Player. Download the latest [free Flash Player](#). To speak with our National Business Banking Center about your specific business needs, please call 1-800-416-8658.

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## Product Overview

### The Corporate Card Overview

The Wells Fargo Corporate Card is a powerful business tool designed to help companies with annual spending of \$2-\$20 million manage spending. It helps to manage travel and entertainment costs, general purchases, and vehicle management expenses all in one program. As a leader in business banking, Wells Fargo makes it a priority to help businesses manage their finances in smarter ways. We've created a product to fit the special needs of the small to mid sized companies and organizations.

The Corporate Card:

- Sets controls for each cardholder
- Provides in-depth reporting
- Customizes the card program

### Product Features:

**Customized authorization levels:** Cards can be set with purchasing authorization settings just for that individual's job function, such as Office Manager, Sales or Driver. We have standard spending restriction groups to make your program set-up easy and manageable.

**Detailed reporting:** Our web-based reporting system, Smart Data OnLine™ provides over 25 standard reports easily accessed to keep track of the company's spending. Reports are available for daily, weekly, monthly or quarterly reporting periods. The data is available for 15 months. The reporting system will also allow split transaction capabilities to separate accounting units, add non-card transactions and add your own custom-defined information. In addition, transaction-mapping options can be utilized to simplify entry into a general ledger system.

The online reporting is available through PC based Internet access. A simple password is all this is required to access this information. The password and instructions are provided once the Corporate Card program is set up.

**Vehicle Management:** Of the 11 million small businesses, 8.5 million have vehicles and no source for fleet management until now. Vehicle reporting is part of the standard reporting package.

**Individual or Corporate billing:** Companies choose the billing option that is best for them.

- **Individual-Cardholders** receive and pay their own bill. Many companies prefer the added cash management control of having individual employees pay their own commercial card bill and use expense reports for reimbursement. Employees receive a statement each month there is activity on their account and are responsible for payment by the due date.

- **Consolidated Billing-** One combined statement is sent and the company makes one payment. Under the consolidated billing option, the financial manager is responsible for paying the lump sum of all charges that appear on the consolidated statement instead of employees paying for charges on their individual account. This system works well for companies who want to manage the payment of all business-related costs from a centralized location. In addition, the option is available to provide individual employees with a copy of their statement for their own reconciliation.

**Cash Access:** At the company's discretion, employees may be issued a Personal Identification Number (PIN) for cash access at ATMs. Cash access is also available at any bank location that accepts MasterCard® credit cards. A cardholder may get up to 20% of the cardholder's credit line as a cash advance.

**Customer Service:** Daily inquiries can be handled by contacting a Customer Service Representative toll-free 24 hours a day, 7 days a week. Additionally, if the program size warrants, the account will be assigned to a Wells Fargo Client Service Consultant who will work with the company program administrator for on-going service and detailed assistance with Smart Data OnLine.

**24-hour Voice Response Unit:** Wells Fargo also realizes that cardholders may need to access account information quickly with no need to speak to a representative. To fill this need, we have a 24-hour Voice Response Unit (VRU) employees can call for account balance and payment information or to report a lost or stolen card.

**Unsurpassed Global Acceptance:** MasterCard is accepted around the world in over 220 countries, at over 22 million merchant locations, more than 560,000 ATMs and over 943,000 member bank locations. With the Wells Fargo Corporate Card, employees will enjoy fewer hassles at the point of sale, along with the exceptional security and convenience that MasterCard provides.

**Extensive Travel and Business Services:** MasterCard offers an extensive package of travel and business services. Features include:

- MasterRental® Insurance Coverage - provides primary collision/loss damage coverage that eliminates the need for filing insurance claims with an insurer.
- Purchase Assurance and Extended Warranty - protects against lost and stolen, theft, and extends manufacturers warranty.
- MasterCoverage® Liability Protection Program - protects the company against losses resulting from unauthorized employee use of the Corporate Card.
- MasterAssist® Travel Assistance - provides value-added services such as 24-hour roadside assistance, emergency medical protection, travel assistance, and legal referrals.

- MasterCard Global Service™ - offers access to toll-free assistance, in over 140 languages, 24 hours a day. This service also provides assistance with reporting lost/stolen cards and emergency cash advances.
- MasterCard VAT Reclaim Service - for those travelers who conduct business within the European Union (EU). This service helps process claims for refunds of the Value Added Tax paid on purchases made within the EU.

**Pricing/Options**

<b>Credit Lines:</b>	Typically \$50,000 - \$250,000
<b>Liability:</b>	Corporate Liability with personal guarantee; Corporate Liability only; or Joint & Several
<b>Grace Period:</b>	25 days
<b>Billing:</b>	Consolidated (with option to have individual memo statements for cardholders) or Individual Billing
<b>Annual Fee per card:</b>	1-50 cards = \$10 per card 51+ cards = \$0 per card
<b>APR:</b>	Credit line amount of \$100,000 or less allows revolving line of credit. APR is Prime+ 2.8% to Prime+ 9.8% (based on credit evaluation) Line amounts over \$100,000 requires payment due in full each month
<b>Late Fee:</b>	\$75 Consolidated billing; \$35 Individual billing
<b>Cash Advance Fee:</b>	3% or \$4 minimum
<b>NSF Charge:</b>	\$35

## FIRST NATIONAL BANK OF OMAHA COMMERCIAL CARD AGREEMENT

This Commercial Card Agreement (the "Agreement") is made as of \_\_\_\_\_ (the "Effective Date") between First National Bank of Omaha (the "Bank") and the undersigned business or governmental entity (the "Company") (each, a "Party" individually, and the "Parties" collectively). References to an article, section or sub-section below refer to the designated segments of this Agreement, unless otherwise indicated.

### RECITALS

A. The Bank is a member of network organizations that process transactions for credit cards and charge cards (each, a "Card Association"), including those cards the Bank issues for commercial use by its customers.

B. The Company has requested a commercial card account from the Bank and has directed the Bank to issue ten (10) or more cards and provide related account services for the Company and its employees and agents.

C. The Bank is willing to issue commercial cards and provide accounts and related services on the terms and conditions set forth in this Agreement and its attached Schedules, Exhibits and Addendums, which are incorporated in the Agreement by this reference.

In consideration of the premises and mutual agreements set forth in this Agreement, the Company and the Bank agree as follows:

### **ARTICLE 1 DEFINITIONS**

Section 1.1 For purposes of this Agreement, the following terms shall have the meanings indicated below:

(a) "Account" means the master account the Bank establishes in the Company's name, associated with Cards the Bank issues to the Company, Employees and Cardholders, and reflecting all Transactions made with Card Accounts of Employees and Cardholders.

(b) "Application" means an application, submitted in the form and manner specified by the Bank, requesting that the Bank open the Account or requesting that the Bank issue a Card and open a related Card Account for an Employee or Cardholder.

(c) "Bank Affiliate" means all entities that are Controlling, Controlled by or under common Control with the Bank, its parent First National of Nebraska, Inc., the Lauritzen Corporation or any financial services entities controlled by the Lauritzen family.

(d) "Card" means any plastic card branded with a Card Association brand that the Bank issues to the Company, an Employee or a Cardholder under the Program. Any

reference to use of a Card in the Agreement shall also mean use of its related Card Account.

(e) "Card Account" means each sub-account the Bank establishes for Employees and Cardholders under the Account, including those associated with use of a particular Card, those for which the Bank has not issued a Card, and Guaranteed Accounts.

(f) "Card Account Statement" means an individual periodic statement the Bank prepares to disclose the applicable balances, Transactions, and Program Fees and Charges for a Card Account at the end of each billing cycle.

(g) "Card Association Liability Program" means liability protection insurance coverage a third-party insurer or Card Association may separately agree to provide the Company, to limit the Company's liability for Unauthorized Transactions.

(h) "Cardholder" means an Employee designated by the Company or its Program Administrator to receive a Card and who is authorized to use a Card and Card Account, including any person using an Unassigned Card for any reason from time to time.

(i) "Cardholder Agreement" means any agreement between the Bank and a Cardholder that governs a Cardholder's use of a Card and Card Account, as amended from time to time, consistent with this Agreement.

(j) "Cash Advance" means the use of a Card or any check, instrument, certificate, device or method the Bank permits for access to the Card Account, when used to obtain a cash advance or a Cash Equivalent Transaction or to initiate any Transaction other than one designated as a Purchase by the Bank. Any such Cash Advance can result from transactions made through the Bank, participating financial institutions, ATMs, point of sale terminals, or otherwise, regardless of whether a Card was presented, the Cardholder's signature was obtained, or a personal identification number was assigned to or used by a Cardholder

(k) "Cash Equivalent Transaction" means a Cash Advance obtained through a merchant or service provider that the Card Association has identified as a seller of travelers checks, foreign currency, money orders, wire transfers, lottery tickets, funds used for wagers or gambling, or similar products or services.

(l) "Charge Limit" applies to both the Account and each related Card Account, and means the maximum aggregate unpaid balance of all Transactions and Program Fees and Charges that may be outstanding on the Account or the Card Account at any time

(m) "Claim" means: (a) any pre-existing, present or future claim, dispute or controversy that arises from or in any way relates to this Agreement, any Cardholder Agreement, the Account, any Card Account, any Card, the credit the Bank offers or denies to Company, Cardholders and Employees in accordance with this Agreement, any

Application, or the benefits, rewards or other products or services that are offered in connection with this Agreement, the Account, any Card Account or any Card; or (b) the acts or omissions of any Party, Bank Affiliate, Company Affiliate, Cardholder and Employee if those acts or omissions affect or relate to this Agreement, the Account, any Card Account, any Card or any benefits, rewards or other products or services related thereto. Claims include, but are not limited to, claims based on contract and tort (including intentional torts), claims made in law or in equity, claims based on constitutional, statutory, regulatory and common law rights, and claims for damages, penalties and injunctive, declaratory or equitable relief.

(n) "Class Proceeding" means any Claim or Claims brought by or on behalf of a class, brought in a representative capacity or otherwise on a class basis, or brought in the form of a private attorney general action, regardless of whether they are commenced in court or in arbitration.

(o) "Company Affiliate" means all entities that are Controlling, Controlled by or under common Control with the Company.

(p) "Company Marks" shall have the meaning assigned in Section 8.4.

(q) "Confidential Information" shall have the meaning assigned in Section 16.1.

(r) "Consolidated Billing Statement" means a periodic statement the Bank prepares to disclose the applicable balances, Transactions, and Program Fees and Charges due from the Company for the Account and all applicable Card Accounts at the end of each billing cycle.

(s) "Control" means possessing, directly or indirectly, the power to direct or cause the direction of the management policies or operations of any entity, whether through ownership of voting securities, by contract, or otherwise.

(t) "Employee" means an employee, agent, contractor, director, or officer of the Company or a Company Affiliate.

(u) "Guarantee" shall have the meaning assigned in Section 2.2.

(v) "Guaranteed Account" shall have the meaning assigned in Section 2.2.

(w) "Initial Term" shall have the meaning assigned in Section 19.1.

(x) "Merchant Category Code" means a code that a Card Association has assigned to identify the principal business of a vendor, merchant or other third party that accepts payments from customers made with Cards and Card Accounts.

(y) "Operating Rules" mean the operating rules and regulations of a Card Association, the Bank, or both, as amended from time to time.

(z) "Payment Due Date" means the date after each Statement Date for the Account and each Card Account by which payment to the Bank is due from the Company and/or its Cardholders.

(aa) "Pricing Schedule" means terms, conditions, and limitations set forth in Schedule A to this Agreement, as amended by the Bank from time to time in accordance with Section 17.2, including all Program Fees and Charges the Company, Employees and Cardholders must pay the Bank and any incentive payments the Bank must pay the Company based on the net amount of aggregate Purchases made during a defined time period.

(bb) "Program" means the commercial card program the Bank establishes for the Company on terms and conditions set forth in this Agreement, through which the Bank opens the Account and permits use of Cards and Card Accounts.

(cc) "Program Administrator" means each individual the Company designates as a representative using the Bank's Program Administrator Designation Form, each of whom is individually authorized to: (i) submit requests for Cards and/or Applications by or on behalf of Employees and Cardholders; (ii) request Charge Limits for individual Cards and Card Accounts (but not an overall Charge Limit for the Account); (iii) request Transaction Limits for individual Cards and Card Accounts; (iv) request cancellation or suspension of individual Cards and Card Accounts; and (v) perform certain administrative duties as described in the Agreement. The Company must designate each Program Administrator in the form and manner required by and acceptable to the Bank, in its sole discretion.

(dd) "Program Fees and Charges" means the fees, charges, and interest rates established by the Pricing Schedule in Schedule A that are payable to the Bank by the Company, Employees and Cardholders.

(ee) "Purchase" means use of a Card or any check, instrument, certificate, device or method the Bank permits for access to the Card Account, when used to pay for goods or services sold, leased, or otherwise provided by any person, entity, or financial institution or initiate any transaction other than one designated as a Cash Advance by the Bank, regardless of whether a Card was presented or a Cardholder's signature was obtained by any such person, entity, or financial institution.

(ff) "Renewal Term" shall have the meaning assigned in Section 19.1.

(gg) "Statement Date" shall mean the closing date of the periodic billing cycle for the Account and for each Card Account, assigned by the Bank and disclosed on Consolidated Billing Statements and Card Account Statements.

(hh) "Term" shall have the meaning assigned in Section 19.1.

(ii) "Transactions" means any Purchase or Cash Advance.

(jj) "Transaction Limit" means parameters the Program Administrator and Bank establish for a Card Account, including but not limited to limits on: (i) the number of Transactions permitted during a specified time period for a Card Account; (ii) the dollar amount of Transactions permitted during a specified time period for a Card Account; (iii) the Merchant Category Codes for which a Card Account may be used; and (iv) such other parameters as may be agreed by the Bank and Program Administrator.

