



## AGENDA

City of Lucas  
**City Council Regular Meeting**  
**January 7, 2016**  
**7:00 PM**  
City Hall – Council Chambers  
665 Country Club Road – Lucas, Texas

Notice is hereby given that a City of Lucas Regular City Council Meeting will be held on Thursday, January 7, 2016 at 7:00 pm at Lucas City Hall, 665 Country Club Road, Lucas, Texas, 75002-7651 at which time the following agenda will be discussed. As authorized by Section 551.071 of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

### Call to Order

- Roll Call
- Determination of Quorum
- Reminder to turn off or silence cell phones
- Pledge of Allegiance

### Citizen Input

The Citizens' Input portion of the agenda is an opportunity for the public to address the City Council on any subject. By completing a "Request to Speak" form and submitting it to the City Secretary, citizens have an opportunity to speak at the City Council meeting. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions but may refer items to City Staff for research and possible inclusion on a future agenda.

1. Citizen Input (**Mayor Jim Olk**)

### Community Interest

Pursuant to Section 551.0415 of the Texas Government Code, the City Council may report on the following items 1) expression of thanks, congratulations or condolences; 2) information about holiday schedules; 3) recognition of individuals; 4) reminders about upcoming City Council events; 5) information about community events; and 6) announcements involving imminent threat to public health and safety.

2. Community Interest (**Mayor Jim Olk**)

### Consent Agenda

All items listed under the consent agenda are considered routine and are recommend to the City Council for a single vote approval. If discussion is desired, an item may be removed from the consent agenda for a separate vote.

3. Consider approval of the minutes of the December 3, 2015 City Council meeting. (**City Secretary Stacy Henderson**)

4. Consider adopting Ordinance 2016-01-00826 amending Chapter 1 of the Code of Ordinances as it relates to Qualifications of Members requiring citizens appointed to all boards and commissions to have resided in the City for twelve continuous months; repealing the provision in Chapter 3 titled Building Regulations as it relates to the Board of Adjustment; and amending Chapter 14 titled Zoning as it relates to the Board of Adjustment. **(City Secretary Stacy Henderson)**

<b>Regular Agenda</b>
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5. Consider setting a date for a Town Hall meeting to discuss the Neighborhood Connector Street Project that includes improvements to Blondy Jhune Road, Winningkoff Road, Snider Lane Bridge/Floodplain Crossing and Stinson Road Bridge/Floodplain Crossing. **(Mayor Jim Olk)**
6. Discuss and consider a Development Agreement between the City of Lucas and Amtex Multi-Housing, LLC., for the purpose of road improvements to McGarity Lane starting at Angel Parkway going eastward to the northeast boundary of the proposed site plan attached to the Development Agreement. **(Development Services Director Joe Hilbourn)**
7. Consider approval of Resolution R-2016-01-00444 of the City Council of the City of Lucas, Texas approving an agreement with First National Bank of Omaha for the VOX Commercial VISA Credit Card. **(Finance Director Liz Exum)**
8. Consider adopting Ordinance 2016-01-00827 amending Chapter 10 of the Code of Ordinances titled "Subdivision" by amending definitions and the procedure for filing plats including amending plats to be consistent with Chapter 212 of the Local Government Code; amending the chapter to replace the planning and zoning manager with the Director of Development Services and providing for other non-substantive changes to division 2, titled Platting Procedure. **(Development Services Director Joe Hilbourn)**
9. Consider authorizing the City Manager to enter into a construction contract with McMahon Contracting recommended by the design consultant for the construction of the Blondy Jhune Road Bridge Replacement Project in the amount of \$2,460,237.50, plus a 20% contingency. **(Public Works Director/City Engineer Stanton Foerster)**
10. Consider the following items regarding the Texas Emergency Services Retirement System (TESRS) due to the inability of the City of Lucas to terminate its participation in the volunteer pension plan:
  - a. Receive recommendations from the Lucas Volunteer Firefighter Pension Board.
  - b. Appropriate funds from the unrestricted fund balance in the general fund in the amount of \$20,000 to finance the required payments to TESRS.
  - c. Authorize the City Manager to negotiate a revised contract with to TESRS to reduce the payment per qualified volunteer to \$36 per month which is the minimum contribution rate. **(Human Resources Manager Cheryl Meehan)**

### **Executive Session**

The City Council may convene in a closed Executive Session pursuant to Chapter 551.071 of the Texas Government Code.

11. Executive Session: An Executive Session is not scheduled for this meeting.
12. Adjournment.

### **Certification**

*I hereby certify that the above notice was posted in accordance with the Texas Open Meetings Act on the bulletin board at Lucas City Hall, 665 Country Club Road, Lucas, TX 75002 and on the City's website at [www.lucastexas.us](http://www.lucastexas.us) on or before 5:00 p.m. on December 23, 2015.*

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*Stacy Henderson, City Secretary*

*In compliance with the American with Disabilities Act, the City of Lucas will provide for reasonable accommodations for persons attending public meetings at City Hall. Requests for accommodations or interpretive services should be directed to Stacy Henderson at 972.912.1211 or by email at [shenderson@lucastexas.us](mailto:shenderson@lucastexas.us) at least 48 hours prior to the meeting.*



# City of Lucas City Council Agenda Request January 7, 2016

Item No. 01

**Requester:** Mayor Jim Olk

**Agenda Item:**

Citizen Input

**Background Information:**

NA

**Attachments/Supporting Documentation:**

NA

**Budget/Financial Impact:**

NA

**Recommendation:**

NA

**Motion:**

NA



# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** Mayor Jim Olk

**Agenda Item:**

Community Interest:

There are no Community Interest items scheduled for this meeting.

**Background Information:**

**Attachments/Supporting Documentation:**

NA

**Budget/Financial Impact:**

NA

**Recommendation:**

NA

**Motion:**

NA



# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** City Secretary Stacy Henderson

## **Agenda Item:**

### **Consent Agenda:**

3. Consider approval of the minutes of the December 3, 2015 City Council meeting.
4. Consider adopting Ordinance 2016-01-00826 amending Chapter 1 of the Code of Ordinances as it relates to Qualifications of Members requiring citizens appointed to all boards and commissions to have resided in the City for twelve continuous months; repealing the provision in Chapter 3 titled Building Regulations as it relates to the Board of Adjustment; and amending Chapter 14 titled Zoning as it relates to the Board of Adjustment.

## **Background Information:**

### **Agenda Item No. 4:**

In October, 2015 the City Council adopted amendments to Chapter 1 of the Code of Ordinances. At that time, it was requested that Chapter 1 be brought back to the City Council amending the residency requirements for all boards and commissions to one year.

Additional amendments have been added that include moving member requirements for all boards and commissions to Chapter 1 rather than placed throughout the Code; and thereby repealing Chapter 3 titled Building Regulations, and amendments to Chapter 14 that include updating duties and obligations of the Board of Adjustment to be in compliance with the Local Government Code.

## **Attachments/Supporting Documentation:**

1. Minutes of the December 3, 2015 City Council meeting.
2. Ordinance 2016-01-00826 – Chapter 1, 3 and 14 amendments

## **Budget/Financial Impact:**

NA

## **Recommendation:**

City Staff recommends approval of the Consent Agenda.

## **Motion:**

I make a motion to approve/deny the Consent Agenda as presented.



**City of Lucas  
City Council Meeting  
December 3, 2015  
7:00 PM**

**City Hall - 665 Country Club Road – Lucas Texas**

**Minutes**

**Call to Order**

Mayor Olk called the meeting to order at 7:00 p.m.

**Council Members Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Debbie Fisher  
Councilmember Steve Duke  
Councilmember Tim Baney  
Councilmember Wayne Millsap  
Councilmember Philip Lawrence

**Staff Present:**

City Manager Joni Clarke  
Development Services Director Joe Hilbourn  
Public Works Director/City Engineer Stanton Foerster  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida

Mayor Olk determined that a quorum was present. Everyone was reminded to turn off or silence their cell phones and the City Council recited the Pledge of Allegiance.

**Citizen Input**

**1. Citizen Input**

There was no citizen participation.

**Community Interest**

**2. Community Interest Items.**

Mayor Olk reminded everyone of the Country Christmas tree lighting event scheduled for Friday, December 4 at 7:00 pm.

Trevor Joyner, with Boy Scout Troop 76 was in attendance working towards his Communication Badge.

**Consent Agenda**

**3. Consider approval of the minutes of the November 19, 2015 City Council meeting.**

4. **Consider approving Resolution 2015-12-00442 declaring the month of December as Lucas History Month.**
5. **Consider approving Resolution 2015-12-00443 designating the Allen American as the official newspaper of the City of Lucas for 2015-2016 beginning December 15, 2015 through December 31, 2016.**

Councilmember Fisher asked that Agenda Items 4 and 5 be removed from the Consent Agenda.

***MOTION:** A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Duke to approve Agenda Item No. 3 on the Consent Agenda. The motion passed unanimously by a 7 to 0 vote.*

<b>Regular Agenda</b>
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4. **Consider approving Resolution 2015-12-00442 declaring the month of December as Lucas History Month.**

Mayor Olk read Resolution 2015-12-00442 into the record declaring December as Lucas History Month and thanked Councilmember Fisher for her time and dedication in creating such a detailed outline of Lucas history.

***MOTION:** A motion was made by Councilmember Fisher, seconded by Mayor Pro Tem Peele, to approve Resolution 2015-12-00442 declaring the month of December as Lucas History Month. The motion passed unanimously by a 7 to 0 vote.*

5. **Consider approving Resolution 2015-12-00443 designating the Allen American as the official newspaper of the City of Lucas for 2015-2016 beginning December 15, 2015 through December 31, 2016.**

Councilmember Fisher asked if the newspaper meets the Local Government Code requirements to become the City's official paper.

City Secretary Stacy Henderson stated that she had verified with the Allen American that they meet the requirements set forth in the Local Government Code.

***MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Lawrence to approve Resolution 2015-12-00443 designating the Allen American as the official newspaper of the City of Lucas for 2015-2016 beginning December 15, 2015 through December 31, 2016.*

6. **Consider the request by Dahlia Arr, LLC for site plan approval of a self-storage facility located at 731 Angel Parkway, otherwise known as the SC Lucas plat, Lot 1, Block A, being a 4.104 acre parcel of land.**



Development Services Director Joe Hilbourn gave a brief presentation.

**MOTION:** *A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Millsap to approve the site plan for a self-storage facility located at 731 Angel Parkway. The motion passed by a 6 to 1 vote with Councilmember Lawrence voting in opposition.*

**7. Discuss and consider the charitable purpose of the Friends of the Lucas Volunteer Fire Department; structure of an appointments to the board of directors; amendments of the Articles of Incorporation and Bylaws; and current financial conditions and financial reporting requirements.**

Councilmember Millsap discussed the organizational status of the Friends of the Lucas Volunteer Fire Department and their source of donations. He stated that the initial board of directors appointed was the City Manager, Fire Chief and the third member appointed was the Mayor at that time. Councilmember Millsap stated that the organization needed to be a separate component from the City and discussed the requirements of 501C3 organizations.

Mayor Pro Tem Peele suggested that the Friends of the Lucas Volunteer Fire Department Board meet to appoint new board members led by citizen volunteers, but that the board maintain City Council representation.

Councilmember Fisher suggested involving members of Community Emergency Response Team of the Lucas Fire Rescue Department.

**MOTION:** *A motion was made by Mayor Olk, seconded by Councilmember Duke to appoint Councilmember Millsap as the third member of the Friends of the Lucas Volunteer Fire Department. The motion passed unanimously by a 7 to 0 vote.*

**8. Discuss and provide direction to the City Manager regarding the following associated with the Blondy Jhune Bridge Projects: 1) look and feel of the bridge elements, 2) tree removal, and 3) project schedule.**

Charlie Weibler, 250 E. Blondy Jhune Road, asked if design elements would be incorporated into the retaining wall such as stone or landscaping to reduce the visual impact of the wall and if the guard rails would be removed.

Public Works Director Stanton Foerster gave a presentation discussing guardrail design elements and the various options available for pedestrian walkways. Mr. Foerster discussed concrete treatments that could be applied to lessen the visual impact and the costs associated with those treatment options. Mr. Foerster discussed the gabion wall underneath the bridge and how patterns could be designed to match the gabion wall.

The City Council discussed maintenance issues with certain design elements.

The City Council agreed that they would like the same design elements on both bridges located on Blondy Jhune and that they would like to have a texture element on the bridge walls. The Council was in agreement to let the neighborhood decide what type of texture design to incorporate.

Mr. Foerster discussed tree removal associated with the reconstruction of the Blondy Jhune bridges and pedestrian trail. He stated that approximately 25 trees would require to be removed as part of construction of the pedestrian trail and in order to avoid one older pecan tree that would could cost an additional \$50,000 to preserve. Mr. Foerster outlined specifics that would take place during construction in order to preserve the tree.

The City Council discussed safety concerns associated with not having a pedestrian walkway and were in agreement that the walkway was needed and the 25 trees would need to be removed.

Mayor Pro Tem Peele suggested that the City could use the trees that will be provided by M. Christopher Custom Homes, as part of their development agreement for Lucas Corners. The additional trees could be planted where needed along Blondy Jhune to replenish the ones that had to be removed during construction.

The City Council agreed that they would like the 25 trees that will be removed during construction to be recycled in some way and reused.

This was a discussion item only, no formal action was taken.

**Executive Session**

The City Council may convene in a closed Executive Session pursuant to Chapter 551.071 of the Texas Government Code.

**9. Executive Session: An Executive Session was not scheduled for this meeting.**

There was no Executive Session for this meeting.

**10. Adjournment.**

**MOTION:** *A motion was made by Councilmember Millsap, seconded by Councilmember Lawrence to adjourn the meeting at 8:28pm. The motion passed unanimously by a 7-0 vote.*

APPROVED:

ATTEST:

\_\_\_\_\_  
Jim Olk, Mayor

\_\_\_\_\_  
Stacy Henderson, City Secretary



**ORDINANCE 2016-01-00826**  
**[AMENDING CODE OF ORDINANCE CHAPTER 1,**  
**CHAPTER 3 AND CHAPTER 14]**

**AN ORDINANCE OF THE CITY OF LUCAS, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 1 TITLED “GENERAL PROVISIONS” BY AMENDING ARTICLE 1.01 TITLED “CODE OF ORDINANCES” BY AMENDING SECTION 1.05 TITLED “BOARDS, COMMISSIONS AND COMMITTEES” BY AMENDING DIVISION 1 TITLED “GENERALLY” BY AMENDING SECTION 1.05.001 TITLED “QUALIFICATIONS OF MEMBERS” TO REQUIRE CITIZENS APPOINTED TO A BOARD OR COMMISSION TO HAVE RESIDED IN THE CITY FOR TWELVE (12) CONTINUOUS MONTHS PRIOR TO THE DATE OF APPOINTMENT; BY AMENDING CHAPTER 3 TITLED “BUILDING REGULATIONS” BY REPEALING ARTICLE 3.02 TITLED “BOARD OF ADJUSTMENTS” IN ITS ENTIRETY; BY AMENDING CHAPTER 14 TITLED “ZONING” BY AMENDING DIVISION 2 TITLED “BOARD OF ADJUSTMENTS” TO FORTH REGULATIONS FOR THE BOARD OF ADJUSTMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE AND PROVIDING FOR AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED THAT THE CITY COUNCIL OF THE CITY OF LUCAS:**

**Section 1.** That the Code of Ordinances of the City of Lucas, Texas be, and the same is, hereby amended by amending Chapter 1 titled “General Provisions” by amending Article 1.01 titled “Code of Ordinances” by amending Article 1.05 titled “Boards, Commissions and Committees” by amending Section 1.05.001 titled “Qualifications of Members”, to read as follows:

**“CHAPTER 1**

**GENERAL PROVISIONS**

**ARTICLE 1.01 CODE OF ORDINANCES**

...

**ARTICLE 1.05 BOARDS, COMMISSIONS AND COMMITTEES**

**Division 1. Generally**

**Sec. 1.05.001            Qualifications of members**

A person is eligible for appointment to a board or commission of the city if the person:

- (1) Has been a citizen of the city for twelve (12) continuous months prior to the date of appointment;
- (2) Has obtained the age of eighteen (18) years prior to the date of appointment;
- (3) Has never been convicted of and is not currently charged with a felony or a crime involving moral turpitude;
- (4) Is not delinquent on any ad valorem tax due the city; and
- (5) Qualified voter of the City.

...”

**Section 2.** That the Code of Ordinances of the City of Lucas, Texas be, and the same is, hereby amended by amending Chapter 3 titled “Building Regulations” by repealing in its entirety Article 3.02 titled “Board of Adjustments” and reserving Article 3.02 for future use.

**Section 3** That the Code of Ordinances of the City of Lucas, Texas be, and the same is, hereby amended by amending Chapter 14 titled “Zoning” by amending Division 2 titled “Board of Adjustments”, to read as follows:

**“Division 2. Board of Adjustments**

**Sec. 14.02.031            Members and Terms of Office**

(a) There is hereby created a board of adjustments consisting of five (5) regular members and (2) alternate members who shall be appointed by the city council. The members shall serve for a period of two (2) years and until their successors are duly appointed and qualified. Members may be removed for cause by the city council upon written charges and after public hearing. A vacancy for the unexpired term of any member will be filled in the same manner as the original appointment was made.

(b) The members of the Board of Adjustments shall meet the requirements of Section 1.05.001 of this code.

**Sec. 14.02.032            Meetings**

The board of adjustments will have the authority to adopt rules consistent with state law. Meetings of the board of adjustments shall be held at the call of the chairman and at such other times as the board of adjustments may determine. The chairman or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustments shall be open to the public. The board of adjustments shall keep minutes of

its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of adjustments and shall be a public record.

**Sec. 14.02.033            Quorum and voting**

Cases must be heard by a minimum of seventy-five percent (75%) of the members of a board panel. The concurring vote of 75% of the members of a panel is necessary to:

- (1) Reverse an order, requirement, decision, or determination of an administrative official involving the interpretation or enforcement of the zoning ordinance;
- (2) Decide in favor of an applicant on a matter on which the board is required to pass under state law, the city charter, or city ordinance; or
- (3) Authorize a variation from the terms of the zoning ordinance. For purposes of this section, administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue.

**Sec. 14.02.034            Powers and duties**

(a) The board of adjustments shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise the following powers and perform the following duties:

- (1) To hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or an ordinance adopted under this chapter;
- (2) To interpret the intent of the zoning district map when uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply;
- (3) To hear and decide special exceptions that are expressly provided for in this chapter;
- (4) To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single-family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:
  - (A) The variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done;

- (B) The variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
  - (C) The variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this section to other parcels of land with the same zoning.
- (5) Hear and decide special exceptions to the requirements when necessary or appropriate to:
- (A) Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with any master plan and present no conflict or nuisance to adjacent properties.
  - (B) Permit a public utility or public service structure or building in any district with a ground area or of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
  - (C) Grant a permit for the extension of a height or area regulation into an adjoining district which divides a lot into a single ownership on the effective date of this chapter.
  - (D) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than fifty percent (50%) of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
  - (E) Waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision or parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
  - (F) Determine, in cases of uncertainty, the classification of any use not specifically named in this chapter.

(b) In exercising its authority, the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal

is taken and make the correct order, requirement, decision, or determination, and for that purpose has the same authority as the administrative official.