(kk) "Unassigned Cards" are Cards the Bank issues in the name of the Company at its request, without designating a specific Cardholder authorized to use the Card.

(ll) "Unauthorized Transaction" means any Transaction not for the purpose of carrying on the Company's business and from which the Company obtains no direct or indirect benefit.

## ARTICLE 2

### PROGRAM EXCLUSIVITY; COMPANY GUARANTY AND FINANCIAL REPORTS

Section 2.1 During the Term, the Company shall not, by itself or in conjunction with any Company Affiliate: (a) enter into an agreement with any financial institution other than the Bank related to the issuance or use of commercial credit cards or commercial charge cards by Employees and Cardholders; (b) enter into an agreement authorizing use of any Company Marks in connection with any commercial credit cards or commercial charge cards to be used by Employees and Cardholders; or (c) directly or indirectly endorse, support, participate in, or benefit from any commercial card program other than the Program, related to the issuance or use of commercial credit cards or commercial charge cards by Employees and Cardholders.

Section 2.2 If the Company or a Program Administrator requests and the Bank agrees to issue a Card and establish a Card Account for a Cardholder or Employee of a Company Affiliate identified in Exhibit 1 (each, a "Guaranteed Account"), the Company shall be liable to the Bank for any and all Transactions and Program Fees and Charges related to or arising from use of any such Guaranteed Account, as well as any losses and reasonable costs of collection the Bank incurs related to such Guaranteed Account (the "Guarantee"). The Company shall execute any additional instruments in the time and manner the Bank might request in connection with any such Guarantee. The Guarantee of each Guaranteed Account shall remain in full force and effect after termination of this Agreement and any such Guaranteed Account, until any such Guaranteed Account has been paid in full and closed to further activity.

Section 2.3 The Company shall provide or cause its accountants and auditors to provide the Bank with reasonably detailed financial statements and reports about the Company, in the time and manner the Bank requests during the Term and while the Company remains obligated to the Bank under the Agreement. The financial statements and reports the Company must provide from time to time upon the Bank's request include periodic statements of income, statements of cash flow, and balance sheets of the Company, as well as statements regarding changes in shareholder's equity of the Company and any Company Affiliate. Any such statements and reports must, as determined by the Bank, be audited by an independent public

accountant selected by the Company or contain a certification by the Company's chief financial officer that such reports are accurate and complete in all material respects.

Section 2.4 The Bank is authorized to investigate and obtain information about the Company as the Bank deems appropriate. The Bank may provide information about the Company and Cardholders to the Card Association, its member institutions and contractors, and credit reporting agencies.

### **ARTICLE 3 USE OF ACCOUNT, CARDS AND CARD ACCOUNTS**

Section 3.1 The Bank, from time to time and in its sole discretion, will establish and advise the Company of its Charge Limit for the Account and the respective Charge Limits for the Card Accounts. The Bank will otherwise provide services to the Company, Employees and Cardholders in the manner described in this Agreement and the Cardholder Agreement. The Bank shall have sole discretion over the management, operation, content and features of the Program. The Bank may modify any aspect of the Program as provided in this Agreement and the Cardholder Agreement.

Section 3.2 The Company understands and agrees that the Account, the Cards and the Card Accounts are for use by Employees and Cardholders for their business-related Transactions, as provided under the terms and conditions of this Agreement, the Operating Rules and the Cardholder Agreement, each as amended from time to time. The Company agrees to notify Employees and Cardholders about the business purposes for which the Account, the Cards and the Card Accounts may be used. The Bank agrees that it will use commercially reasonable efforts to notify the Company about particular requirements of the Operating Rules that may impact or affect the Account, the Cards, and the Card Accounts.

Section 3.3 The Company, consistent with its internal policies, may instruct Employees and Cardholders to use a Card and Card Account only for specific kinds of business-related Transactions. The Bank shall not have any duty or obligation to question or investigate the underlying purpose or nature of any Transaction, except to the extent the Bank might be specifically required to do so in connection with Transaction Limits or other limits specifically established by this Agreement. The Company may, in its sole discretion, require that Employees sign a separate agreement related to their permitted use of a Card and Card Account. The Bank shall not be liable to the Company or any Employee or Cardholder in connection with any such agreement that might exist between those parties. The Bank's duties and obligations to the Company, Employees and Cardholders are established by this Agreement, the Operating Rules and the Cardholder Agreement, each as amended from time to time.

### **ARTICLE 4 CANCELLATION OF CARDS; CARD REFUSAL BY THIRD PARTIES**

Section 4.1 The Program Administrator or the Company may direct the Bank to cancel any Card or Card Account at any time and for any reason whatsoever, after giving the Bank a cancellation notice in the time and manner it requires and a reasonable opportunity to act on any such instructions. If Company cancels any Card and Card Account due to termination of

any Employee's employment, the Company must notify the Bank within two (2) business days after the earlier of the date the Employee's employment is terminated or the date the Employee gives or receives oral or written notice of immediate or pending termination of employment. The Bank may cancel or suspend the right to use any Card or Card Account in its sole and absolute discretion at any time.

Section 4.2 The Bank shall have no obligation, responsibility or liability to the Company or an Employee, Cardholder or any user of a Card or a Card Account (including the user of an Unassigned Card) if any person, entity or financial institution refuses to honor a Card, Card Account or the Account, or if the Bank refuses or fails to authorize the use of any Card, Card Account or Account.

## **ARTICLE 5 DESIGNATION AND RESPONSIBILITIES OF PROGRAM ADMINISTRATOR**

Section 5.1 The Company shall provide the Bank with a written designation of one or more representative(s) as a Program Administrator, each of whom shall be individually authorized to: (i) designate the Employees authorized to receive Cards and use Card Accounts; (ii) establish or change the Charge Limit and Transaction Limits requested by the Company for any Cardholder, Card and Card Account (but not the overall Charge Limit of the Account); (iii) direct the Bank to cancel or suspend any Card or Card Account; and (iv) otherwise act as the Company's authorized representative in administering the Program on behalf of the Company and resolving any disputed Transactions. A Program Administrator must promptly advise the Bank in writing of any changes to be made with respect to the Account and any Card or Card Account, using a request form acceptable to the Bank and purportedly signed or submitted by a Program Administrator. The Bank, without further inquiry, may rely on, deal with, and accept Program instructions from any person who identifies himself or herself as a Program Administrator in all matters related to the operation and administration of the Program. The Bank shall not be liable or responsible to the Company for any Program Administrator that exceeds the limits of his or her authority.

Section 5.2 The Bank will, except as otherwise provided in this Agreement, direct all documents and correspondence relating to this Agreement to a Program Administrator. The Bank shall not act upon any instructions, orders, agreements or other documents submitted by a person purporting to be a Program Administrator, unless and until the Bank has received a Program Administrator Designation Form appointing such person as a Program Administrator.

Section 5.3 The Company must notify the Bank of any change in any Program Administrator by submitting a new Program Administrator Designation Form setting forth the changes to be made (including the name of any new Program Administrator). Each Program Administrator Designation Form shall be effective upon receipt of such form by the Bank.

Section 5.4 The Bank may, in its sole discretion, request separate documents, certificates, and resolutions from the Company to establish the authority of a Program Administrator, Employee or Cardholder in connection with the Program and this Agreement. The submission by the Company of a Program Administrator Designation Form shall constitute a Company's representation that the individuals named on the form have been granted general

authority from the Company's Board of Directors or other governing body (or have been designated by an officer who has been duly authorized by the Company's Board of Directors or other governing body) over the transaction of the Company's Program-related business with the Bank.

## **ARTICLE 6 ISSUANCE OF CARDS; IDENTIFICATION OF CARDHOLDERS**

Section 6.1 Promptly after execution and the Effective Date of this Agreement:

- (a) The Bank and the Company shall agree on the date when the Bank shall begin issuance of Cards;
- (b) The Company shall advise the Bank where and to whom it should send the Cards and Consolidated Billing Statements, Card Account Statements, invoices and reports with respect to the Program, Account, Card Accounts and Cards; and
- (c) The Company shall provide the Bank with written notice of any Transaction Limits and Merchant Category Codes it should use to prevent particular Transactions pursuant to the provisions of Article 6 and such other information as the Bank may reasonably request.

Section 6.2 A Program Administrator or the Company shall provide the Bank with a completed Application or consent for each Employee who shall be issued a Card for use under this Agreement. In all circumstances where an Employee or Cardholder will be jointly and severally liable with the Company for use of a Card or Card Account, the Program Administrator or the Company must provide the Bank with an Application for that Card or Card Account. An Application or authorization requesting issuance of a Card must be signed by a Program Administrator and, if requested by the Bank, also signed by the Employee and prospective Cardholder. The Program Administrator must keep copies of such Applications in a secure area under the Company's control. The Company must provide the Bank with any identification information it might request for each Cardholder in an Application, including his or her address (business and home), telephone numbers (business and home), social security number, and date of birth, and update such information as requested by the Bank from time to time during the term of this Agreement.

Section 6.3 The Bank will issue a Card to each Employee identified in an Application that has been completed and signed by a Program Administrator. Where emergency issuance is reasonably requested by the Company, the Bank will use commercially reasonable efforts to issue Cards within seventy-two (72) hours. The Bank shall issue a new Card to replace each outstanding Card before its scheduled expiration date, unless the Bank receives written notice from the Company not to issue a renewal Card at least thirty (30) calendar days before its scheduled expiration date.

Section 6.4 The Bank shall send the Cards to Employees by first class mail to the address designated on an Application or, at the election of the Program Administrator, to the Program Administrator. Each Card shall be accompanied by any disclosures or other materials

the Bank deems necessary or appropriate. The Bank may also institute any security procedures regarding the issuance and activation of Cards that the Bank may deem necessary or desirable.

Section 6.5 Upon the Company's request, the Bank may, in its sole discretion, agree to issue one or more Unassigned Cards. The Bank will not issue a personal identification number in connection with Unassigned Cards and the Company understands that Cardholders may be unable to obtain Cash Advances using an Unassigned Card. Section 9.2 describes where and how the Bank will provide the Company with Card Account Statements for an Unassigned Card, and Section 11.3 describes the increased liability and indemnity obligations the Company will incur in connection with any such Unassigned Cards.

#### **ARTICLE 7 TRANSACTION LIMITS AND CHARGE LIMITS; COMPANY LIABILITY FOR TRANSACTIONS ABOVE ESTABLISHED LIMITS**

Section 7.1 The Bank will establish and advise the Company of its Charge Limit for the Account. The Bank will assign Transaction Limits and Charge Limits designated by a Program Administrator to each Card and Card Account. Promptly upon the request of a Program Administrator, but no later than five (5) business days following receipt of written notice from the Program Administrator, the Bank shall increase or decrease the Transaction Limits or Charge Limits of a Card and Card Account in accordance with such request. The Bank reserves the right, in its sole discretion, to modify the Charge Limit of the Account or any individual Card Account at any time.

Section 7.2 The Company acknowledges that the Account and Card Accounts may exceed Transaction Limits and Charge Limits established under the Agreement and agrees that the Bank may, in its sole discretion, allow or reject Transactions that would cause the Account or a Card Account to exceed a Charge Limit or a Transaction Limit. The Company and its Cardholders shall remain liable and must promptly remit payment to the Bank for any and all Transactions that would cause the Account or a Card Account to exceed a Charge Limit or Transaction Limit, as well as any related Program Fees and Charges, as provided by this Agreement and any related Cardholder Agreement.

Section 7.3 The Bank or any person, entity or financial institution presented with a Card may refuse to authorize any Transaction referred to it if:

- (a) The Transaction is not permitted under the Transaction Limits established for Card Accounts by this Agreement;
- (b) Permitting the Transaction would cause the Charge Limit for the Account to be exceeded, when the Transaction is included with other Transactions authorized for the Account (including those Transactions that are authorized but not yet posted);
- (c) Permitting the Transaction would cause the Transaction Limits or Charge Limit for a Card Account to be exceeded, when the Transaction is included with other Transactions authorized for that Card Account (including those Transactions that are authorized but not yet posted);

- (d) The Bank believes that it is an Unauthorized Transaction; or
- (e) The Bank has not received any payment required by this Agreement or a Cardholder Agreement by its Payment Due Date.

**ARTICLE 8  
CARD REQUIREMENTS AND MARK USE**

Section 8.1 Each Card the Bank issues under the Program shall be branded as a Card Association card, in compliance with the applicable requirements and specifications for such commercial cards established in the Operating Rules. Each Card may bear other language and symbols the Bank deems necessary or appropriate, subject to the applicable requirements and specifications of the Operating Rules.

Section 8.2 The Company, upon the Bank's request, must provide the Bank with copies of any materials accompanying or relating to the use of the Card and Card Accounts that the Company may provide its Employees from time to time. All such materials shall identify the Bank as the Card issuer and prominently indicate that the Card is a Card Association card. The Company acknowledges that the Card Association mark(s) are owned by the Card Association and the Company agrees not to do anything inconsistent with such ownership. The Company shall not provide materials to its Employees or Cardholders that contradict or are inconsistent in any way with this Agreement or the Cardholder Agreement. This Agreement and the Cardholder Agreement shall prevail over any inconsistent or contradictory statements made by the Company to its Employees or Cardholders about the Program.

Section 8.3 The Company shall not use any trademark, service mark, logo, or other intellectual property right of the Bank or a Bank Affiliate without the express prior written consent of the Bank.

Section 8.4 If the Parties have agreed to use certain trademarks, service marks and logos of the Company or a Company Affiliate ("Company Marks") in connection with the Program, those Company Marks are set forth in Exhibit 2 to this Agreement. The Company grants the Bank a non-exclusive, non-transferable, non-sublicenseable, royalty-free, paid-up limited license to use those Company Marks set forth in Exhibit 2, as they now exist and as they may be modified during the Term, solely in connection with the Program (including, without limitation, use of any such Company Marks on Cards, periodic statements, Applications, and marketing materials intended for distribution to Employees and Cardholders). Notwithstanding the preceding sentence, the Bank shall not be required, in connection with the Program, to use the Company Marks on marketing materials generally used across the Bank's portfolio of cards for account activation and retention activities, Cardholder agreement, and related disclosures.