### **Sec. 14.02.35 Appeals**

(a) Procedure. A decision made by an administrative official of the city may be appealed to the board of adjustment by a person aggrieved by the decision or by any officer, department, board or bureau of the city affected by the decision. Such appeal shall be made by filing a notice of appeal with the office of the board and with official from whom the appeal is taken specifying the grounds thereof. The office, official or department from which the appeal is taken shall forthwith transmit to the board of adjustment all of the papers constituting the records upon which the action appealed from was taken. The appeal must be filed within twenty (20) days after the date of the decision of the administrative official from which the appeal is taken.

(b) Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In such case, the proceedings may be [stayed] only by a restraining order granted by the board or by a court of record on application, after notice to the official, if due cause is shown.

(c) Notice of hearing on appeal. The board shall set a reasonable time for the hearing on the appeal or other matter referred to it, and shall mail notices of such hearing to the petitioner and to the owners of property lying within two hundred feet (200') or less of street frontage of any point of the lot or portion thereof on which a variation is desired. The city shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall hear and decide the appeal within a reasonable time. Notice of such hearings may be sent by the board in writing, properly addressed to the last known addresses of the proper parties, and such notices shall be deemed complete when deposited in the mail.

### **Sec. 14.02.036 Decisions**

(a) Every decision of the board shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. The decision shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the building official, and shall be open to the public for inspection. A true and correct copy of the decision shall be sent by mail or otherwise to the appellant and a copy shall be publicly posted in the office of the building official for two (2) weeks after the filing thereof.

(b) The board shall in every case reach a decision without unreasonable or unnecessary delay.

(c) If a decision of the board reverses or modifies a refusal, order, or disallowance of the building official, or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision.

(d) Any person, firm, or corporation aggrieved by any decision of the board may present to a court of competent jurisdiction a petition duly verified setting forth that such decision is illegal,

in whole or in part, specifying the grounds of the illegality. Unless such verified petition (appeal) shall be presented to the court within ten (10) days of the date that the decision of the board is filed with the city secretary, the decision of the board shall become final.”

**Section 2.** All ordinances of the City of Lucas in conflict with the provisions of this Ordinance shall be, and same are hereby, repealed, and provided, however, that all other provisions of said Ordinances that are not in conflict herewith shall remain in full force and effect.

**Section 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or of the City of Lucas Code of Ordinances, as amended hereby, be adjudged or held to be voided or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinances or the City of Lucas Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**Section 4.** An offense committed before the effective date of the Ordinance is governed by prior law and the provisions of the City of Lucas Code of Ordinances in effect when the offense was committed and the former law is continued in effect for this purpose.

**Section 5.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Lucas, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS 7<sup>TH</sup> DAY OF JANUARY, 2016.**

APPROVED:

\_\_\_\_\_  
Jim Olk, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney  
(12-16-15/74721)

\_\_\_\_\_  
Stacy Henderson, City Secretary





# City of Lucas

## City Council Agenda Request

### January 7, 2016

**Requester:** Mayor Jim Olk

#### **Agenda Item:**

Consider setting a date for a Town Hall meeting to discuss the Neighborhood Connector Street Project that includes improvements to Blondy Jhune Road, Winningkoff Road, Snider Lane Bridge/Floodplain Crossing and Stinson Road Bridge/Floodplain Crossing.

#### **Background Information:**

At the workshop held on Thursday, December 17 the City Council directed staff to place an item on the agenda for January 7 to allow City Council to select a date for a Town Hall Meeting. The purpose of the Town Hall Meeting is to share information regarding improvements to:

**BLONDY JHUNE ROAD** – Engineering Consultant Metropolitan Infrastructure is working on the design and is planning to have an engineer’s estimate of cost ready for this project in January 2016.

**WINNINGKOFF ROAD** – Engineering Consultant Birkhoff is reviewing some of the boring and traffic data. The engineer’s estimate should be ready in January 2016.

**SNIDER LANE BRIDGE/FLOODPLAIN CROSSING** – Engineering Consultant KCI is preparing a phase one proposal for the schematic (5%) designs of the Snider Lane bridge and the roadway between Shady Lane and east of Natha Court. The bridge is on land owned by the United States and controlled by the Army Corp of Engineers. The bridge and adjacent roadway will need to be raised 12 to 16 feet to clear the floodplain.

**STINSON ROAD BRIDGE/FLOODPLAIN CROSSING** – Engineering Consultant BW2 did some preliminary work on this project in 2012 and is preparing a proposal to complete the schematic (5%) design of the Stinson Road bridge and approximately 1,500 feet of Stinson Road. They have already done most of the preliminary work for this bridge in 2012. During work done in 2012, BW2 anticipated the need to raise the bridge and roadway eight feet to clear the floodplain. Staff met with BW2 and discussed the importance of including the trail elements in the preliminary design. For estimating purposes, the bridge is 40 feet wide and 100 feet long. The roadway is 24 feet wide and made of concrete. Right-of-way needs and impacts to trees near the bridge and within the creek channel are still being assessed.

The purpose of obtaining the schematic designs and costs for the above projects is to determine how to fund these projects and how to sequence the construction. Staff’s goal is to have the best set of numbers and estimates possible for the Town Hall Meeting



# City of Lucas

## City Council Agenda Request

### January 7, 2016

Requester: Mayor Jim Olk

#### **Attachments/Supporting Documentation:**

NA

#### **Budget/Financial Impact:**

Cost estimates are to be provided by the consulting engineers in January 2016 and will be reviewed by the City engineer. The engineers' cost estimates will be presented to the City Council at the Town Hall Meeting.

#### **Recommendation:**

Staff will need direction on what items to include in the upcoming 2016 election. As part of the election process, the last day to call an election for May 2016 will be February 19, 2016.

City Council meetings in February are scheduled for February 4<sup>th</sup> and 18<sup>th</sup>. Staff will be bringing forward an ordinance to call a General and Special election at the February 18, 2016 meeting.

#### **Motion:**

NA



**City of Lucas  
City Council Agenda Request  
January 7, 2016**

**Requester:** Development Services Director Joe Hilbourn

**Agenda Item:**

Discuss and consider a Development Agreement between the City of Lucas and Amtex Multi-Housing, LLC., for the purpose of road improvements to McGarity Lane starting at Angel Parkway going eastward to the northeast boundary of the proposed site plan attached to the Development Agreement.

**Background Information:**

Amtex Multi-Housing, LLC., will be giving a short presentation outlining their company and their proposed development.

Staff has met with this developer on several occasions. They are proposing a retirement community with 120 units that will be two stories in height. The exterior will consist of a mix of stone and siding.

**Attachments/Supporting Documentation:**

1. Proposed Development Agreement with exhibits including proposed site plan.

**Budget/Financial Impact:**

NA

**Recommendation:**

Approve as presented.

**Motion:**

I make a motion to approve/deny a Development Agreement between the City of Lucas and Amtex Multi-Housing, LLC., for the purpose of road improvements to McGarity Lane starting at Angel Parkway going eastward to the northeast boundary of the proposed site plan attached to the Development Agreement.

STATE OF TEXAS           §  
  §       **DEVELOPMENT AGREEMENT**  
COUNTY OF COLLIN       §

THIS **DEVELOPMENT AGREEMENT** (herein so called) is executed this \_\_\_\_\_ day of January 2016, by and between the CITY OF LUCAS, TEXAS, a municipal corporation existing under the laws of the State of Texas (the "City"), and AMTEX Multi-Housing, LLC, duly qualified to transact business in the State of Texas (the "**Owner/Developer**") (the City and the Owner/Developer, sometimes the "**Parties**").

**RECITALS:**

**WHEREAS**, AMTEX Multi-Housing, Inc. is the owner of the Property, which is located in Lucas, Texas, and which Owner desires to develop the Property in accordance with the Development Regulations and other applicable City ordinances, including the construction of Public Improvement; and

**WHEREAS**, Owner intends to develop the Property and to design and construct certain Roadway Improvements, on and for the benefit of the Property; and

**WHEREAS**, in association with the construction of the Development, the Parties find it to be in their mutual benefit and interest that Owner construct or cause to be constructed Roadway Facilities that consist of following: McGarity Lane east from the intersection of Angel parkway and McGarity road 962 feet.

**WHEREAS**, Texas Local Government Code §212.071, as amended, authorizes municipalities to participate in the Owner’s costs of construction of public improvements related to the development of subdivisions within the municipality without compliance with Chapter 252 of the Texas Local Government Code, as amended;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows

**Article I**  
**Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them in this Article I unless the context clearly indicates a different meaning:

“City” shall mean City of Lucas, Texas.

“City Engineer” shall mean City of Lucas City Engineer, or designee.

“Commencement of Construction” shall mean that: (i) the Construction Documents have

been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Roadway Facilities; (ii) all necessary permits for the construction of the Roadway Facility pursuant to the Construction Documents therefore have been issued by all applicable governmental authorities; and (iii) grading of the Roadway Facilities has commenced.

“Completion of Construction” shall mean: (i) the Roadway Facilities have been substantially completed in accordance with the Construction Documents; and (ii) the respective Roadway Facilities have been accepted by City.

“Construction Documents” shall mean the plans and specifications submitted for the design, installation and construction of the Roadway Facilities, as approved by City Engineer.

“Owner” shall mean AMTEX Multi-Housing, LLC and any subsequent owner of any portion of the Property.

“Effective Date” shall mean the last date of execution of this Agreement.

“Force Majeure” shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, adverse market conditions, governmental approvals, laws, regulations, or restrictions, or other cause beyond the control of the Party.

“Property” shall mean the real property described and depicted in Exhibits “A-1” and “A-2” attached hereto.

“Roadway Facilities” shall mean the design and construction of the road base and resurface (asphalt) of McGarity Lane for approximately 962 feet eastward from the intersection of Angel Parkway and McGarity. The base shall be twenty four (24) feet wide and a sub-grade consisting of five percent (5%) cement stabilized base. The pavement shall be a minimum of three (3) inches thick and twenty four (24) feet wide of Type D asphalt concrete pavement (ACP) in accordance with the current City of Lucas Standard Construction Details and as depicted in Exhibit “C” in accordance with the Construction Documents.

## **Article II Term; Termination**

The term of this Agreement shall commence on the Effective Date and shall continue until the Parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

## **Article III Roadway Facilities**

3.1 Roadway Facilities. At the time building permits have been issued for the construction of residential homes on 75% of the lots shown on the conceptual plan attached hereto as Exhibit “B”, the Owner/Developer shall cause the Commencement of Construction of

the Roadway Facilities. Owner shall cause the Completion of Construction to occur with 180 days after the Commencement of Construction. Subject to events of Force Majeure, Owner agrees to design and construct the Roadway Facilities in accordance with the applicable standards, ordinances, and regulations adopted by the City (“City of Lucas Standard Construction Details”). Owner shall submit plans for the design and construction of the Roadway Facilities (“Construction Plans”) to the City Engineer for review and approval. Subject to extensions for delay or caused by events of Force Majeure and to the City’s approval of the Approved Plans, Owner agrees, at Owner’s sole cost, to construct or cause the construction of the Roadway Facility. Upon Completion of Construction Owner shall provide City with construction pay applications and maintenance bonds and such other records as City may reasonably request to document the actual costs of the design and construction of the Roadway Facilities.

3.2 City’s Participation. The City will collect impact fees in connection with the issuance of building permits for improvements on the lots shown on the conceptual plan attached hereto as Exhibit “B” and reimburse the Owner/Owner for the construction costs of Roadway Facility after the Completion of Construction and the City verification of such costs. City agrees to pay Owner in an amount not to exceed the amount collected in impact fees (the “City’s Cost Participation”). Owner shall be responsible for any costs that exceed the City’s Participation Amount.

#### **Article IV General**

4.1 Early Plat Recording. Owner may record a final plat before the final public improvements are completed and accepted.

#### **Article V Termination**

This Agreement may be terminated by the mutual written agreement of the Parties. Either Party may terminate this Agreement if the other Party breaches any of the terms and conditions of this Agreement, and such breach is not cured by such Party within sixty (60) days after receipt of notice thereof.

#### **Article VI Miscellaneous**

6.1 Release. Upon the full and final satisfaction by City and Owner of their respective obligations contained herein, City and Owner shall execute and record, in the Deed Records of Collin County, a release of City and Owner from their obligations set forth herein.

6.2 Books and Records. Owner and City agree to make their respective books and records relating to the construction of the Project available for inspection by the other Party, until acceptance of the Project by City.

6.3 Indemnification/Hold Harmless. **OWNER DOES HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY REPRESENTATIVES (COLLECTIVELY REFERRED TO AS “CITY”) FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES AND ATTORNEY’S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM OWNER’S PERFORMANCE OF THIS AGREEMENT. THE FOREGOING RELEASE AND INDEMNITY SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

6.4 Project Plans. Except as otherwise provided herein, prior to Commencement of Construction, Owner shall submit all Construction Documents for all Roadway Facilities to City Engineer for review and approval.

6.5 Compliance with Laws. Except as otherwise provided herein, Owner shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Agreement and the work to be done hereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

6.6 Successors and Assigns. All obligations and covenants of Owner under this Agreement shall be binding on Owner, its successors and permitted assigns. Owner may not assign this Agreement without the prior written consent of City, which shall not be unreasonably withheld.

6.7 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto.

6.8 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.9 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.10 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days after it is sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for Owner, to:

AMTEX Multi-Housing,  
LLC Attn: Arjun Nagarkatti  
30141 Agoura Road, Suite 100  
Agoura Hills, California 91301

If intended for City, to:

City of Lucas  
Attn: Joni Clarke, City Manager  
665 Country Club Road  
Lucas, Texas 75002

With a copy to:

Joseph J. Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

6.11 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written, previous and contemporary, agreements between the Parties and relating to the matters in this Agreement.

6.12 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.13 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.14 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.15 Recitals. The recitals to this Agreement are incorporated herein and are found to be true and correct.

6.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.17 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.18 Survival of Covenants. The representations, warranties, covenants, and



obligations of Owner set forth in this Agreement shall survive termination.

6.19 Recordation of Agreement. An original of this Agreement shall be recorded in the Deed Records of Dallas County, Texas.

6.20 Covenants Run With Property. The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on Owner and each and every subsequent owner of all or any portion of the Property but only during the term of such Party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of Owner which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property.

6.21 Effective Date. The effective date of this Development Agreement shall be the date on which this Development Agreement is approved by the City Council of the City.

*(signature page to follow)*

EXECUTED as of the date first above written.

**CITY:**

**CITY OF LUCAS, TEXAS**

**OWNER:**

**AMTEX Multi-Housing, LLC**  
A Texas limited liability corporation

By \_\_\_\_\_  
Jim Olk, Mayor

By \_\_\_\_\_  
Arjun Nagarkatti, President

Approved as to Form:

By \_\_\_\_\_  
Joseph J. Gorfida, Jr, City Attorney

THE STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN           §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2016, by Jim Olk, Mayor of City of Lucas, Texas, a municipal corporation on behalf of such municipal corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

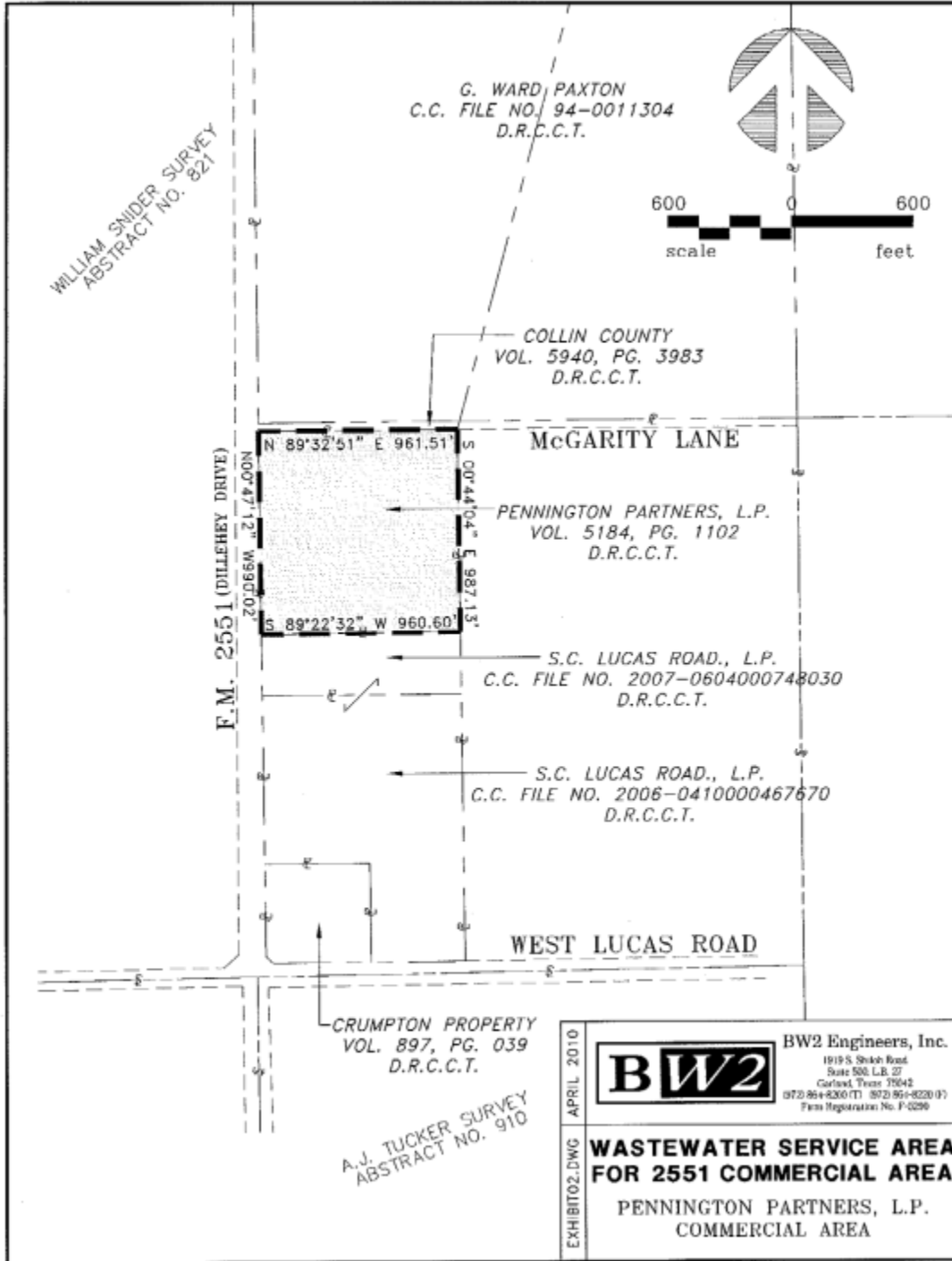
THE STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN           §

This instrument was acknowledged before me on the \_\_\_\_ day of January 2016, by Arjun Nagarkatti, President of AMTEX Multi-Housing, Inc. a Texas Limited Liability Corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

roberts,james\ford'sranch\developmentag-v3.doc

**EXHIBIT "A-1"**  
**Legal Description**



**EXHIBIT "A-2"**  
**Legal Description**

Being all a tract of land located in the W. M. Snider Survey, Abstract 832, Collin County, Texas, and being the same land described in deed to Mrs. William Henry Pennington, dated January 7, 1941, recorded in Volume 329, Page 281, Deed Records, Collin County, Texas, and being more particularly described as follows:

**BEGINNING** at a 1/2 - inch diameter iron rod set in the East line of F. M. EDghway 2551, said point being the Northwest corner of a called 6.476 acre tract of land described in deed to Dorothy F.