Section 8.5 Exhibit 2 may be amended from time-to-time by the Company providing the Bank with reasonable notice thereof. If the Company wishes to change any of the Company Marks then in use by the Bank, the Company shall promptly reimburse the Bank for any reasonable incremental expenses incurred because the Cards or Program materials used to maintain the Accounts can no longer be used as a result of any such change.

Section 8.6 The Bank acknowledges that the Company is the sole and exclusive owner of the Company Marks and all rights, title and interest therein and any copyright relating thereto. The Bank acknowledges that the value of the goodwill associated with the Company Marks, and all rights therein and pertaining thereto, belong exclusively to the Company. The Bank shall not authorize any third party to use the Company Marks, except for subcontractors and affiliates of the Bank, engaged by the Bank solely in connection with the Program.

Section 8.7 The Bank shall comply with the standards reasonably established by the Company with respect to the form of the Company Marks, and the Bank shall submit to the Company sample materials evidencing the proposed use of the form of Company Marks. Within five (5) business days after receiving any such materials by the Company, the Company must provide its written approval of or reasonable objections to such materials. If the Company does not respond within that five (5) business day period, the Company shall be deemed to have approved use of those materials by the Bank. The Company agrees that once the Bank has obtained approval for a given use of the Company Marks, the Bank is not obligated to obtain approval from the Company again for the same general use.

Section 8.8 On termination of this Agreement for any reason whatsoever, all Cards in the possession of Cardholders that have not expired may continue to bear the Company Marks until the expiration of such Cards. The Bank, however, shall have no further right to market the Program or any products or services using the Company Marks or further use or distribute promotional materials containing the Company Marks.

## **ARTICLE 9 PROGRAM STATEMENTS AND REPORTS**

Section 9.1 The Bank shall send or make available to a Program Administrator, or any Company representative designated by a Program Administrator, a Consolidated Billing Statement for each billing cycle. Each such Consolidated Billing Statement will disclose the applicable balances, Transaction activity, Program Fees and Charges, and other disclosures and information the Bank considers necessary or appropriate for the Account and all related Card Accounts during the billing cycle. The Bank may send or make available any such Consolidated Billing Statement using the physical address, electronic mail address, and/or website designated for this purpose in Schedule B to this Agreement.

Section 9.2 Unless the Company requests and the Bank otherwise agrees, the Bank shall also send or make available an individual Card Account Statement for each Card Account at the end of each billing cycle, in an electronic or paper form acceptable to both Parties. Any such Card Account Statement will disclose the applicable balances, Transaction activity, Program Fees and Charges, and other disclosures and information the Bank considers necessary or appropriate for that Card Account. For Unassigned Cards, the Bank will send or make available a Card Account Statement to a Program Administrator, using the physical address, electronic mail address and/or website the Parties have established for this purpose in Schedule B to this Agreement. For all other Cards, the Bank will send or make available a Card Account Statement to a Program Administrator, a Company representative designated by a Program Administrator, or the Cardholder, using the physical address, electronic mail address

and/or website the Parties have established for this purpose in Schedule B to this Agreement or as designated on the Application for the Cardholder holding any such Card Account. If the Cardholder is not responsible for payment of his or her own Transactions and Program Fees and Charges, the Bank will only provide a Card Account Statement for purposes of informing the Cardholder about his or her use of the Card and Card Account.

Section 9.3 Each Program Administrator, designated Company representative, and/or Cardholder must promptly examine each Consolidated Billing Statement or Card Account Statement as soon as it is received from or made available by the Bank. The provisions of Articles 11 and 12 describe the time and manner in which the Company must provide notice to the Bank of any suspected errors or Unauthorized Transactions shown on a Consolidated Billing Statement and Card Account Statement, and the liability of the Company, Employees and Cardholders for any such suspected errors or Unauthorized Transactions.

Section 9.4 At the Company's request, the Bank may compile certain information provided by the sellers of goods and services that accept the Cards (such as Merchant Category Codes and information identifying such sellers as unincorporated business enterprises or business enterprises owned by certain minorities or women). The Bank cannot guaranty the accuracy of any such information and, by conveying such information to the Company, the Bank does not agree to perform or satisfy any reporting or compliance obligations required of the Company by any applicable law or contract.

#### ARTICLE 10

##### MERCHANT DISPUTES; TRANSACTIONS MADE IN FOREIGN CURRENCIES

Section 10.1 If the Company has any questions, problems or disputes concerning the quality of goods or services purchased from any seller by means of any Card, Card Account or an Account, the Company agrees to pay the Bank the amount of the related Purchase and contact the seller directly to resolve such question, problem or dispute. If the Company cannot directly settle its dispute with a seller, then the Company can request the Bank to process a chargeback subject to the limits of the Operating Rules. The Bank agrees that it will use commercially reasonable efforts to notify the Company about particular chargeback procedures and requirements of the Operating Rules that may impact or affect the Account, the Cards, and the Card Accounts. The Company acknowledges that the Bank is not liable for the quality of any such goods or services and that any dispute between the Company and any seller shall not affect the Company's obligation to pay the Bank in full for all Transactions and related Program Fees and Charges in accordance with the terms of this Agreement.

Section 10.2 In the event that any Transaction is made in a currency other than U.S. dollars outside of the United States, the charges incurred in a foreign currency will be converted by the Card Association into a U.S. dollar amount in accordance with the procedures set forth in its Operating Rules. The Bank agrees that it will use commercially reasonable efforts to notify the Company about particular currency conversion procedures established by the Operating Rules that may impact or affect the Account, the Cards, and the Card Accounts. The currency conversion rate in effect on the transaction processing date may differ from the rate in effect on the transaction date or statement posting date. The Company and Cardholders shall remain liable to the Bank as provided in this Agreement and any related Cardholder Agreement

for all transaction and conversion fees and charges associated with any such Transactions, as detailed in Schedule A.

**ARTICLE 11**  
**LIABILITY FOR TRANSACTIONS, FEES AND OTHER CHARGES; BANK**  
**LIABILITY FOR INCENTIVES PAYMENTS**

Section 11.1 The Company authorizes and directs the Bank to extend credit to the Company or for its Account from time to time by paying the amount of Transactions arising from use of each Card and Card Account.

Section 11.2 The Company shall be liable and pay the Bank for all Transactions and all applicable Program Fees and Charges as established by the Agreement and its attached Pricing Schedule in Schedule A, even those that might exceed a Charge Limit or Transaction Limit established for the Account or a Card Account. Each Cardholder may also be jointly and severally liable with the Company for the Cardholder's Transactions and for his or her Program Fees and Charges under the Program and any applicable Cardholder Agreement, if such Cardholder liability has been established through an Application, Cardholder Agreement, Schedule B, and/or other schedules and addendums to this Agreement. The Company shall immediately pay the Bank for any Transactions and Program Fees and Charges incurred by a Cardholder, even one jointly and severally liable with the Company, after the Bank notifies the Company about any Cardholder's failure to pay all amounts due and owing under a Cardholder Agreement. The Company's payment and other obligations to the Bank shall be enforceable against the Company in accordance with the terms of this Agreement, regardless of the validity and enforceability of the Cardholder's obligations to the Bank under any Cardholder Agreement.

Section 11.3 The Company understands the increased risks associated with issuance and use of Unassigned Cards. Despite anything stated to the contrary in the Agreement, the Company agrees that it is fully liable to the Bank for any and all Program Fees and Charges and all Transactions resulting from use of any Unassigned Card and its related Card Account, regardless of whether any such Transactions were Unauthorized Transactions. In addition to its other indemnification obligations under the Agreement, the Company agrees to indemnify the Bank from and against any and all liability, judgments, claims, demands, judgments, or other disputes, regardless of merit, together with all costs, charges and expenses imposed in any manner upon or accruing against the Bank, arising out of or associated in any way with the issuance of Unassigned Cards by the Bank and the use of those Unassigned Cards by any individual.

Section 11.4 The Bank will establish a monthly periodic billing cycle for the Account and each Card Account. The exact number of days within each periodic billing cycle may vary slightly from month to month and the first billing cycle may be more or less than one month. The Bank shall, in its sole discretion, assign the Statement Date disclosed on Consolidated Billing Statements and Card Account Statements. Where the Company and its Cardholders have joint and several liability for Card Accounts, the Bank may assign different dates as the Statement Dates for each Card Account and the Account. As established by Schedule B to this Agreement or other schedules and addendums to this Agreement, the Bank and the Company shall mutually agree upon: (i) the number of days used to determine the Payment Due

Date that will follow each Statement Date; and (ii) the method of payment, which may be by check or pre-authorized debit to a deposit account the Company maintains at the Bank, any Bank Affiliate, or any other depository institution used by the Company and acceptable to the Bank. Any and all amounts (including the amount of all Transactions) shall be due to the Bank and payable in full on or before the applicable Payment Due Date that follows each Statement Date for the Account or Card Account. All payments by the Company must be remitted to the Bank in U.S. dollars. The Company agrees that payments on the Account and Card Accounts may be applied in the order the Bank selects from time to time. The Bank may apply payments first to any Program Fees and Charges, then finally to principal balances. Payments to principal balances may be applied starting with the lowest interest rate, before principal balances with higher interest rates. Until the Bank determines a payment is unlikely to be returned for insufficient funds or some other reason, the credit available in the Account and Card Accounts may not reflect a payment.

Section 11.5 The Company may not deduct or withhold, without the prior written approval of the Bank, any credit, chargeback, disputed or questioned amount from the aggregate amount due when making payment. If the Company reasonably believes any Transaction shown on a Consolidated Billing Statement is in error, the Company must notify the Bank and the Bank will make any appropriate adjustment on the Company's next Consolidated Billing Statement.

Section 11.6 The Bank shall charge interest on Transactions at the rates and in the time and manner shown on the Pricing Schedule attached as Schedule A to this Agreement. Cash Advances and their related Transaction fees shall be charged interest beginning with the date of each such Cash Advance until paid in full. Interest will not be charged on Purchases and other Program Fees and Charges that are paid in full on or before their applicable Payment Due Date, as shown by Consolidated Billing Statements and/or Card Account Statements. Interest will accrue on Purchases, and Program Fees and Charges added to a Card Account as Purchases, beginning with the first day that follows the applicable Payment Due Date. If the Company fails to pay to the Bank any amount due under this Agreement, then the Bank is authorized to, without prior notice to the Company, apply any account balances of the Company held by the Bank or any Bank Affiliate toward any balance owed under this Agreement. Payments received at the Bank's designated payment processing center after 5:00 p.m. Central Time on a Bank business day (or on any day that is not a Bank business day) will be credited to the Company's Account (and the underlying Card Accounts) on the next Bank business day. **The Bank is permitted to accept late payments, partial payments or payments marked with restrictive endorsements without losing any of its rights under this Agreement. The Company shall not send any payment marked "paid in full," "without recourse," or other similar language unless those payments are marked for special handling and sent to the Bank at First National Bank of Omaha, Attn: Commercial Card Department, 1620 Dodge Street, Mailstop: 3188, Omaha, NE 68197, or such other address as the Bank may give in the future.**

Section 11.7 The Company shall be liable to the Bank for all uses of, and Transactions made using, the Account, Cards and Card Accounts, including, without limitation, any Unauthorized Transactions (including any Transactions made using lost or stolen Cards), that occur before the Company notifies the Bank in accordance with Section 4.1 or Section 12.1 that the Card or Card Account should be cancelled. Any Card that an individual receives from

the Company, or whose use is authorized by the Company, shall not be considered lost or stolen or in the hands of an unauthorized person, and the Company shall be liable to the Bank for the use of any such Card until it is returned to the Bank or the Company has provided the Bank with notice under Section 4.1 or Section 12.1 that such person is no longer authorized by the Company to use any such Card. The Company will make reasonable efforts to recover any Card from any person no longer employed or designated by the Company to use the Card, and prevent its use and cooperate in any proceedings or legal actions against such person.

Section 11.8 Notwithstanding the provisions of Section 11.4, if requested by the Bank, the Company agrees to maintain a deposit account at the Bank or a Bank Affiliate with a balance of available funds sufficient to accommodate the Company's obligations under this Agreement. The Company authorizes the Bank, without prior notice, to debit any such account electronically on the Payment Due Date for amounts due under this Agreement. If there are not sufficient funds in such account, then the Company agrees to pay promptly any amounts due to the Bank. The Company agrees that the Bank (and any Bank Affiliate, if applicable) will not be responsible for any dishonor of any check or other item as a result of these actions.

Section 11.9 The Bank agrees to pay to the Company certain incentive payments based upon the net amount of aggregate Purchases made during a defined time period, subject to the terms, conditions and limitations as provided in the Pricing Schedule attached as Schedule A to this Agreement. The Company acknowledges and agrees that under certain circumstances as provided in the Pricing Schedule attached as Schedule A to this Agreement, the Company will be obligated to repay incentives payments previously received from the Bank, and to forfeit accrued but unpaid incentives.

## ARTICLE 12

### REPORTING UNAUTHORIZED USE; CARD ASSOCIATION LIABILITY PROGRAM

Section 12.1 If the Company or an Employee knows of or suspects the loss, theft or possible unauthorized use of the Account or a Card and Card Account, the Company or Employee must promptly notify the Bank by calling the toll-free telephone number appearing on Card Account Statements and the reverse side of the Cards, or such other telephone number as the Bank may otherwise designate for use by the Company. The caller must report the respective Employee's name, Card Account number and the last-known address of such Employee or, if applicable, the Card Account number, and must request that such Card and Card Account be canceled. The Bank will then place a hold to cancel and prevent further use of the Card and Card Account, and the Company shall not be liable for further use of such Card or Card Account after the Bank has received any such telephone call. The Program Administrator must promptly send the Bank written confirmation of any such notice.