Haley, recorded in Volume 897, Page 36 Deed Records, Collin County, Texas, said point also called to be North 00 deg. 24 min. 15 sec. West, a distance of 1,633.50 feet and North 89 deg. 44 min. 46 sec. East, a distance of 45.00 feet from the Southwest corner of said W. M. Snider Survey;

THENCE North 00 deg. 24 min. 16 sec. West, (basis of bearing derived from the plat of North Bethany Lake Estates, Phase Two, Cabinet L, slide 959, Map Records, Collin County, Texas), along

said East line, a distance of 990.00 feet to a 1/2/-inch diameter iron rod set at the intersection of said

East line with the South line of County Road 224;

THENCE North 89 deg. 44 min. 30 sec. East, along said South line, a distance of 957.82 feet to a Va-inch diameter iron rod set at the Northwest corner of a called 14.344 acre tract of land describe

din deed to Elaine M. Dawson, recorded in County Clerk's File No. 96-009333, Deed Records, Collin County, Texas;

THENCE South 00 deg. 18 min. 45 sec. East, along the West line of said 14.344 acre tract, a distance of 990.03 feet to a Va-inch diameter iron rod set at the Northeast corner of aforementioned

6.476 acre tract;

THENCE South 89 deg. 44 min. 46 sec. West, a distance of 956.23 feet to the Place of Beginning

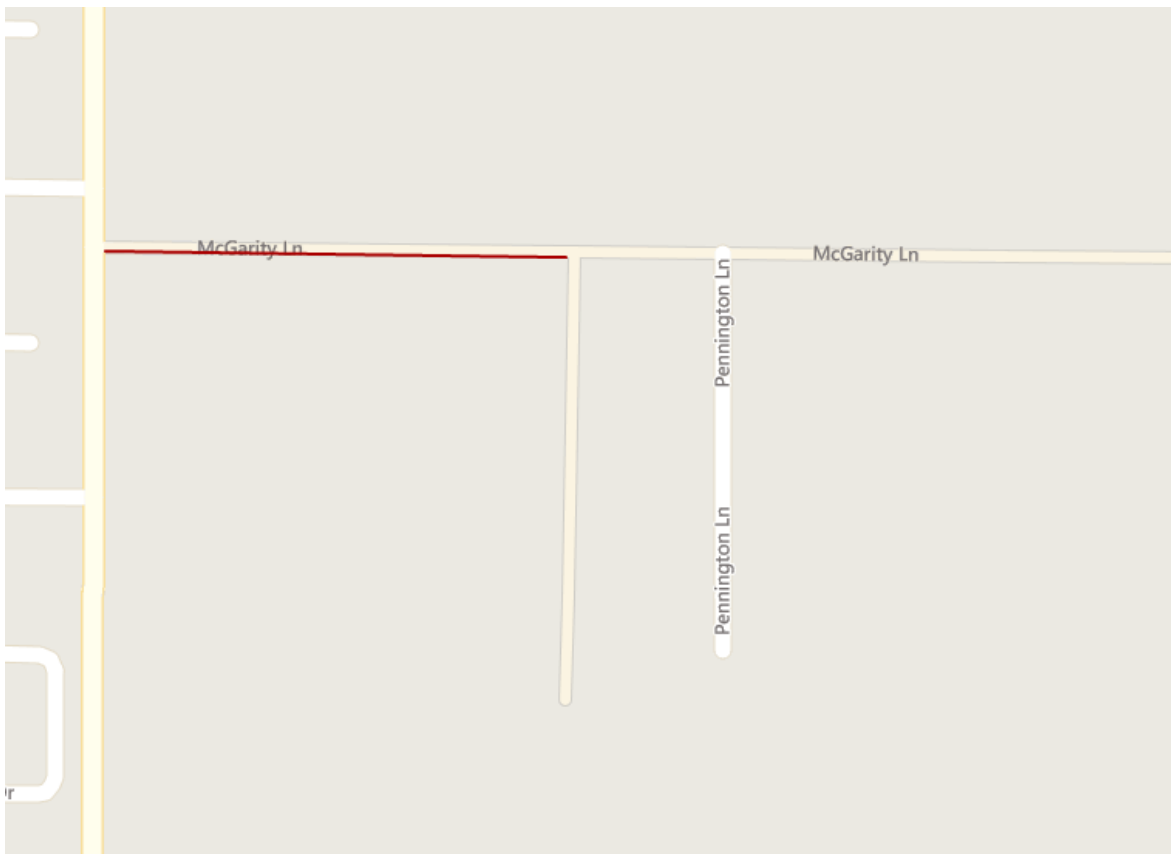
and containing 21.751 acres of land.

**EXHIBIT "B"**  
**Conceptual Plan**



**EXHIBIT “C”**  
**Standard Construction Details**

“Roadway Facilities” shall mean the design and construction of the road base and resurface (asphalt) of McGarity Lane for approximately 962 feet eastward from the intersection of Angel Parkway and McGarity. The base shall be twenty four (24) feet wide and a sub-grade consisting of five percent (5%) cement stabilized base. The pavement shall be a minimum of three (3) inches thick and twenty four (24) feet wide of Type D asphalt concrete pavement (ACP) in accordance with the current City of Lucas Standard Construction Details and as depicted in Exhibit “C” in accordance with the Construction Documents.





# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** Finance Director – Liz Exum

## **Agenda Item:**

Consider approval of Resolution R-2016-01-00444 of the City Council of the City of Lucas, Texas approving an agreement with First National Bank of Omaha for the VOX Commercial VISA Credit Card.

## **Background Information:**

The City currently has two separate VISA accounts with The Independent Bankers Bank (TIB). One for city hall staff and one for Fire Department personnel. Staff would like to have one consolidated account with flexibility, added security, and enhanced reporting capabilities. Benefits of the VOX card include: no annual fee, cash rewards, EMV chip card technology, and online card management.

## **Attachments/Supporting Documentation:**

1. Vox Commercial Visa Card Proposal.
2. Vox Business Card Application and Agreement.
3. Resolution R-2016-01-00444 Vox Commercial Credit Card Agreement.

## **Budget/Financial Impact:**

NA

## **Recommendation:**

Approve as presented.

## **Motion:**

I make a motion to approve Resolution R-2016-01-00444 of the City Council of the City of Lucas, Texas approving an agreement with First National Bank of Omaha and authorize the City Manager to execute the agreement on behalf of the City of Lucas.

First Bankcard



**VOX Commercial Visa Card Proposal  
for  
City of Lucas**

*Presented*

*December 1, 2015*

*By*

**First Bankcard**

**First National Bank of Omaha Corporate Headquarters**  
1620 Dodge Street. Omaha, Nebraska 68197  
877.834.7283 phone | [www.firstnational.com](http://www.firstnational.com)



# First Bankcard

First Bankcard is a division of First National Bank of Omaha. With nearly \$20 billion in managed assets, First National Bank of Omaha has grown into the largest privately owned bank holding company in the United States. First Bankcard currently services over 100,000 small businesses and corporate credit card clients. We are completely committed to providing our customers with the best personal, technical and financial resources necessary for their success. We are a self-processor utilizing our own proprietary system.

First Bankcard has partnered with American National Bank of Texas to provide commercial card products to their customers. Below is an overview of the VOX Commercial card program.

## **Maximum Rewards® For Business Program**

Maximum Rewards® for Business is a points-based program which allows your cardholders or the company to earn points on every purchase. Maximum Rewards is provided at no additional cost. Transactions are awarded one point for each one dollar in qualifying card transactions posted to the cardholders account. Rewards can be applied to the individual card accounts or can be pooled to a corporate rewards account. Rewards include

- Statement credit applied to any account (up to 1% return)
- Airline, hotels and experiential travel
- Gift cards to retailers and restaurants
- Electronics and other merchandise for business and home
- Charitable donations

## **Online Card Management:**

First Bankcard provides both online as well as phone based support for managing the company and cardholder card accounts. Program Administrator(s) (PA) will manage card accounts by contacting our client services group or by accessing, real-time online card management via our FirstBankcard.com online system. Through FirstBankcard.com the PA can:

- Order new or replacement cards – Only the cardholder name, employee ID, and the assigned credit limit are required.
- Change card credit limits in real-time
- Close/cancel accounts instantly online
- Manage lost/stolen cards
- Add or change account alerts
- View account statements and statement history and make secure payments.
- Make secure online payments or set automatic payments
- Grant access to cardholders to view their own card statements

## **Online Reporting:**

First Bankcard's Commercial Card Online Reporting (CCOR) for the VOX Commercial Visa Card, offers standard PDF reports to track and analyze spend. Standard reports include monthly statements, spend analysis reports, travel analysis reports, etc. Reports can be scheduled to run daily, weekly, monthly or annually and can be sorted by company, cardholder, or other grouping.

## **Credit Limit and Allocation**

The company credit limit is shared by all cardholders, with individual card limits set by your program administrator. The sum total of allocated card limits can be greater than the company limit; there is no need to reduce one card limit to increase another card. If the combined spend of all cards equals the company limit, all cards will be declined until a payment is made. Payments can be made online – payments made by 3:00 PST will be processed that night and the credit available the next day.

## **Expense Management Integration – (Transaction Data Feed):**

First Bankcard can integrate with most third party expense management systems through a daily transaction data feed. First Bankcard will work directly with your selected vendor to implement a data feed. A one-time cost of \$300 will be charged to setup the data feed. There are no additional or on-going fees.