Section 12.2 The Company, Employees and Cardholders must promptly examine all Consolidated Billing Statements and Card Account Statements as soon as they are received or made available by the Bank. The Company or an Employee must provide written notice to the Bank related to any suspected errors in one or more Transactions, the Account and any Card Account, within sixty (60) calendar days after the date of the Consolidated Billing Statement or Card Account Statement on which any such error first appeared. Each such notice must disclose the dollar amount of the suspected error, a Transaction reference number, and a

description of the suspected error. Suspected errors include any failure to receive goods or services arising from a Transaction, unauthorized use of the Account, a Card or a Card Account by a person other than the Cardholder or authorized Employee, altered charges, incorrect amounts and charges incurred by telephone order where the authenticity of the charge is in question. The Bank will investigate any such report of a suspected error and make a determination. All Consolidated Billing Statements and Card Account Statements will conclusively be deemed correct, unless the Company or an Employee has provided the Bank with written notice of a suspected error as required by this Agreement and any applicable Cardholder Agreement.

Section 12.3 In cases of unauthorized use of a Card or a Card Account, the Company shall, contemporaneously with the Company's issuance of the notice of cancellation described in Section 12.1, use its best efforts to: (i) hand deliver or send to the respective Employee by certified mail, return receipt requested, to the Employee's current address, a copy of such written notice of cancellation; and (ii) retrieve and destroy such Card. The Company shall also cooperate with the Bank in its efforts to resolve any fraudulent transactions made by means of a Card, Card Account or the Account.

Section 12.4 The Company's liability for Unauthorized Transactions by Employees may be reduced to the extent of liability protection insurance coverage separately provided by a Card Association under its Liability Program. The Company's coverage shall be subject to the terms, exclusions, and conditions of the Liability Program as established from time to time by the Liability Program's underwriters, including but not limited to the condition that the Company meet all of its then-current obligations under the Liability Program and as set forth by the Card Association and its underwriters. The current provisions of any such Liability Program are described in a brochure published by the Card Association, which the Bank has furnished or will furnish to the Company. If the Card Association modifies or suspends its Liability Program, the Bank may modify or terminate this subsection at any time upon notice to the Company. The Bank shall not have any liability to the Company under any circumstances arising from or associated with any such Liability Program.

### **ARTICLE 13 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Section 13.1 The Company represents, warrants and covenants that:

- (a) The Company will cause the Bank to issue and maintain ten (10) or more Cards at all times under this Agreement;
- (b) The Company is duly organized, existing and in good standing under the laws of the state of its incorporation or formation;
- (c) The Company has full right, power and authority to make and perform this Agreement and to observe all of the provisions hereof;
- (d) The making and the performance by the Company of this Agreement and securing extensions of credit from time to time through the issuance or establishment of the Company's Account, Cards, and Card Accounts has been validly authorized by all

necessary action of the Company and does not violate the Company's articles of incorporation, charter, partnership agreement, by-laws or any other document or agreement pursuant to which the Company is organized, or any provision of applicable law, regulation, order or rule of any governmental agency, or court decision;

(e) All information (including without limitation business and financial data) now or hereafter furnished to the Bank and the information contained in each Application, notice of cancellation or other documentation submitted by a Program Administrator to the Bank hereunder shall be true, complete and accurate as of the date thereof and may be relied upon by the Bank as being authorized by the Company;

(f) The Account and all Cards and Card Accounts established or issued under or pursuant to the Agreement shall be used only for business or commercial purposes; and

(g) The Company has and shall maintain the full right, power and authority to grant the license of Company Marks in Section 8.4 and doing so does not infringe upon or violate any rights or interest held in those marks by any third party or Company Affiliate.

Section 13.2 Nothing herein contained shall impair the obligation of the Company, which shall be unconditional and absolute, to repay all extensions of credit arising out of the use of the Account, Cards, or Cards Accounts for any purpose and to pay all of its other obligations and liabilities as provided in this Agreement. The representations and warranties in this Article 13 are made to induce the Bank to issue Cards for the Company's Account and to extend credit to it and the Employees and Cardholders from time to time. The representations and warranties made by the Company in this Article 13 shall constitute continuing representations and warranties, until such time as this Agreement is terminated as herein provided, all Cards have been returned to the Bank or canceled, all Card Accounts and Accounts have been cancelled and all amounts owing the Bank under this Agreement have been paid in full.

Section 13.3 The Bank represents, warrants and covenants that this Agreement has been authorized by all necessary action, does not violate the Bank's charter or by-laws or any other agreement binding upon the Bank of any provision of law. **THE BANK MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROGRAM OR THE BANK'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **ARTICLE 14 INDEMNIFICATION**

Section 14.1 The Company will indemnify and hold harmless the Bank and its Bank Affiliates, and their respective officers, directors, agents, subcontractors and employees, and the Card Association and its members, from and against any and all claims, demands,

actions, proceedings, liabilities, losses, actual damages and expenses, including actual and reasonable counsel fees, arising directly or indirectly from:

(a) The Company's breach of any of its representations, warranties, or covenants under this Agreement, or the Bank's enforcement of any of its rights or remedies under or pursuant to this Agreement;

(b) The Bank's compliance with or carrying out any instruction or request which identifies the Company as sender, if such instruction or request is accepted by the Bank in good faith;

(c) The Bank's actions or omissions in performing services in connection with the Program, unless such actions or omissions are determined to result from the Bank's gross negligence or willful misconduct;

(d) Any incorrect classification of a merchant under the Card Association's Merchant Category Codes that has the effect of allowing Transactions that the Company and the Bank intended to preclude under certain Transaction Limits; or

(e) The Bank's good faith refusal to approve any Transactions.

Section 14.2 The provisions of Article 14 shall survive the termination of this Agreement.

#### **ARTICLE 15 IMPOSSIBILITY OF PERFORMANCE; LIMITATION OF LIABILITY**

Section 15.1 The Bank shall not incur any liability for any failure or delay in carrying out any of its obligations under this Agreement if such failure or delay results from the Bank acting in accordance with applicable laws or applicable Operating Rules, or from acts of God, strike or stoppage of labor, power failure, system, network, or equipment failure, adverse weather conditions or any other cause beyond the Bank's control. The Bank agrees that it will use commercially reasonable efforts to notify the Company about particular requirements of the Operating Rules that may impact or affect the Account, the Cards, and the Card Accounts.

Section 15.2 The Bank shall have no responsibility and shall incur no liability for any act or failure to act by any other financial institution, Card Association, or any other third party, including, without limitation, the refusal of any vendor or merchant to honor any Card or Card Account. The Company acknowledges and agrees that the functioning of some Program services depends on equipment, software, communication lines and Program services provided by the Company or parties other than the Bank. The Bank shall not be responsible or liable in any way for the performance of equipment, software, communication lines and Program services provided by the Company or any party other than the Bank.

Section 15.3 The liability of the Bank to the Company for any loss or damage arising from or relating to this Agreement or any of the Bank's services in connection with the Program, regardless of the form of action, shall be limited to direct damages attributable to the gross negligence or willful misconduct by the Bank, and in no event shall the Bank be liable for

any other damages, including, without limitation, indirect, exemplary, consequential, punitive or special damages. The Bank's liability to the Company for damages under this Agreement will in no event exceed the Program Fees and Charges the Company paid the Bank during the six (6) months preceding the date on which the Company's claim accrued against the Bank. In no event will the Bank be liable for any claim asserted against the Company by any third party, except as set forth in this Agreement.

Section 15.4 The provisions of this Article 15 shall survive termination of this Agreement.

## **ARTICLE 16 CONFIDENTIALITY**

Section 16.1 The Company agrees that it and each Employee and Cardholder shall safeguard and not disclose to any third party the: (i) terms and conditions of the Agreement; (ii) any payment and pricing terms or fees for the Program, the Account, and Cards; (iii) the Program user guide(s); (iv) security procedures for the Program, the Account, and Cards; or (v) any other documentation with respect to the Agreement or the Program that the Bank has designated as confidential or proprietary (collectively, "Confidential Information"), whether or not the Agreement is then in effect.

Section 16.2 The Company agrees to limit the internal access, disclosure and distribution of any and all Confidential Information to those Employees, Cardholders, agents or representatives who have a need to know such information. The Company shall, at all times, have appropriate written policies and procedures in effect to ensure the confidential status of such Confidential Information. The Company will be responsible for the acts and omissions of its Employees, Cardholders, agents or representatives with respect to any and all Confidential Information.

Section 16.3 The provisions of this Article 16 shall survive the termination of this Agreement.

## **ARTICLE 17 ASSIGNMENT AND SUBCONTRACTS; AMENDMENTS**

Section 17.1 A Party may not assign this Agreement, transfer any right or delegate any duty or performance under the Agreement without the other Party's prior written consent, except as expressly provided in the Agreement. The Bank may, without the Company's prior written consent, assign this Agreement or delegate its rights and obligations under the Agreement to a Bank Affiliate. In addition, the Bank may, without the Company's prior written consent, subcontract with other entities for the provisions of services under the Agreement. Any such subcontracts shall not relieve the Bank of its obligations under this Agreement or alter the Company's rights against the Bank under this Agreement, although all entities entering into a subcontract with the Bank shall be entitled to rely on and benefit from the provisions of this Agreement as if they were the Bank (including, without limitation, the limitations on liability and indemnities in the Agreement). This Agreement shall be binding upon and inure to the benefit of both Parties and, unless otherwise contemplated in this Agreement, their representatives and their

respective successors and assigns. Any attempted assignment of rights or delegation of obligations contrary to the provisions of this Agreement shall be void.

Section 17.2 This Agreement, including its applicable Schedules, Exhibits and Addenda, constitutes the entire understanding between the Parties and it supersedes all prior agreements and negotiations.

(a) The Parties may agree to amend the Agreement through a written instrument referencing this Agreement that has been signed by both Parties.

(b) The Bank may, at any time, in its sole discretion, and without advance notice or consent of the Company, modify the Charge Limit of the Account or any Card Account as provided in Section 3.1 of the Agreement.

(c) The Bank will notify the Company as provided in Schedule A of any decrease in Program compensation that might be received and paid by the Bank. The Company's consent for any such decrease shall not be required when it results from a change made or required by a Card Association.

(d) The Bank will notify the Company of any other amendments to the Agreement that the Bank might require, including those related to: (i) any law or regulatory requirement that applies to the Bank; (ii) any change to the material features of the services or products offered under the Program; or (iii) any change in the Program Fees and Charges received or imposed by the Bank in connection with the Program. The Bank may amend this Agreement by sending a written notice to the Company at least thirty (30) calendar days before the effective date of an amendment. If the Company does not wish to accept any such amendment, the Bank must receive a written letter of rejection from the Company no later than the effective date for the amendment specified in the Bank's notice. The Company must send any such rejection letter to the Bank using the address specified in its written notice to the Company or, if no address is specified for this purpose in the Bank's written notice, using the address specified by this Agreement for Bank notices. The Company's timely rejection of an amendment described in a written notice from the Bank shall not terminate the Agreement or either Party's rights and obligations under the Agreement, except as otherwise provided by this Agreement.

## ARTICLE 18 NOTICES

Section 18.1 Except as otherwise provided herein, any notice or other communication to be given under this Agreement shall be in writing, delivered by hand, overnight courier service, facsimile transmission (with telephone confirmation by the sender of receipt by the recipient) or mailed postage prepaid, addressed, as shown below the signatures of the Parties, or at such other address as either Party may subsequently designate in writing to the other Party. All notices and other communications delivered by facsimile transmission must also be delivered by hand, overnight courier service or U.S. mail. Notwithstanding the foregoing, the Bank may rely on facsimile transmissions as though they are originals, and regardless of whether it has received telephone confirmation from the sender.

Section 18.2 Electronic transmissions from the Company to an electronic mail address designated by the Bank shall constitute written notices under this Agreement, shall be binding on the Company and may be relied upon by the Bank if accepted in good faith. The Company understands that unencrypted electronic mail messages are inherently insecure and that all such data communications and transfers can be monitored, intercepted, rerouted, copied and read by others. The Company assumes all risk for any unencrypted electronic communications the Company chooses to send the Bank.

Section 18.3 Any notice or communication will be effective against the Company when it has actually received and has had a reasonable time to act on such notice, but in no event later than the close of business on the second business day following receipt. Any notice or communication will be effective against the Bank when it is actually received and the Bank has had a reasonable time to act on such notice.

## **ARTICLE 19 EFFECTIVE DATE AND TERMINATION**

Section 19.1 This Agreement shall be effective as of the Effective Date first above written and shall remain in full force and effect for an initial term of one (1) year from the Effective Date (the "Initial Term"). This Agreement shall be renewed automatically for successive renewal terms of one (1) year each (each, a "Renewal Term"). Either Party may terminate the Agreement by providing written notice of non-renewal to the other Party at least one hundred twenty (120) calendar days prior to the end of the Initial Term or any Renewal Term. The Initial Term and all Renewal Terms are collectively referred to as the "Term."

Section 19.2 Upon any cancellation or termination of this Agreement, the Account and all Cards and Card Accounts will be canceled by the Bank, the Bank's obligation to pay the Company any incentive payments under the Pricing Schedule shall terminate, and the Company shall use reasonable efforts to collect and destroy each Card. Upon any cancellation or termination of this Agreement, any computer software licenses or other licenses the Bank has granted to the Company for use in connection with the Program shall automatically terminate and the Company shall immediately return to the Bank the original and all copies of such licensed materials and all other confidential Program materials or documentation the Bank provided to the Company.