# First Bankcard

**EMV / Chip Cards:**

First Bankcard issues all Visa cards with EMV/Chip and signature technology built into the card. EMV (Chip Card) Technology is a very effective defense against counterfeit fraud. As recent large scale data breaches highlight, data can be stolen and used to create counterfeit magnetic stripe cards. EMV can prevent such counterfeit fraud, which is one of the most prevalent types of fraud in the U.S. Chip cards use stronger authentication methods and unique transaction elements that make the personal information more difficult to steal and counterfeit. EMV will dramatically reduce acceptance disruption when cardholders travel abroad.

**Payment and Cycle Options:**

Unlike traditional Commercial Cards, the VOX Commercial Visa card allows you to choose a minimum payment option. Below are the four options available with the corresponding interest rate. Pay 100% of the outstanding balance to avoid interest charges on purchases, or make minimum payments when you need more cash on hand.

Minimum Payment	Interest Rate
100%	0.00%
50%	9.99%
25%	12.99%
10%	14.99%

First Bankcard offers a 30 day cycle with a 25 day grace period before payment is due. First Bankcard offers eighteen (18) different billing cycles, including last business day of the month closing. If full payment is made, no interest charges will accrue. Central Billing accounts and/or individual cardholder account billing/payment is available. First Bankcard supports conventional check remittance, online payment, wire transfer, and auto payment options.

**Card Program Implementation and Customer Support:**

First Bankcard is committed to providing superior training and support. Our implementation team will work with you to configure our online program administration application and reporting tools specific to your organization. The implementation team will set up reporting processes and provide training of the online tools.

For on-going support, First Bankcard provides a cardholder support line, 24x7x365, for your individual cardholders and a dedicated support group for your program administrator. All of our commercial card customer care centers are located in Nebraska and South Dakota.

- Program Administrator Toll Free assistance, open M – F 7am - 7 pm Central Standard time, is staffed with dedicated individuals available to assist program administrators with adding or closing accounts, credit limit adjustments, bill payment, fraudulent transactions, etc.
- Cardholder assistance line, available 24 x 7 x 365, will assist cardholders requests for account balance information, lost/stolen card reports, etc.,

**Card Program Costs**

The commercial card program is one of the most cost effective card programs in the industry. The commercial card program does not have any annual card fees, or data access fees. Assuming the card program is paid in full by the payment due date, the company should not experience fees associated with the card program with the exception of a foreign transaction fee for non-US denominated dollar transactions. A full listing of fees is provided in the VOX application.

**International Conversion Fee**

All transactions completed in a foreign currency are subject to an international conversion fee. Transactions will be converted to USD and a fee of 3% will be charged on that amount. This fee cannot be waived as it is a pass-through fee from Visa & MasterCard.

# First Bankcard

## **Credit Approval**

Credit approval will take between 5-7 business days. Once approved, a commercial card agreement will be provided for signatures. The commercial card program is a commercial liability program with credit approval based on the financial strength of the company. First Bankcard requires the following financial information to complete credit approval.

- Prior two years audited or reviewed financial statements with current YTD interim financial statements and a comparative for the prior year. **OR**
- Prior two years internally prepared financial statements and two years complete tax returns along with current YTD interim financial statements with a comparative for the prior year.

## **Summary**

First Bankcard is pleased to offer this commercial card proposal. All pricing and fees provided are valid for a period of one hundred and twenty (120) calendar days. This proposal is dependent on credit approval based on financial data provided by the company and completion of the First Bankcard's commercial card agreement.



### VOX™ BUSINESS CARD APPLICATION

Sales Representative:  Employee #:  Primary Phone Number:   
 Email Address:  Date:  Agent Bank:

### COMPANY INFORMATION

- New Card Customer     Current Card Customer     Company legal name verified through state

Company Legal Name:  Trade Name (DBA) of Company:  Company Tax ID:   
 Physical Address (other than P.O. Box):  City:  State:  Zip Code:

Mailing Address is the same as the Physical Address  
 Mailing Address:  City:  State:  Zip Code:

Contact Name:  Title:

Phone Number:  Fax Number:  Email Address:

Company Structure:  NAICS:  Company Reported Annual Revenue:  Year Company Started:  Number of Employees:

### PROGRAM INFORMATION

Requested Company Credit Limit:  Current Annual Card Spend:  Number of Cards:

Company Name to be Shown on Card (limit 22 characters and spaces):

Cardholder Names:	Credit Limit:	Employee ID or Last 4 of SSN:	Cardholder Names:	Credit Limit:	Employee ID or Last 4 of SSN:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

\*If you would like more than 10 cards, please attach a separate document with the requested information.

Application Notes:

### VOX BUSINESS CARD PROGRAM CUSTOMIZATION OPTIONS

Maximum Rewards® for Business	<input type="checkbox"/> YES <input type="checkbox"/> NO
Commercial Card Online Reporting	<input type="checkbox"/> YES <input type="checkbox"/> NO
Annual Percentage Rates & Minimum Payment	<input type="checkbox"/> If minimum payment is 10%, a variable 14.99% APR applies to Purchases;
	<input type="checkbox"/> If minimum payment is 25%, a variable 12.99% APR applies to Purchases;
	<input type="checkbox"/> If minimum payment is 50%, a variable 9.99% APR applies to Purchases;
	<input type="checkbox"/> If minimum payment is 100%, a variable 0.0% APR applies to Purchases.

### CUSTOMER DOCUMENTATION CHECKLIST

Completed, checked and signed application/agreement	<input type="checkbox"/> Gathered
Program Administrator Form	<input type="checkbox"/> Gathered
Corporate Resolution Form	<input type="checkbox"/> Gathered
Online Enrollment Form	<input type="checkbox"/> Gathered
2 years most recent financials including notes - Preferred order: 1. Audited 2. Reviewed 3. Compiled 4. Tax Returns along with internals	<input type="checkbox"/> Gathered
Bank Relationship Summary	<input type="checkbox"/> Gathered



First Bankcard, a division of First National Bank of Omaha (the "Bank"), and the business or governmental entity identified and signing below (the "Company"), have entered into this Commercial Card Agreement as of the Effective Date established below. Any reference to the "Commercial Card Agreement" or "Agreement" includes this document, any attached or enclosed schedule, addendum, and exhibit, and the accompanying Commercial Card Terms and Conditions, its Schedules and Exhibits ("Terms and Conditions") that is made a part of and incorporated in the Agreement by reference. The Bank and the Company are each a "Party" (individually), and both are the "Parties" (collectively), to the Agreement. The Parties agree to be bound by and perform their obligations pursuant to the Agreement as of its Effective Date. Capitalized terms used below, but not defined by this document, shall have the meanings assigned to them by the Terms and Conditions. The Parties recite as follows:

- 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.

Company and Bank hereby agree to the following additional terms:

1. **Company.** The "Company" is:

_____	_____		
Legal Entity Name	Federal Tax Identification Number		
_____	_____	_____	_____
Physical Address	City	State	Zip Code
_____	_____	_____	_____
Mailing Address	City	State	Zip Code

- 2. **Effective Date.** The "Effective Date" of the Agreement shall be the date on which the Agreement is fully executed by the Parties. For clarity, if the Parties do not execute on the same date, the Effective Date will be the date that the last Party executes the Agreement.
- 3. **Guaranty.** A separate personal or corporate guaranty may be required as indicated in Section 18.4 of the Terms and Conditions or as subsequently requested by the Bank.
- 4. **Address for Written Notices for the Agreement.** (See Section 15.1 of the Terms and Conditions)

If to Bank:  First National Bank of Omaha Attn: First Bankcard Legal Department 1620 Dodge Street Stop 3199 Omaha, NE 68197 Facsimile: 402-602-6019 With telephone confirmation to: 402-602-6750	If to Company: _____ <input type="checkbox"/> Same as Physical <input type="checkbox"/> Same as Mailing Attn: _____ Address: _____ City: _____ State: _____ Zip Code: _____ Fax: _____
--	---

- 5. **Rewards Program.** (See Schedule B to Terms and Conditions)     YES     NO
- The Company shall be entitled to the following rewards program associated with the Program: Maximum Rewards® for Business Program. Company has designated **itself OR Cardholders** to receive any such benefits and rewards.     ITSELF     CARDHOLDERS

- 6. **Online Reporting.** (See Schedule C to Terms and Conditions)     YES     NO
- 7. **Annual Percentage Rates for Purchases and Cash Advances; Minimum Payment for Account and Card Accounts.** (See Schedule B and Sections 7.1 and 7.2 of the Terms and Conditions)
  - A. If minimum payment is 10%, a variable 14.99% APR applies to Purchases;
  - B. If minimum payment is 25%, a variable 12.99% APR applies to Purchases;
  - C. If minimum payment is 50%, a variable 9.99% APR applies to Purchases; and
  - D. If minimum payment is 100%, a 0.0% APR applies to Purchases.

8. **Company Address for Delivery of Consolidated Billing Statements, Card Account Statements for Unassigned Cards, and Informational Card Account Statements.** (See Sections 7.1 and 7.2 of the Terms and Conditions)

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

9. **Liability of Company and/or Cardholders.** (See Section 8.2 of the Terms and Conditions)



**Option A**

**Company is the only liable party for the Account and all Card Accounts and the only party that will make Account and Card Account payments:** The Company shall be solely liable to the Bank for payment of all amounts due for the Account and all Card Accounts, including any Unassigned Cards requested by the Company. The Bank, using the delivery method the Company requested, will provide the Company with a Consolidated Billing Statement and/or Card Account Statements for payment of the Account and all Card Accounts. The Bank will also provide Cardholders with informational Card Account Statements about the use of their Card Accounts.

**Option B**

**Company is the only liable party for the Account and all Card Accounts, but will instruct some or all Cardholders to pay for their own Card Accounts based on individual Card Account Statements:** The Company will instruct some or all of its Cardholders to make individual payments of their own Card Accounts based on Card Account Statements. The Bank, using the delivery method requested by the Cardholder, will provide each such Cardholder with a Card Account Statement for payment of his/her Card Account. The Company remains solely liable to the Bank for payment of all amounts due for the Account and all Card Accounts, including any Unassigned Cards requested by the Company. The Bank, using the delivery method the Company requested, will provide the Company with a Consolidated Billing Statement and/or Card Account Statements disclosing information about the use of, and the Company's liability for, the Account and all related Card Accounts (including without limitation the Company's liability for overdue Card Accounts and for Unassigned Cards requested by the Company).

Reset

10. **Company Affiliates.**

Company Affiliates to be included or associated with the Program.  YES  NO

The undersigned individuals signing on behalf of each Party certify that they have full power and authority to execute this Commercial Card Agreement on behalf of such Party.

IN WITNESS WHEREOF, the Parties have executed the Commercial Card Agreement effective as of the Effective Date.

FIRST NATIONAL BANK OF OMAHA

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Company: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Required fields are indicated with an (\*).

Capitalized terms not otherwise defined in this form have the meanings set forth in the Commercial Card Agreement and the Commercial Card Terms and Conditions by and between First Bankcard, a division of First National Bank of Omaha (the "Bank"), and the business or governmental entity identified and signing below (the "Company"). The Company hereby appoints and designates each person named below as a Program Administrator in connection with the Program established for the Company. At least one Program Administrator is required but you may designate up to three.

**Contact 1**  Add

Program Administrator Name:*		Employee ID or Last 4 of SSN:*(max 10 characters)	
<input type="text"/>		<input type="text"/>	
Business Email Address:*		Business Mailing Address:	
<input type="text"/>		<input type="text"/>	
Business Phone:*	Business Fax:	Mobile:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Contact 2**  Add

Program Administrator Name:*		Employee ID or Last 4 of SSN:*(max 10 characters)	
<input type="text"/>		<input type="text"/>	
Business Email Address:*		Business Mailing Address:	
<input type="text"/>		<input type="text"/>	
Business Phone:*	Business Fax:	Mobile:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Contact 3**  Add

Program Administrator Name:*		Employee ID or Last 4 of SSN:*(max 10 characters)	
<input type="text"/>		<input type="text"/>	
Business Email Address:*		Business Mailing Address:	
<input type="text"/>		<input type="text"/>	
Business Phone:*	Business Fax:	Mobile:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

**COMPANY AUTHORIZATION**

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.

\_\_\_\_\_  
Name of Authorizing Party\* (please print)

\_\_\_\_\_  
Title of Authorizing Party\*

\_\_\_\_\_  
Signature of Authorizing Party\*

\_\_\_\_\_  
Date\*

\_\_\_\_\_  
Company Name\*

\_\_\_\_\_  
Company ID/Number (FOR INTERNAL USE ONLY)



I, the undersigned, do hereby certify to First National Bank of Omaha ("FNBO") that I am the duly qualified and acting \_\_\_\_\_ (Title/Position), of \_\_\_\_\_ (Business Name), a \_\_\_\_\_ (Legal Entity Type), referred to as the "Organization". I certify that the Organization is (a) duly formed and validly existing under the laws of the State of \_\_\_\_\_ and is authorized to do business in the State of \_\_\_\_\_; and (b) in good standing under both the laws of the state of its formation and the state in which it is authorized to do business. I further certify to FNBO that the following resolutions have been duly adopted by the Board of Directors, Executive Committee, Members, Managers, Owners or other governing body, as applicable, and such resolutions are in full force and effect as of the date hereof:

RESOLVED that:

1. The First National Bank of Omaha Commercial Card Agreement and all respective schedules, addenda, and exhibits ("Agreement") is approved.
2. The individual(s) designated below (the "Authorized Official(s)"), being duly qualified and designated by the Organization and its governing body, and holding the title(s) or position(s) shown, is/are authorized and directed to (a) borrow money on behalf and in the name of the Organization, (b) execute the Agreement on behalf of the Organization as well as any notes, drafts, agreements and other documents and instruments, pledge and encumber property of the Organization (including, without limitation, bank accounts), and (c) name and appoint the individuals who shall be authorized to instruct FNBO to issue credit cards under the Agreement and perform all other duties identified in the Agreement on behalf of the Organization. If there is more than one Authorized Official listed below, each shall independently have full and complete authority to act on behalf of Organization as designated herein and related to FNBO and the Agreement. The initial Authorized Official(s) who is/are appointed to act on behalf of the Organization are listed immediately below (and the signatures below are the genuine signatures of such persons).

Authorized Official(s):

_____	_____	_____
Printed Name	Title	Signature
_____	_____	_____
Printed Name	Title	Signature
_____	_____	_____
Printed Name	Title	Signature
_____	_____	_____
Printed Name	Title	Signature

The resolutions shall continue to be in full force and effect, and FNBO shall be entitled to rely upon the resolutions, until express written notice of rescission, modification or termination has been received by FNBO. Any and all prior resolutions received by FNBO shall continue in full force and effect until FNBO receives such written notice. Any rescission, modification or termination of a resolution must be accompanied by written notification to FNBO.

IN WITNESS WHEREOF, I have subscribed my name to this document on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title/Position







INFORMATION ABOUT BUSINESS OR GOVERNMENT ENTITY IDENTIFIED AND SIGNING BELOW ("COMPANY")

Company Legal Name:  Trade Name (DBA) of Company:  Company Tax ID:

Physical Address (other than P.O. Box):  City:  State:  Zip Code:

INFORMATION ABOUT COMPANY'S PRIMARY ONLINE SERVICES ADMINISTRATOR ("PRIMARY ONLINE ADMINISTRATOR")

User ID:  (User ID is case sensitive and must be 8 - 20 characters consisting of at least one letter and one number)

First Name:  MI:  Last Name:  Date of Birth:

Title:  Email Address:

Business Phone:  Business Fax:  Mobile:

The Company's privacy is important to the Bank. The Bank is providing the Company two safeguards against unauthorized access to account information: (1) the Primary Online Administrator's User ID; and (2) the Password assigned to the Primary Online Administrator. To ensure the highest level of security, the Company must keep its Online Administrator User ID and Password confidential.

- 1) The person signing as the "Authorized Company Representative" below represents and certifies to First Bankcard, a division of First National Bank of Omaha (the "Bank"), that:
  - a) the Authorized Company Representative and the Primary Online Administrator each hold the title and officer capacity with the Company shown in this Online Services Enrollment Form and Authorization Certificate; and
  - b) the Company has, in accordance with its governing and charter documents, duly authorized this Authorized Company Representative to provide the certifications, make the representations, bind the Company, and agree on the Company's behalf to the terms and conditions set forth in this Online Services Enrollment Form and Authorization Certificate.
- 2) The Authorized Company Representative represents, certifies, and agrees on behalf of the Company and the Authorized Company Representative, that:
  - a) The Company, acting through its Primary Online Administrator and other Online Administrators, may authorize certain employees, officers, agents, and representatives ("Users") to request, obtain and use online services and information from time to time in connection with any account the Company maintains with the Bank, now or in the future ("Online Services");
  - b) The Company has duly authorized the Authorized Company Representative, the Primary Online Administrator identified above, and any Online Administrator that the Authorized Company Representative or Primary Online Administrator may designate now or in the future, to take the following actions from time to time on behalf of the Company:
    - i) Apply through any medium acceptable to the Bank to request, modify, or terminate Online Services that are provided to the Company by or through the Bank;
    - ii) Designate the Users and Online Administrators who are authorized to have access to and/or use all or any part of the Online Services made available to the Company;
    - iii) Enter into and bind the Company with respect to one or more agreements, operating rules, and procedures associated with the Online Services (including, but not limited to, those that establish how an Online Administrator may establish, modify, and terminate any User identification numbers ("User IDs") and passwords required for access to Online Services; those that establish security measures that are acceptable to the Company and the Bank associated with the Online Services; and those that may establish or modify Online Services agreements, procedures, and operating rules that apply to the Company); and
    - iv) Prepare, sign, and submit any other documents or information requested by the Bank, and deemed necessary or appropriate by any such Authorized Company Representative, the Primary Online Administrator, or other Online Administrator, for purposes of allowing the Company to obtain Online Services and bind the Company to any applicable Online Services agreement;
  - c) The Bank shall have no obligation to make any inquiries for purposes of verifying or confirming:
    - i) Any representations or instructions given at any time by any Authorized Company Representative, Primary Online Administrator, or other Online Administrator;
    - ii) Any transactions effected through the use of the Company's User IDs or passwords; or
    - iii) Any application or use of the Company's funds, it being understood that the Bank shall have no responsibility or liability for any misapplication or misuse of the Company's funds by virtue of the authority granted by this Online Services Enrollment Form and Authorization Certificate and any related Online Services agreement.
  - d) The power and authority granted by this Online Services Enrollment Form and Authorization Certificate shall continue in full force and effect, until the Bank receives written notice in a manner that allows it a reasonable time and opportunity to act, that specifically states that any such notice relates to Online Services, and that sets forth the specific termination or change requested with respect to such Online Services; and
  - e) The provisions of this Online Services Enrollment Form and Authorization Certificate shall control over any inconsistent or contradictory provisions or resolutions made by the Company at any time with respect to the Online Services, and with respect to any account the Company maintains with the Bank, now or in the future.