Section 19.3 Either Party may terminate this Agreement following a breach by the other Party that remains uncured thirty (30) calendar days after the non-defaulting Party sends the other Party written notice in the manner described in this Agreement. Notwithstanding the foregoing, the Bank may require immediate payment of the entire balance owed on the Company's Account and all other amounts owing under this Agreement, immediately terminate this Agreement or any Account or Card Account, refuse to permit further access to any Account or Card Account, or without prior notice to the Company, apply any deposit account balances of the Company held by the Bank or any Bank Affiliate toward any balance owed on the Company's Account or any other amount owing hereunder, if:

(a) The Company fails to make payments as required by the Agreement or the Company breaches any of its representations, warranties, covenants, or terms or conditions contained in this Agreement;

(b) The Company has made any statement to the Bank or provided the Bank with any credit information that is false in any respect;

(c) The Company (or any guarantor of the Company's obligations under this Agreement) is in default of any other obligation it may owe to the Bank or any Bank Affiliate; or

(d) The Company becomes insolvent, subject to a receivership, or subject to a voluntary or involuntary bankruptcy or similar proceeding, or the Bank, in good faith, determines that the financial condition of the Company has become impaired.

Section 19.4 The Company agrees to advise the Bank promptly of any consolidation, merger, sale or conveyance of the Company or any principal part of its assets, or the sale or conveyance of any controlling interest in the Company, and upon any such happening the Bank shall have the right to terminate this Agreement upon written notice to the Company.

Section 19.5 The expiration or termination of this Agreement shall not terminate, affect or impair any rights or obligations of either Party with respect to any Transactions or event related to this Agreement occurring prior to such expiration or termination, including, without limitation, obligations pursuant to Articles 14, 15, 16, 17, 18, 20, 21, and 22 and obligations pursuant to the following Sections: 2.2; 2.3; 8.3; 8.8; 10.1; 11.2; 11.3; 11.5; 11.6; 11.7; 11.8; 11.9; 12.1; 12.2; 12.4; 13.2; 19.2; and 19.5. Upon expiration or termination of this Agreement, the Bank shall have the right to demand immediate payment of the entire balance owed by the Company and any Cardholder and any default by a Cardholder shall be a default by the Company. The Bank shall have the right to setoff any accounts the Company maintains with the Bank or its Bank Affiliates to recover payment of sums due under this Agreement, and the Company waives any demands and notices that might otherwise be required to the extent permitted by law.

## **ARTICLE 20 LIMITATION OF CLAIMS**

Section 20.1 When the term "Company" is used in Article 20 and Article 21 on "Claims" or in the provisions on "Limitations on Claims" or "Arbitration", that term means the Company and any of the following who will be considered "Company Related Parties": any Cardholder, Company Affiliate, Employee, or guarantor or authorized user of the Account, any Card, or any Card Account, and the heirs, successors, permitted assigns and trustee in bankruptcy of the Company and any Company Related Parties. References to "Bank Related Parties" in Article 20 and Article 21 includes Bank Affiliates and the officers, directors, agents, employees, representatives, successors and assigns of the Bank and Bank Affiliates. "Bank Related Parties" also include unaffiliated third parties that provide products, services or benefits to the Company or to the Bank in connection with the Account, any Card Account and any Card or that have

otherwise participated in the marketing or servicing of the Account, any Card Account and any Card.

Section 20.2 Before the Bank brings a Claim against the Company, Bank must notify the Company in writing of the Bank's Claim, including the amount of the Claim. Before the Company brings a Claim against the Bank, the Company must notify the Bank in writing of the Company's Claim, including the amount of the Claim. If the Bank has a Claim based on a payment obligation that the Company may have to the Bank: (1) the Bank's notification requirement will be considered satisfied by sending the Company a billing statement within the time required by applicable law and regulation; and (2) the Company will be afforded the period of time allowed by this Agreement and applicable law to make the payment before Bank commences court proceedings or arbitration. If the Company has a Claim based on something the Bank or Bank Related Parties may have done or failed to do: (1) the Company agrees to provide the Company's notification to the Bank within 90 days after the time the Company could have first learned what the Bank or Bank Related Parties did or failed to do; and (2) the Bank will be afforded a reasonable period of time to take corrective action before Company commences court proceedings or arbitration.

Section 20.3 The Company and the Bank both agree, to the fullest extent allowed by law, that: (i) Claims will not under any circumstances be pursued in Class Proceedings; (ii) the Bank waives the right to bring or to participate in Class Proceedings against the Company; and (iii) the Company waives the right to bring or to participate in Class Proceedings against the Bank. If some other person initiates a Class Proceeding against the Company, the Bank may not join that proceeding or participate as a member of that class. If some other person initiates a Class Proceeding against the Bank, the Company may not join that proceeding or participate as a member of that class. This paragraph is referred to below as the "Class Action Waiver."

Section 20.4 The sections of this Article 20 shall survive the termination of this Agreement.

## ARTICLE 21 ARBITRATION

**THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY:**

**WITH LIMITED EXCEPTIONS, THIS ARBITRATION PROVISION ALLOWS EITHER PARTY TO REQUIRE THAT ANY "CLAIM" (AS DEFINED ABOVE) BE RESOLVED BY BINDING ARBITRATION.**

**ARBITRATION REPLACES THE RIGHT TO GO TO COURT AND TO HAVE A CLAIM DETERMINED BY A JURY. OTHER RIGHTS YOU MAY HAVE IN COURT, SUCH AS DISCOVERY OR APPEAL RIGHTS, MAY NOT BE AVAILABLE OR MAY BE MORE LIMITED IN ARBITRATION. EXCEPT AS PROVIDED BELOW, THOSE OTHER RIGHTS ARE WAIVED.**

**YOU WILL NOT BE ABLE TO DO THESE TWO THINGS (IN COURT OR IN ARBITRATION): (1) BRING A CLAIM AS A CLASS ACTION OR IN A REPRESENTATIVE CAPACITY; OR (2) PARTICIPATE IN A CLAIM AS A CLASS MEMBER.**

Section 21.1 Except as provided below: (1) the Company may unilaterally choose to have any Claim that the Bank brings against the Company resolved through binding arbitration; and (2) the Bank may unilaterally choose to have any Claim that the Company brings against the Bank (or the Bank and any of the Bank Related Parties) resolved through binding arbitration. If the Company asserts a Claim against any Bank Related Parties, but the Company does not also assert that Claim against the Bank, the Bank Related Party (or anyone defending the Bank Related Party) may unilaterally choose to have that Claim resolved through binding arbitration. If a court proceeding is commenced, the Party that commenced that court proceeding may unilaterally choose to have any counterclaim, cross-claim, or third party claim brought in that proceeding resolved through binding arbitration. **If a Party chooses to have a Claim resolved by arbitration pursuant to this arbitration provision, neither the Company nor the Bank will have the right to litigate that Claim in court, have a jury trial on that Claim, or engage in pre-arbitration discovery, except as provided for in the applicable Arbitration Rules of the selected Arbitrator(s) and as otherwise set forth in this arbitration provision.**

Section 21.2 "Ordinary Claims" are not subject to this arbitration provision and may be resolved through litigation. A Claim will be considered an "Ordinary Claim" if all three of the following are true: (1) the only remedy being sought for the Claim is monetary damages; (2) the recovery being sought for the Claim is less than \$50,000, excluding interest and costs; and (3) the only parties to litigation to resolve the Claim will be the Company, Company Related Parties, and/or Bank Related Parties.

Section 21.3 The arbitration administrator (an "Administrator") shall be either the American Arbitration Association ("AAA") or National Arbitration Forum ("NAF"). Arbitrations shall be conducted in accordance with the arbitration rules and procedures of the AAA or NAF which are applicable and in effect when the Claim is initiated (the "Arbitration Rules"). However, if the Arbitration Rules are inconsistent with this arbitration provision, this provision will prevail. If neither the AAA nor the NAF are available, Claims shall be submitted to one or more comparable organizations. The parties shall agree in writing on which comparable organization they wish to use. No other organization may be used.

Section 21.4 Arbitrations may be initiated pursuant to the Arbitration Rules of the selected Administrator. One or more impartial arbitrators (the "Arbitrator(s)") will be selected pursuant to the Arbitration Rules, but any arbitrator must be either a lawyer with at least ten years experience or a former judge. The Company or the Bank may choose to have an arbitration hearing. The Company and the Bank may be represented by counsel throughout any arbitration. Arbitration hearings will take place in the federal judicial district where the Company resides at the time the Claim is initiated or some other place to which the Company and the Bank agree in writing. The decision of the Arbitrator(s) will be final and binding. Any final decision of the Arbitrator(s) is subject to judicial review only as set forth in the Federal Arbitration Act. Judgment upon an award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

Section 21.5 If there is a dispute as to whether any claim, dispute or controversy is a "Claim" subject to this provision, that dispute shall be resolved solely by the Arbitrator(s) (except as noted below with reference to Class Proceedings and except that a court may decide whether a Claim is an Ordinary Claim).

Section 21.6 An arbitration pursuant to this provision may decide only the Company's Claims, the Bank's Claims or the Claims of the Company Related Parties or Bank Related Parties. The Arbitrator(s) shall have no authority to entertain or determine Class Proceedings. If the Arbitrator(s) decide they have authority to entertain or determine any Claim brought in a Class Proceeding, that decision may be appealed to a court of competent jurisdiction. If, despite this Agreement, Class Proceedings are allowed, those proceedings shall be conducted only in a court of competent jurisdiction. The claims of other persons who may (or may not) have similar claims may not be consolidated with any Claim. No arbitration will be consolidated with any other arbitration proceeding without the consent of all parties. The only Claims that may be joined under this arbitration provision are (1) those brought by the Bank and Bank Related Parties against the Company and Company Related Parties; or (2) those brought by the Company and the Company Related Parties against the Bank and the Bank Related Parties.

Section 21.7 The Arbitrator(s) shall have no authority to award punitive damages.

Section 21.8 If any portion of this arbitration provision shall be found to be unenforceable, that portion will be severed, and the rest of this arbitration provision will remain in effect. However, if the Class Action Waiver is held to be invalid with respect to any Class Proceeding, the entire arbitration provision shall be null and void.

Section 21.9 The Bank will reimburse the Company for the initial arbitration filing fee up to \$350 upon receipt of proof of payment, provided that the Company has initiated an individualized proceeding in good faith and in accordance with this Agreement and provided that the Company has not initiated the Company's proceeding in concert with any other persons or entities. All other fees will be allocated in keeping with the applicable Arbitration Rules and applicable law. The Bank will also advance or reimburse other fees if the Administrator or Arbitrator(s) determine there is good reason for requiring the Bank to do so or if the Company asks the Bank and the Bank determines there is good cause for doing so. Each Party will bear the expense of the fees and costs of that Party's own attorneys, experts, witnesses, documents and other expenses, regardless of which party prevails.

Section 21.10 This arbitration provision shall survive repayment of the Company's extension of credit, changes to the Account, any Card Account, any Card and this Agreement (although this provision itself may be changed in accordance with the provisions set forth in Section 17.2 of this Agreement), the Bank's assignment of the Account, any Card Account, any Card, the issuance of a Card or Card Account, the Company's or the Bank's termination of the Account, any Card Account, any Card and the bankruptcy (or similar proceeding) of any party.

Section 21.11 This arbitration provision is made in connection with a transaction involving interstate commerce, and shall be governed by and enforceable under the Federal

Arbitration Act, 9 U.S.C. §§ 1 through 16, as amended. The Arbitrator(s) shall apply applicable substantive law consistent with the Federal Arbitration Act, the National Bank Act and OCC regulations and applicable statutes of limitations, and shall honor claims of privilege recognized at law.

Section 21.12 The Company may obtain AAA rules and forms by contacting the AAA at 335 Madison Avenue, Floor 10, New York, NY 10017-4605, by visiting their web site at [www.adr.org](http://www.adr.org), or, if you cannot access the AAA web site, by calling the AAA at 800-778-7879. Company may obtain NAF rules and forms by contacting the NAF at P.O. Box 50191, Minneapolis, MN 55405, by visiting their web site at [www.arb-forum.com](http://www.arb-forum.com), or, if Company cannot access the NAF web site, by calling the NAF at 800-474-2371.

Section 21.13 The sections of this Article 21 shall survive the termination of this Agreement.

## ARTICLE 22 MISCELLANEOUS

Section 22.1 This Agreement has been made, executed, and delivered in the State of Nebraska. The Company hereby consents to the exclusive jurisdiction and venue of any local, state, or federal court located within the County of Douglas, State of Nebraska, for any action or proceeding arising out of this Agreement. The Company hereby waives personal service of any summons, complaint, or other process in connection with any such action or proceeding and agrees that the service of any such summons, complaint or other process may be made by first class mail to the Company address for written notices indicated below.

Section 22.2 This Agreement is binding upon the assigns and successors of the Company. Except to the extent federal law is applicable, the interpretation, effect and validity of this Agreement shall be governed by the laws of the State of Nebraska. If any provision of the Agreement is held invalid, illegal, or unenforceable for any reason by a court of competent jurisdiction, the Parties agree that all other provisions of the Agreement shall remain unimpaired and enforceable.

Section 22.3 No duty, obligation, or breach of the Company under the Agreement shall be waived or excused by the Bank, unless an authorized Bank representative has signed a written waiver or consent specifically related to any such duty, obligation or breach. Any failure or delay by the Bank to exercise any right, power, privilege, or remedy under the Agreement shall not operate as a waiver or consent in connection with any different or subsequent breach.

Section 22.4 The article and section titles in this Agreement are included as a matter of convenience, for reference purposes only, and in no way define, limit, expand, or describe the scope or intent of any provision of the Agreement.

Section 22.5 The sections of this Article 22 shall survive the termination of this Agreement.

*[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK; THE SIGNATURE PAGE  
FOLLOWS THIS PAGE.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

FIRST NATIONAL BANK OF OMAHA

COMPANY: \_\_\_\_\_  
[PRINT OR TYPE COMPANY NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Written Notices:

Address for Written Notices:

First National Bank of Omaha  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention to the individual (who shall  
be named) then currently acting as  
Program Administrator  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: (xxx) xxx-xxxx  
With telephone confirmation to:  
(xxx) xxx-xxxx

With telephone confirmation to  
# \_\_\_\_\_

## PROGRAM ADMINISTRATOR DESIGNATION FORM

Capitalized terms not otherwise defined in this form have the meanings set forth in the Commercial Card Agreement between First National Bank of Omaha (the "Bank") and the undersigned business or governmental entity (the "Company"), dated as of \_\_\_\_\_. The Company hereby appoints and designates each person named below as a Program Administrator in connection with the Program established for the Company:

Print/Type Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

The Company warrants and certifies that each person named above is individually authorized by all necessary action of the Company to: (i) submit Applications and related requests for Cards and Card Accounts; (ii) request Credit Limits and Transaction Limits for Cards and Card Accounts; (iii) request cancellation or suspension of Cards and Card Accounts; and (iv) perform other administrative duties related to the Program. The Company also warrants and certifies that the appointment of each person named above as a Program Administrator does not violate the Company's articles of incorporation, articles of formation, articles of organization, charter, partnership agreement, by-laws or any other document or agreement pursuant to which the Company is organized, any provision of applicable law, regulation, order, or rule of any governmental agency, or any court decision.

Company Name: \_\_\_\_\_  
*[Print or Type Company Name]*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

To	From
Co. FIRST NATIONAL	Co.
Dept. COMMERCIAL CARD	Phone #
Fax # (402) 636-6913	Fax #

Applicant (Name of Corporation, Partnership, Sole Proprietorship or other Business Entity) (include d.b.a.) \_\_\_\_\_

Social Security or Taxpayer Identification Number \_\_\_\_\_ Street Address (Must have a physical address) \_\_\_\_\_

P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Application: \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other \_\_\_\_\_

Phone Number \_\_\_\_\_

Years in Business \_\_\_\_\_ Bank Name and Location \_\_\_\_\_

**AGREEMENT**

"You", "Your", or "Company" means the applicant in this application (the "Application"). "We", "us", "our" or "First Bankcard", means First Bankcard, a division of First National Bank of Omaha.

By signing below, you agree to be bound by the BUSINESS CARD AGREEMENT (the "Agreement") enclosed with this application and promise to pay all amounts coming due on the card accounts opened here under.

By signing below, you also represent to us that the information in this application is true and complete and that you understand that we will rely on this information. You agree to provide, or authorize third parties to provide, your financial statements upon our request and also authorize us to obtain additional information from credit bureaus and other lawful sources, including persons and companies named in this application. Cards are issued by First Bankcard. All accounts are subject to credit approval by First Bankcard Center.

Company \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

For Bank Use Only: Bank/Branch/Officer \_\_\_\_\_ Phone No. \_\_\_\_\_

**CORPORATE RESOLUTION**

The undersigned, the duly elected and acting Secretary (General Partner, Sole Proprietor or other Owner of the Business Entity) Of \_\_\_\_\_ (the "Company"), hereby certifies that:

The following resolutions have been duly adopted by the Board of Directors, or other governing body, of the Company and such resolutions are in full force and effect as of the date hereof:

RESOLVED, that the Business Card Agreement (the "Agreement") is hereby approved and the official designated below ("Authorized Official") is hereby authorized and directed to execute the Agreement on behalf of and in the name of the Company.

RESOLVED, FURTHER, that such Authorized Official is hereby authorized and directed to name the individuals at the Company who shall be authorized to instruct First Bankcard to issue credit cards to one or more employees of the Company, for the account of the Company and in respect of which the Company shall be responsible; and

RESOLVED, FURTHER, that such Authorized Official is hereby authorized and directed to execute such notes, drafts, agreements and other documents and instruments and to pledge and encumber such property of the Company (including, without limitation, bank accounts) as such Authorized Official may deem appropriate in connection with the foregoing transaction.

(Non-corporate entities use the following signature line)

The following person is the Authorized Official referenced in the foregoing resolutions, and is duly elected and holding the office shown, and the signature is the genuine signature of such person:

Name \_\_\_\_\_ Title \_\_\_\_\_ Signature \_\_\_\_\_

(Corporate entities use the following signature line)

IN WITNESS WHEREOF, I have executed my name as Secretary and have hereunto affixed the Corporate seal of the above-named corporation as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL) \_\_\_\_\_ Secretary \_\_\_\_\_



## Corporate Liability – Underwriting Needs

- 1) Projected spend for the entire company. This number does not have to match the total requested for the cardholders. To calculate this figure, divide the projected **annual** spend number for the company by 6. Confirm that this will be enough for any 2 month period of time.
- 2) 2 years of completed, audited financials plus whatever financials you have for the current year
- 3) Cardholder list as you would like their name to appear on the card.
  - Include a 4 digit security number (normally last 4 digits of ss# or an employee #). Please note on the list what those numbers represent.
  - Include their projected spend or limit covering 2 months.
- 4) Program Administrator Designation Form (this person has full access to your company's line)
- 5) Corporate Resolution
- 6) Ownership Structure (who owns it and what percentage ownership do they have)

Please feel free to contact me with any questions.

Please return information to

Martha McKeone

Fax 402-633-2576

Phone 402-636-6368

mmckeone@fnni

AGENDA ITEM SUMMARY

DATE: 4/27/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

SUBJECT:

Codification of The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act, and adoption of a resolution to enact by-laws for the Hailey Community Oversight Committee

AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IFAPPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed Title 11 of the Hailey Municipal Code, which incorporates The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act. In Title 11, I am showing the language stricken by Judge Elgee and I have added a footnote explaining the legislative history of these acts. I am also attaching proposed by-laws for the Hailey Community Oversight Committee and a resolution which would adopt the by-laws. I used the by-laws from the Arts Committee as a template. If the Council adopts the by-laws, I would suggest that we start the appointment process for the Committee. You can either appoint individuals or advertise and then appoint.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Casele # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments: \_\_\_\_\_

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)

<input checked="" type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	_____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	_____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the format of Title 11 and the By-Laws for the Hailey Community Oversight Committee. If Title 11 is acceptable, instruct the City Clerk to incorporate Title 11 in the Hailey Municipal Code. If the by-laws are acceptable, make a motion to approve the resolution adopting the by-laws. Then, discuss the procedure for appointment of the committee.

FOLLOW-UP REMARKS:

## TITLE 11

### VOTER ADOPTED INITIATIVES\*

#### Chapters:

- 11.04        The Hailey Medical Marijuana Act
- 11.08        The Hailey Lowest Police Priority Act
- 11.12        The Hailey Industrial Hemp Act

#### Chapter 11.04

##### The Hailey Medical Marijuana Act

11.04.010    Title. This short title of this initiative shall be and the initiative may be enacted as “The Hailey Medical Marijuana Act.”

11.04.020    Findings. The people of Hailey, Idaho find as follows:

WHEREAS the National Academy of Sciences’ Institute of Medicine concluded after reviewing relevant scientific literature including dozens of works documenting marijuana’s therapeutic value,<sup>1</sup> that there are some circumstances in which smoking marijuana is a legitimate medical treatment;<sup>2</sup> and,

WHEREAS a scientific survey conducted in 1990 by Harvard University researchers found that 54% of oncologists with an opinion favored the controlled medical availability of marijuana, and 44% had already suggested at least once that a patient obtain marijuana illegally;<sup>3</sup> and,

WHEREAS tens of thousands of patients nationwide – people with AIDS, cancer, glaucoma, chronic pain, and multiple sclerosis – have found marijuana in its natural form to be therapeutically beneficial<sup>4</sup> and are already using it with their doctors’ approval; and,

WHEREAS numerous organizations have endorsed medical access to marijuana, including the AIDS Action Council, American Nurses Association, American Academy of HIV Medicine, American Bar Association, American Medical Student Association, American Preventive

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<sup>1</sup> “The Medical Value of Marijuana and Related Substances,” Chapter 4 of the Institute of Medicine’s Marijuana and Medicine: Assessing the Science Base (Washington: National Academy Press, 1999), lists 198 references in its analysis of marijuana’s medical uses.

<sup>2</sup> From Principal Investigator Dr. John Benson’s opening remarks at the Institute of Medicine’s news conferences releasing the report Marijuana and Medicine: Assessing the Science Base (March 17, 1999).

<sup>3</sup> R. Doblin and M. Kleiman, “Marijuana as Antiemetic Medicine,” Journal of Clinical Oncology 9 (1991): 1314-1319.

<sup>4</sup> The therapeutic value of marijuana is supported by existing research and experience. For example, the following statement appeared in the American Medical Association’s “Council on Scientific Affairs Report 10 – Medicinal Marijuana,” adopted by the AMA House of Delegates on December 9, 1997:

\*“Smoked marijuana was comparable to or more effective than oral THC, and considerably more effective than prochlorperazine or other previous antiemetics in reducing nausea and emesis.” (page 10)

\*“Anecdotal, survey, and clinical data support the view that smoked marijuana and oral THC provide symptomatic relief in some patients with spasticity associated with multiple sclerosis (MS) or trauma.” (page 13)

\*“Smoked marijuana may benefit individual patients suffering from intermittent or chronic pain.” (page 15)

Medical Association, American Public Health Association, California Academy of Family Physicians, California Legislative Council for Older Americans, California Medical Association, California Nurses Association, California-Pacific Society of Addiction Medicine, Florida Medical Association, Gray Panthers, Lymphoma Foundation of America, Multiple Sclerosis California Action Network, National Association for Public Health Policy, National Association of Attorneys General,, National Association of People with AIDS, National Black Police Association, National Women's Health Network, New York State Nurses Association, Public Citizen, Virginia Nurses Association, Whitman-Walker Clinic (Washington, D.C.), Women of Reform Judaism; and,

WHEREAS a scientific survey conducted in 1995 by Belden & Russonello (a Washington, D.C.-based polling firm) indicated 79% of U.S. voters support the idea of "legaliz[ing] marijuana to relieve pain and for other medical uses if prescribed by a doctor;"<sup>5</sup> and,

WHEREAS national public opinion polls conducted by ABC News, CBS News, the Family Research Council, and the Gallup Organization between 1997 and 1999 found substantial support for medical marijuana;<sup>6</sup> and,

WHEREAS since 1996, medical marijuana initiatives received a majority of votes in every state in which they appeared on the ballot – Alaska, Arizona, California, Colorado, the District of Columbia, Maine, Nevada, Oregon, and Washington state;<sup>7</sup> and,

WHEREAS on June 14, 2000, Governor Ben Cayetano of Hawaii signed into law the first medical marijuana bill enacted via a state legislature which permits the cultivation, possession, and use of medical marijuana; and,

WHEREAS on September 6, 1988, after reviewing all available medical data, the Drug Enforcement Administration's chief administrative law judge, Francis L. Young, declared that marijuana is "one of the safest therapeutically active substances known" and recommended making marijuana available by prescription;<sup>8</sup> and,

WHEREAS the federal penalty for possessing one marijuana cigarette – even for medical use – is up to one year in prison, and the penalty for growing one plant is up to five years;<sup>9</sup> and,

WHEREAS the penalties are similar in most states, where medical marijuana users must live in fear of being arrested; and,

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<sup>5</sup> Belden & Russonello interviewed 1,001 registered voters, selected by a national random digit dial survey, on behalf of the American Civil Liberties Union, which released the results via its Department of Public Education on November 27, 1995.

<sup>6</sup> ABC News/Discovery News (69% support medical marijuana, poll conducted May 27, 1997 by Chilton Research); CBS News (66% of Independent respondents, 64% of Democrat respondents, and 57% of Republican respondents support medical marijuana, poll reported in The New York Times, June 15, 1997); Family Research Council (74% support medical marijuana, poll conducted Spring 1997); Gallup (73% support medical marijuana, poll conducted March 19-21, 1999)

<sup>7</sup> Alaska, Measure 8, Nov. 1998, received 58% of the vote; Arizona, Proposition 200, Nov. 1996, received 65% of the vote; Arizona, Proposition 300, Nov. 1998, rejected by 57% of the vote by rejecting Proposition 300, voters upheld the medical marijuana provision in 1996's Proposition 200); California, Proposition 215, Nov. 1996, received 56% of the vote; Colorado, Amendment 20, Nov. 2000, received 54% of the vote; District of Columbia, Initiative 59, Nov. 1998, received 69% of the vote; Main, Question 2, Nov. 1999, received 61% of the vote; Nevada, Question 9, Nov. 2000, received 65% of the vote; Oregon, Measure 67, Nov. 1998, received 55% of the vote; Washington, Initiative 692, Nov. 1998, received 59% of the vote.

<sup>8</sup> U.S. Department of Justice, Drug Enforcement Administration. "In the Matter of Marijuana Rescheduling Petition, Docket No. 86-22, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and decision of Administrative Law Judge," Francis L. Young, Administrative Law Judge, September 6, 1988.

<sup>9</sup> Section 844(a) and Section 841(b)(1)(D), respectively, of Title 21, United States Code.

WHEREAS the present federal classification of marijuana<sup>10</sup> and the resulting bureaucratic controls impede additional scientific research into marijuana's therapeutic potential,<sup>11</sup> thereby making it nearly impossible for the Food and Drug Administration to evaluate and approve marijuana through standard procedural channels; and,

WHEREAS seriously ill people should not be punished for acting in accordance with the opinion of their physicians in a bona fide attempt to relieve suffering; and,

WHEREAS the state of Idaho has no mandate under the Constitution to outlaw medical marijuana and would therefore be subordinate to the will of the people as expressed through the initiative process and guaranteed by Article One Section Two of the Idaho Constitution;

THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing the medical marijuana policy in the city.

11.04.030 Definition.

"Marijuana" as used in this initiative shall be as currently defined in Idaho Code 37-2701(s), and shall also include any other variety of marijuana not enumerated therein.

11.04.040 Purpose. The purpose of this initiative is:

1. To ensure that patients, for whom marijuana has been recommended by a physician, suffer no punishment or penalty for obtaining, possession, and/or using medicinal marijuana and/or marijuana paraphernalia used to consume medicinal marijuana, and to ensure that individuals are not arrested and suffer only a fine, and no other punishment or penalty, for the possession of less than 35 grams of marijuana and/or marijuana paraphernalia. This initiative shall be liberally construed for the accomplishment of these purposes.
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to authorize the use of marijuana for medical purposes.
3. To stimulate a communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

~~11.04.050 Use of Medical Marijuana. Seriously ill citizens have the right to obtain, possess, and use up to 35 grams of marijuana for medicinal purposes where that medical use is deemed appropriate and is recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, HIV, AIDS, chronic pain, glaucoma, arthritis, migraines, or any other serious condition for which marijuana provides relief. Patients who obtain and use marijuana for medicinal purposes upon the recommendation of a physician shall not be subject to any arrest, prosecution, punishment, or sanction; once a doctor's recommendation has been provided by the patient, any marijuana and/or marijuana paraphernalia charges against the patient shall be dismissed by the prosecuting attorney. Also, physicians who recommend marijuana for their patients shall not be subject to any arrest, prosecution, punishment or sanction. Local enforcement of state law shall be by~~

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<sup>10</sup> Section 812(c) of Title 21, United States Code.

<sup>11</sup> The U.S. Department of Health and Human Services (HHS) issued written guidelines for medical marijuana research, effective December 1, 1999. The guidelines drew criticism from a coalition of medical groups, scientists, members of Congress, celebrities, and concerned citizens. The coalition called the guidelines "too cumbersome" and urged their modification in a letter to HHS Secretary Donna Shalala, dated November 29, 1999. Signatories of the letter included 33 members of Congress, former Surgeon General Joycelyn Elders, and hundreds of patients, doctors, and medical organizations.

~~summons only. All such matters shall only be referred to the Municipal Prosecuting Attorney, and no other prosecuting attorney, and the Municipal Prosecuting Attorney shall not refer the matter to any other prosecutor, agency, or office, unless the individual is also charged with a non-related felony offense arising from the same set of facts and circumstances.~~

11.04.060 Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist ~~and other city officers,~~ for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include, but are not limited to, the following:

- a) Amendment of state code to allow for the use of medical marijuana by seriously ill patients;
- b) End any sanctions against physicians who prescribe or recommend medical marijuana to their patients;
- c) Grant local control to cities and counties to license and regulate the use of medical marijuana; and
- d) End the prosecution, arrest, investigation and imprisonment of seriously ill adults who use marijuana for medicinal purposes.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's medical marijuana laws.

11.04.070 Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation of the Hailey Medical Marijuana Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:  
1 community member appointed by each member of the Hailey City Council,  
1 community member appointed by the Mayor of Hailey  
1 community member appointed by the Hailey Chief of Police,  
1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensure timely implementation of this ordinance;
- b) Make recommendations to the Hailey City Council regarding appropriate regulations to carry out Section [11.04.050] above;
- c) Report regularly to the Council on the implementation of this ordinance.

The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes.

11.04.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Chapter 11.08

The Hailey Lowest Police Priority Act

11.08.010 Title. This short title of this initiative shall be and the initiative may be enacted as “The Hailey Lowest Police Priority Act.”

11.08.020 Findings. The people of Hailey, Idaho find as follows:

WHEREAS the federal government’s war on drugs has failed; and  
WHEREAS Hailey should determine its marijuana polices locally, not hand them over to the federal Drug Enforcement Administration; and  
WHEREAS each year Idaho spends millions of dollars enforcing marijuana laws, thereby filling local jails and prisons to capacity, and expending valuable law enforcement resources that would be better spent on fighting violent and serious crimes; and  
WHEREAS decades of arresting millions of marijuana users have failed to control marijuana use or reduce its availability; and  
WHEREAS medical and governmental studies have consistently found cannabis to be less dangerous than alcohol, tobacco and other already legal drugs; and  
WHEREAS making adult marijuana offenses Hailey’s lowest law enforcement priority will reduce the city’s spending on law enforcement and punishment;  
THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing that marijuana offenses by adults shall be the lowest police priority of the city.

11.08.030 Definitions.

“Marijuana” as used in this initiative shall be as currently defined in Idaho Code 37-2701(s), and shall also include any other variety of marijuana not enumerated therein.

“Adult” means an individual who is 18 years of age or older

“Hailey law enforcement officer” means a member of the Hailey Police Department or any other city agency or department that engages in law enforcement activity.

“Lowest law enforcement priority” means a priority such that all law enforcement activities related to all offenses other than adult, personal-use marijuana offenses shall be a higher priority than all law enforcement activities related to marijuana offenses, where the marijuana was intended for adult personal use, other than the exceptions designated in this chapter.

11.08.040 Purpose. The purpose of this initiative is:

1. To make investigations, citations, arrests, property seizures, and prosecutions for adult marijuana offenses, where the marijuana was intended for adult personal use, the City of Hailey’s lowest enforcement priority; and
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to decriminalize the use of marijuana by adults.
3. To stimulate communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

11.08.050 Lowest Police Priority. Hailey law enforcement officers shall make law enforcement activity relating to marijuana offenses, where the marijuana was intended for adult personal use, their lowest law enforcement priority. Law enforcement activities relating to marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of adult marijuana offenses.

This lowest law enforcement priority policy shall not apply to use of marijuana on public property or driving under the influence.

The lowest law enforcement priority policy shall apply to cooperating with state or federal agents to arrest, cite, investigate, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.

Hailey law enforcement officers shall not accept or renew deputization or commissioning by a federal law enforcement agency if such deputization or commissioning will include investigating, citing, arresting, or seizing property from adults for marijuana offenses included in the lowest law enforcement priority policy.

Hailey shall not accept any federal funding that would be used to investigate, cite, arrest, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.

11.08.060 Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist and other city officers, for changes to state law (and other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a) Allow for municipalities to set their own criminal penalties for marijuana use;
- b) Decriminalize generally the use of marijuana by adults;
- c) Enforcement of existing laws by summons only.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's marijuana laws.

11.08.070 Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation of the Hailey Lowest Police Priority Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:

- 1 community member appointed by each member of the Hailey City Council,
- 1 community member appointed by the Mayor of Hailey,
- 1 community member appointed by the Chief of Police,
- 1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensuring timely implementation of this chapter, with the cooperation of the Hailey Police Department and any other Hailey law enforcement agencies in providing needed data;
- b) Receiving any grievances from individuals who believe they were subjected to law enforcement activity contrary to the lowest law enforcement priority policy;
- c) Designing a supplemental report form for Hailey law enforcement officers to use to report all adult marijuana arrests, citations, and property seizure and all instances of officers assisting in state or federal arrests, citations, and property seizures for any adult marijuana offenses. The

supplemental report form shall be designed with the goal of allowing the committee to ascertain whether the lowest law enforcement priority policy was followed;

d) Requesting additional information from any Hailey law enforcement officer who engaged in law enforcement activity relating to one or more marijuana offenses under circumstances which appear to violate the lowest law enforcement priority policy. An officer's decision not to provide additional information may be grounds for discipline; and

e) Submitting written reports semiannually to the Hailey City Council on the implementation of this ordinance, with the first report being issued nine months after the enactment of this chapter. These reports shall include, but not necessarily be limited to: the number of all arrests, citations, property seizures, and prosecutions for marijuana offenses in Hailey; the breakdown of arrests and citations by race, age, specific charge, and classification as infraction, misdemeanor, or felony; any instances of law enforcement activity that the committee believes violated the lowest law enforcement priority policy; and the estimated time and money spent by the city on law enforcement and punishment for adult marijuana offenses.

Hailey law enforcement officers shall submit to the committee a supplemental report within two weeks after each adult marijuana arrest, citation, or property seizure or instance of assisting in a state or federal arrest, citation or property seizure for any adult marijuana offense in Hailey. The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes.

11.08.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

## Chapter 11.12

### The Hailey Industrial Hemp Act

11.12.010. Title This short title of this initiative shall be and the initiative may be enacted as "The Hailey Industrial Hemp Act."

11.12.020 Findings. The people of Hailey, Idaho find as follows:

WHEREAS industrial hemp can be differentiated from marijuana; and  
WHEREAS industrial hemp contains virtually no narcotic or intoxicating properties; and  
WHEREAS the reasons for criminalizing the cultivation of industrial hemp appear to be politically motivated with no basis in reason or logic; and  
WHEREAS industrial hemp can be used to make a variety of useful products; and  
WHEREAS Idaho farmers should have the right to grow industrial hemp; and  
WHEREAS in 1996 the Idaho Farm Bureau voted in favor of granting Idaho farmers the right to grow industrial hemp; and  
WHEREAS industrial hemp has a long and rich history in the United States as a valuable crop;

THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing the industrial hemp policy of the city.

11.12.030     Definitions.

“Industrial hemp” means any hemp or hemp product containing one percent or less THC.

11.12.040     Purpose. The purpose of this initiative is:

1. To establish an official policy of the city that is favorable to the growing of industrial hemp.
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to legalize the growth and cultivation of industrial hemp.
3. To stimulate communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

11.12.050     Official Policy. It shall be the official policy of the City of Hailey that the growth and cultivation of industrial hemp is a positive and beneficial farming activity, and that the legalization of such activity by the state and federal government is favored.

11.12.060     Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist ~~and other city officers~~, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a) Allow for the legalization of industrial hemp by the State of Idaho;
- b) Allow each county or city to decide their own policies with regards to the farming of industrial hemp.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters’ express and official desire for legislative change to the state’s industrial hemp laws.

11.12.070     Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation and enforcement of the Hailey Industrial Hemp Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:

- 1 community member appointed by each member of the Hailey City Council,
- 1 community member appointed by the Mayor of Hailey
- 1 community member appointed by the Hailey Chief of Police,
- 1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensure timely implementation of this ordinance;
- b) Make recommendations to the Hailey City Council regarding appropriate policy decisions to carry out Section [11.12.050] above;
- c) Report regularly to the Council on the implementation of this ordinance;

d) Any other duty that the Committee deems to be in the best interest of effectuating this initiative.

The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes. In the event that this initiative is the only cannabis or hemp related proposal adopted by the voters, the committee shall not be formed.

11.12.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

\*On November 6, 2007 and May 27, 2008, the voters of Hailey adopted three initiatives: The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act. These three initiatives have been codified in Title 11 of the Hailey Municipal Code. In *Davis v. City of Hailey*, Blaine County Case No. CV-2008-0366 (the Honorable Robert Elgee), the district court ruled that the language stricken in Sections 11.04.050, 11.04.060, 11.08.050, 11.08.060 and 11.12.060 was void.

**CITY OF HAILEY**  
**RESOLUTION NO. 2009-\_\_**

A RESOLUTION ADOPTING BY-LAWS FOR THE HAILEY COMMUNITY  
OVERSIGHT COMMITTEE

WHEREAS, the voters of Hailey adopted by initiative The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act, which have been codified in Title 11 of the Hailey Municipal Code;

WHEREAS, The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act provide that a Community Oversight Committee be appointed to implement the acts and to perform other duties designated therein; and

WHEREAS, the Hailey City Council now desires to adopt by-laws for the Hailey Community Oversight Committee to govern their actions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1: By-Laws of the Hailey Community Oversight Committee are adopted as set forth in attached Exhibit "A."

2. This Resolution shall be in full force and effect from and after its passage and approval.

Passed and Adopted on this \_\_\_\_\_ day of April, 2009.

\_\_\_\_\_  
Richard L. Davis, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk

EXHIBIT "A"

By-Laws of the Hailey Community Oversight Committee

## BYLAWS FOR THE HAILEY COMMUNITY OVERSIGHT COMMITTEE

### PURPOSE

These bylaws provide direction to the members of the Hailey Community Oversight Committee in the performance of their duties.

### ARTICLE I - GENERAL PROVISIONS

The following statutes, ordinances and rules shall govern the Hailey Community Oversight Committee, hereinafter referred to as the "Oversight Committee."

#### 1.1 Applicable State Statutes and Local Ordinances and Rules.

To the extent that they remain in force and in effect or as they are amended, the Committee and its members shall be governed by state statutes and local ordinances and policies including the following:

- a. State statutes applying to public boards, members and officials, and those dealing with disclosure.
- b. The Hailey Municipal Code, all as approved by the Hailey City Council.

#### 1.2 Requirements of Familiarity with State Statutes and Local Ordinances and Rules Affecting the Oversight Committee.

Upon taking office, all members of the Oversight Committee shall familiarize themselves with the forgoing and, while in office, shall maintain such knowledge, including knowledge of amendments and additions, and shall be governed thereby in the conduct of Oversight Committee affairs.

#### 1.3 Rules of the Oversight Committee to be Available at the office of the Hailey City Clerk.

An official copy of the Bylaws of the Oversight Committee shall be available as a public record from the Hailey City Clerk. Additional copies shall be provided to the members of the Oversight Committee and made available to the public upon request.

### ARTICLE II - MEMBERS

#### 2.1 Number of Members, Appointment, Etc.

The Oversight Committee shall consist of seven (7) voting members. 1 member shall be appointed by each member of the Hailey City Council, 1 member shall be appointed by the Mayor, 1 member appointed by the Hailey Chief of Police, and 1 member shall be a representative of the Liberty Lobby of Idaho, Each member shall be a resident of the City of Hailey at the time of appointment. Each member must remain a resident of the City during the term of his or her membership on the Oversight Committee. Each member shall serve for a term of three (3) years. The terms shall be staggered and shall be filled in the same manner as original appointments, but replacements shall serve only until the expiration of the original term.

#### 2.2 Causes for Removal from the Oversight Committee.

Causes for removal of members from the Oversight Committee by the Mayor and City Council may include, but are not limited to:

- a. Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the Oversight Committee, or failure to be governed thereby.
- b. Failure to disclose conflict of interest for purposes of disqualification when a member has a "conflict of interest" as defined by Idaho Code §59-703, as amended.
- c. When a member becomes incapacitated for the office for a protracted period, or moves from the City of Hailey or becomes for some other reason no longer qualified for office and fails to resign.
- d. Failure to attend three consecutive regular meetings, or three of any seven consecutive meetings, without the recorded consent of the Chair. The Chair can recommend removal of the Oversight Committee member to the Hailey City Council and Mayor.

### 2.3 Resignations and Removal.

Members proposing to resign shall give reasonable notice of such intent to the Chair, stating the effective date of resignation.

### 2.4 Vacation of Office, Appointment of New Members.

When a member dies, resigns, or is otherwise removed, or when the term of a member is 90 days from its scheduled expiration, the Oversight Committee Chair will immediately notify the Mayor that a vacancy either exists or could exist. The vacancy may be advertised in the official newspaper of the City as necessary to secure letters of interest and résumés from interested Hailey residents. The vacancy shall be filled by appointment of the City Council Member, Mayor, Chief of Police or Liberty Lobby, as the case may be.

## ARTICLE III - OFFICERS, COMMITTEES, STAFF, DUTIES

### 3.1 Regular Election of Chair, Vice Chair

Annually, as the first item of business at the first regular meeting of the Oversight Committee at which a quorum is present, the Oversight Committee shall elect a Chair and Vice Chair.

### 3.2 Succession of Vice Chair to Office of Chair.

Should the Chair resign or be removed, the Vice Chair shall succeed to the office for the remainder of the original one year term. Should the Vice Chair resign, be removed, or succeed to the office of Chair, a special election shall be held to fill the vacancy of the Vice Chair until the expiration of the original one-year term. Said election shall occur at the next regularly scheduled meeting of the Oversight Committee at which a quorum is available.

3.3 Duties of the Chair and Vice Chair; Appointment of Temporary Chair to Preside at Meetings.

The Chair shall preside at all meetings and hearings. If the Chair is absent or unable to preside, the Vice Chair shall preside. If both are absent or unable to preside, the members present shall elect from among their number a Temporary Chair to preside. The Temporary Chair shall abide by all rules and policies set forth herein.

The Chair shall maintain order and conduct the meeting in accordance with Robert's Rules of Order.

The Chair shall set the agenda for each meeting. The agenda will generally include issues designated in Sections 11.04.070, 11.08.070 and 11.12.070 of the Hailey Municipal Code.

ARTICLE IV - CONDUCT OF OVERSIGHT COMMITTEE MEMBERS

4.1 Conflict of Interest.

The procedure for determining the existence and disclosure of a conflict of interest shall be governed by Idaho Code §§59-701, et seq. as amended.

ARTICLE V - MEETINGS

5.1 Meetings.

Meetings of the Oversight Committee will be held at such time and place as is established by the Oversight Committee and at least two times each calendar year. Notice of Meetings and agenda notices shall be posted in accordance with Idaho Code §67-2343, as amended.

5.2 Open to the Public.

All meetings of the Oversight Committee are open to the public, unless otherwise provided in Idaho Code §67-2345, as amended.

5.3 Cancellation.

If no business is scheduled before the Oversight Committee, or if it is apparent that a quorum of the Oversight Committee will not be available, the Chair may cancel any meeting by giving notice to all members and presenters not less than 48 hours before time set for such meeting.

5.4 Quorum.

A quorum of the Oversight Committee shall consist of a simple majority of members. An affirmative vote of a simple majority of the present members of the Oversight Committee shall decide all matters under consideration. The Chair may vote on all matters.

5.5 Agenda, Order of Business.

The Chair shall prepare an agenda for each Oversight Committee meeting. Order of business shall be as follows:

1. Call to Order
2. Old Business
3. New Business
4. Approval of Minutes
5. Reports
6. Adjourn

ARTICLE VI - MEETING PROCEDURES

6.1 Robert's Rules of Order.

Robert's Rules of Order shall govern all procedures and conduct at a meeting of the Oversight Committee.

ARTICLE VII - AMENDING OR WAIVING BYLAWS

7.1 Amending Bylaws.

Recommendations for amendment to the Bylaws may be forwarded by the Oversight Committee at any time to the Hailey City Council for consideration. Bylaws may only be amended by resolution of the Hailey City Council.

## Heather Dawson

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**From:** Lawrence Schoen [lschoen@co.blaine.id.us]  
**Sent:** Wednesday, April 22, 2009 12:54 PM  
**To:** Heather Dawson; rick.davis@haileycityhall.org  
**Subject:** RE: Invitation to Fire & EMS Services Discussion

Dear Heather and Rick—

On behalf of the Ambulance District Board, we accept your invitation to a meeting to discuss an independent study of efficient, effective emergency services provision. I understand through the grapevine, you have pushed back potential dates into June. I will be out of town 5/28-6/14 and respectfully request you schedule the meeting at such time when all Board members may be present. May would be fine, if that is still possible. Please let us know.

With best regards,  
Larry

*Lawrence Schoen*  
**Blaine County Commissioner**  
206 First Avenue South  
Hailey, Idaho 83333

Ph: 208-788-5500  
Fx: 208-788-5569  
E: [lschoen@co.blaine.id.us](mailto:lschoen@co.blaine.id.us)

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**From:** Heather Dawson [mailto:heather.dawson@haileycityhall.org]  
**Sent:** Tuesday, April 14, 2009 10:10 AM  
**To:** 'Tom Blanchard'; blassman@wrfr.com; cthomas@wrfr.com; Lawrence Schoen; Char Nelson; kbbsvr@aol.com; sevenriverlane@yahoo.com  
**Subject:** Invitation to Fire & EMS Services Discussion

Please see the attached letter, the original of which will be sent out in today's mail. Please ensure that the proper parties in your organization see and respond to this letter. Thank you.

Heather Dawson, Hailey City Administrator  
115 South Main Street, Hailey ID 83333  
208-788-4221 ext 18 Fax 208-788-2924

-Please be aware all correspondence received and sent by this public agency is a matter of public record.-

## Heather Dawson

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**From:** James Frehling [frehling@gmail.com]  
**Sent:** Wednesday, April 15, 2009 2:55 PM  
**To:** rick.davis@haileycityhall.org  
**Cc:** heather.dawson@haileycityhall.org  
**Subject:** April 13th letter

The Fire District welcomes the opportunity. Thank you. Due to our schedules we can't be available from May 14th until June 1st. The Fire District would attend and we assume it is a discussion for elected officials to carry forward. Thanks for your consideration, James Frehling, Commission Chair WRFPD.

AGENDA ITEM SUMMARY

DATE: 04/27/2009 DEPARTMENT: Finance & Records DEPT. HEAD SIGNATURE: HD

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**SUBJECT** Discussion of outdoor uses in business district – addition of music as an approved use without special permit. See Sections D and E in the Hailey Municipal Code excerpt below:

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**AUTHORITY:**  ID Code  IAR \_\_\_\_\_  City Ordinance/Code 05-05 Business

5.02.040 Standards for issuance of license. A license shall be issued by the city clerk only to applicants who meet the following requirements:

A. Compliance with Building and Fire Regulations. The business and premises for which the license application is made has not been cited by the building or fire departments for a violation of the adopted International Building or Fire Code, or, having been cited for such a violation, is in the process of correcting the violation to the satisfaction of the building official or fire chief. The applicant shall specify what steps are being taken to correct the violation. Businesses relocating in new structures or remodeled structures and all new businesses opening for the first time shall have obtained a certificate of occupancy furnished by the city building inspector establishing that the premises are not in violation of the applicable International Building Code and applicable International Fire Code.

B. Compliance with Zoning Requirements. The business and premises for which the application is made are not in violation of any zoning regulations.

C. Water & Sewer Connection Required. The business and premises for which the application is made shall be connected to city water and sewer systems, and shall not be in violation of any section of Chapter 13 of the Hailey Municipal Code.

D. The business and premise for which the application is made shall not be placed upon or encroach upon any public street or place, with the exceptions of sidewalks. Encroachments upon private parking or yard areas, public sidewalks or other areas outside of a business structure connected to city water and sewer systems shall be shown clearly upon the business license application and shall not restrict a clear six-foot lane for pedestrian traffic. The encroachment must meet all other applicable rules, regulations, and ordinances of the city of Hailey.

E. The intended use of any business areas outside of a business structure connected to city water and sewer systems, whether upon public sidewalks or private parking and yard areas shall be shown upon the application, and shall be restricted to the same use and business activity as is conducted within the business structure connected to city water and sewer systems. (Ord. 1004 §1, 2008; Ord. 903 §1, 2005; Ord. 872 §3, 2004; Ord. 593 §6, 1992)

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**BACKGROUND:**

The City Council discussed the issue of outdoor sales at its March 14, 2005 meeting, and formed consensus that restrictions should be put in place that allows outdoor sales but limits competition with established businesses. The ordinance sections above were then adopted.

As businesses identify outside areas appropriate for like sales by others (Bear's Bar-B-Q on Bullion Square's patio) or for their own sales and services to spill outdoors (sidewalk sales by retail establishments and sidewalk tables at restaurants), they would also like those areas to be used for marketing purposes (Fire Places Etc hosting a spring bar-b-q). The marketing efforts always lead to the request for an outdoor music venue, which compliments the restaurant seating or the bar-b-q.

Marketing is a business activity usual to businesses, and live music is standard to indoor restaurant uses. The purpose of this discussion is to inform the council that we believe we can interpret the ordinance above to allow outdoor dinner music in these prescribed outdoor areas. We consider dinner music to be acoustic or modestly amplified, with the range of sound staying within a ½ block area of the business (per noise ordinance). We do not consider dinner music and entertainment music to be the same. The special events list attached has a list of entertainment music, during which the number, type, and amplification of the instruments projects the sound well beyond 50 feet. Approval of these entertainment events will continue to require council approval which includes a waiver of the noise ordinance.

**SPECIAL EVENTS LISTING FOR MAYOR & COUNCIL**  
**Special Events For the Year 2009**

\*\*\* Music at the event  
*Italicized pending event*

**Hop Porter Park**

April 25<sup>th</sup> – Advocates Carbonate Hill Climb  
June 18<sup>th</sup> – SV Center Concert \*\*\*\*\*  
July 31<sup>st</sup> - August 2<sup>nd</sup> – Northern Rockies Folk Festival \*\*\*\*\*  
September – Rotarun Fun Run Concert \*\*\*\*\*

**McKercher Park**

Jan. 17<sup>th</sup>, 18<sup>th</sup> – BCRD Pond Hockey Classic  
July 3<sup>rd</sup> – 5<sup>th</sup> – Hailey's Antique Market  
August 8<sup>th</sup> – Kiwanis Car Show  
Sept. 4<sup>th</sup> – 6<sup>th</sup> – Hailey's Antique Market  
October 10<sup>th</sup> – Trailing of the Sheep \*\*\*\*\*

**Heagle Park**

May 16<sup>th</sup> – Girls On The Run 5K & Healthy Living Expo.

**Lions Park**

June 29<sup>th</sup> - Rock N Ride \*\*\*\*\*  
September 20<sup>th</sup> – The Big Wood 12K

**Bullion Square Parking Lot/Main St.**

July 4<sup>th</sup> – Fourth of July Events & Parade \*\*\*\*\*  
May - Cinco de Mayo Fiesta \*\*\*\*\*  
Summer Months - Notes Music Store/Music & Me \*\*\*\*\*

**Wicked Spud**

June – Sept. - Back Alley Parties \*\*\*\*\*  
August – Camp Rainbow Gold Fundraiser/Biker Escort \*\*\*\*\*

**Community Campus**

May 23<sup>rd</sup> & 24<sup>th</sup> - Spring Fest Craft Fair \*\*\*\*\*

**Ellsworth Estate**

May 30<sup>th</sup> - Crisis Hotline Wine Tasting  
August – Citizens for Smart Growth Silent Auction

**The Armory**

July - 2 Day Tool Sale  
October – Hailey Ski Team Swap

**WRMS & Northridge Neighborhood**

July – Animal Shelter Mutt Strut

**Main Street Hailey**

July 15 - Music in the Streets \*\*\*\*\*

October - Hailey Halloween Hoopla

Sept - WRHS Homecoming Parade

**On 1<sup>st</sup> Ave between Bullion & Carbonate**

June 12<sup>th</sup> - SVMA Celebrate Summer in South Valley \*\*\*\*\*

**314 2<sup>nd</sup> Ave S**

June 19<sup>th</sup> - Sun Valley Center for the Arts Fandango \*\*\*\*\*

**Lot between Sturtevant's and Bank of America**

June 1<sup>st</sup> - Oct. 10<sup>th</sup> - Farmers & Artists Market

**Lot by McDonalds**

July 3<sup>rd</sup> - 5<sup>th</sup> - Hailey's Main Street Antique Show

Sept. 4<sup>th</sup> - 6<sup>th</sup> - Hailey's Main Street Antique Show

**208 N. River St**

Holy Tomato Plant Sale - May 30<sup>th</sup> & 31<sup>st</sup>

**City of Hailey Schools & Residential Streets**

February 4<sup>th</sup> - Special Olympic Torch Run

**Sweetwater Grange Park & City Streets in N. Woodside Neighborhood**

June - Community Appreciation Day

**BC Aquatic Center/Deerfield Neighborhood to WRMS**

November - Hailey Turkey Trot Fun Run & Walk