IN WITNESS WHEREOF, the Authorized Company Representative identified below has signed this Online Services Enrollment Form and Authorization Certificate on behalf of the Company as of the date shown below:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name of Authorized Company Representative

\_\_\_\_\_  
Title of Authorized Company Representative

\_\_\_\_\_  
Signature of Authorized Company Representative

\_\_\_\_\_  
Date of Signature

**COMMERCIAL CARD TERMS AND CONDITIONS**

The following Commercial Card Terms and Conditions and its Schedules and Exhibits (the **"Terms and Conditions"**) are incorporated into and made a part of the Commercial Card Agreement between First Bankcard®, a division of First National Bank of Omaha (the **"Bank"**) and the party identified as the **"Company"** in the Commercial Card Agreement. References to a **"Party"** means either the Bank or the Company, individually, and references to the **"Parties"** mean the Bank and the Company, collectively. Capitalized terms used in the Terms and Conditions that are not defined in the context of their first use or elsewhere in the Agreement are generally defined in Schedule A to these Terms and Conditions (Definitions). The First Bankcard® VISA® Credit Cards are Powered by Paymentflex Technologies, LLC. First Bankcard, a division of First National Bank of Omaha, is an authorized user of Paymentflex US Patents #5,933,817 and #6,836,764, and of the Paymentflex® registered trademark pursuant to license from Paymentflex Technologies, LLC. First Bankcard, a division of First National Bank of Omaha, is the card issuer and creditor of the credit card program described in this offer. ©2012 Paymentflex Technologies, LLC.

**ARTICLE 1  
COMPANY GUARANTY; FINANCIAL REPORTS**

1.1 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 (each, a **"Guaranteed Account"**), the Company shall be liable to the Bank for any and all Transactions and Account 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 may request in connection with any such Guarantee. The Guarantee of each Guaranteed Account shall remain in full force and effect after termination of the Agreement and any such Guaranteed Account, until any such Guaranteed Account has been paid in full and closed to further activity.

1.2 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 on an annual or more frequent basis upon the Bank's request include, without limitation, 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. 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 2  
USE OF ACCOUNT AND CARD ACCOUNTS; CANCELLATION OF CARDS**

2.1 The Bank, from time to time and in its sole discretion, will establish and advise the Company of its Credit Limit for the Account and the respective Credit Limits for the Card Accounts. The Bank will otherwise provide services to the Company, Employees and Cardholders in the manner described in the 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 the Agreement and the Cardholder Agreement.

2.2 The Account, Cards and Card Accounts may be used by Employees and Cardholders only for business-related Transactions, as provided under the terms and conditions of the Agreement, the Operating Rules and the Cardholder Agreement, each as amended from time to time. The Bank agrees to use commercially reasonable efforts to notify the Company about particular requirements of the Operating Rules that may affect use of the Account, Cards, and Card Accounts. The Company agrees to notify Employees and Cardholders about the business-related Transactions for which the Account, Cards and Card Accounts may be used. The Company, in its discretion, may separately require that Employees and Cardholders use a Card Account only for specific types of business-related Transactions or purposes acceptable to the Company. The Bank shall have no duty to question or evaluate the underlying purpose of any Transaction or investigate whether any Employee or Cardholder is exceeding the limits of his or her authority with the Company, except to the extent that the Bank is specifically required to do so in connection with Transaction Limits or other limits expressly established by the Agreement. The Bank shall not be liable to the Company or any Employee or Cardholder related to any separate agreement that may exist between those parties. The Bank's duties to the Company, Employees and Cardholders are established solely by the Agreement, the Operating Rules and the Cardholder Agreement, each as amended from time to time.

2.3 The Program Administrator or the Company may direct the Bank to cancel any Card or Card Account at any time and for any reason, by giving the Bank a cancellation notice in the time and manner it requires and a reasonable opportunity to act on any such instructions. If the 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: (i) the date the Employee's employment is terminated; or (ii) 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.

**ARTICLE 3  
DESIGNATION AND RESPONSIBILITIES OF PROGRAM ADMINISTRATOR**

3.1 The Company shall designate one or more individual(s) as a Program Administrator, in the manner and form required by and acceptable to the Bank, in its sole discretion. Any Program Administrator designated by the Company shall be authorized, acting as an individual, to: (i) submit requests for Cards and/or Applications by or on behalf of Employees and Cardholders and designate Employees and Cardholders authorized to receive Cards and use Card Accounts; (ii) establish or change Credit Limits and Transaction Limits for any Cardholder, Card and Card Accounts (but not the overall Credit Limit for the Account); (iii) request that the Bank cancel or suspend any Card and Card Account; (iv) act as the Company's authorized representative in administering the Program on behalf of the Company and resolving any disputed Transactions; and (v) perform other administrative duties described in or contemplated by the Agreement or reasonably required for purposes of administering the Program. 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 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.

3.2 The Bank will, except as otherwise provided in the Agreement, direct all documents and correspondence relating to the Agreement to a Program Administrator. The Bank may not act upon any instructions, orders, agreements or other documents submitted by a person purporting to be a Program Administrator, until the Bank has received a Program Administrator designation form acceptable to the Bank appointing such person as a Program Administrator. The Company must notify the Bank of any change in any Program Administrator by submitting a new Program Administrator designation form acceptable to the Bank setting forth the changes to be made (including the name of any new Program Administrator). Each Program Administrator designation form shall be effective upon the Bank's receipt of a form acceptable to the Bank. 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 the 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 4  
ISSUANCE OF CARDS; IDENTIFICATION OF CARDHOLDERS**

4.1 Promptly after execution and the Effective Date of the Agreement: (i) The Bank and the Company shall agree on the date when the Bank shall begin issuance of Cards; (ii) The Company shall advise the Bank where and to whom it should send the Cards, Consolidated Billing Statements, Card Account Statements, and other documents related to the Program, Account, Card Accounts, and Cards; and (iii) 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 this Article and such other information as the Bank may reasonably request.

4.2 The 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 the 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.

4.3 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 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. The Bank shall send 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. 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.

**ARTICLE 5  
CREDIT AND TRANSACTION LIMITS; LIABILITY FOR ABOVE LIMIT AND REJECTED TRANSACTIONS**

5.1 The Bank will establish and advise the Company of its Credit Limit for the Account. The Bank will assign Transaction Limits and Credit Limits designated by the Company or a Program Administrator to each Card and Card Account. The Bank shall change the Transaction Limits or Credit Limits of a Card or Card Account within five (5) business days after the Bank receives a Program Administrator's written request for any such change. If the Company or a Program Administrator does not establish a Credit Limit for any Card Account for which the Company is solely liable, the Company agrees that the Bank may: (i) establish a Credit Limit for each such Card Account, up to the aggregate Credit Limit of the Company's Account; and (ii) disclose an amount on Card Account Statements, up to the aggregate Credit Limit of the Company's Account, as the applicable Credit Limit of each such Card Account (which may not accurately reflect the actual Credit Limit available for the Company's Account). The Bank reserves the right, in its sole discretion, to modify the Credit Limit of the Account or any individual Card Account at any time.

5.2 The Company acknowledges that the Account and Card Accounts may exceed Transaction Limits and Credit 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 Credit 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 Credit Limit or Transaction Limit, as well as any related Account Fees and Charges, as provided by the Agreement and any related Cardholder Agreement.

5.3 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. The Bank or any person, entity or financial institution presented with a Card may, among other reasons, refuse to authorize any particular Transaction if: (i) the Transaction is not permitted under the Transaction Limits established for such Card Account; (ii) permitting the Transaction would cause the Credit Limit for the Account to be exceeded, or cause the Transaction Limits or Credit Limit for a Card 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); (iii) the Bank believes it is or may be an Unauthorized Transaction; or (iv) the Bank has not received any payment required by the Agreement or a Cardholder Agreement by its Payment Due Date.

**ARTICLE 6  
CARD REQUIREMENTS AND MARK USE**

6.1 Each Card the Bank issues under the Program shall be branded as a Card Association card, in compliance with the applicable requirements 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. 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.

6.2 The Company must provide the Bank, upon its request, 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 the Agreement or the Cardholder Agreement. The 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.

6.3 The Bank may use all Company Marks that the Company provides to the Bank in connection with the Program. The Company grants the Bank a non-exclusive, non-transferable, non-sublicenseable, royalty-free, paid-up limited license to use those Company Marks, 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). 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 Agreements, or related disclosures. The Company may update and amend the Company Marks from time to time during the Term by providing the Bank with reasonable notice thereof. If the Company wishes to change any 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 Card Accounts can no longer be used as a result of any such change. 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. 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. On termination of the 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 7

##### PROGRAM STATEMENTS AND REPORTS; BILLING CYCLES; PAYMENTS

7.1 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, Account 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 the Commercial Card Agreement signed by the Company.

7.2 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, Account 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 the Commercial Card Agreement signed by the Company. 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 the Commercial Card Agreement signed by the Company 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 Account Fees and Charges, the Bank will provide a Card Account Statement only for purposes of informing the Cardholder about his or her use of the Card and Card Account.

7.3 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 the Commercial Card Agreement signed by the Company or other schedules and addendums to the 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. For Card Accounts for which the Company is solely liable, the Payment Due Date shall be at least twenty (20) days after the Statement Date disclosed on the applicable Consolidated Billing Statement or applicable Card Account Statement(s). For Cardholders who have joint and several liability with the Company for Card Accounts, the Payment Due Date shall be at least twenty (20) days after the Statement Date disclosed on the applicable Card Account Statements for the Cardholders. The Commercial Card Agreement signed by the Company establishes how the Bank will determine the minimum payment amount that the Company and its Cardholders must pay the Bank 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 Account 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. The Company agrees to make payment to the Bank in the time, manner and amount required by the Agreement and the Company's Consolidated Billing Statements and/or Card Account Statements, either by mailing a check to the Bank at the address provided on the Company's Consolidated Billing Statements and/or Card Account Statements or by initiating individual electronic payments or wire transfers to the Bank, with the Bank's assistance or using instructions and account information separately provided by the Bank.

7.4 If the Company fails to pay to the Bank any amount due under the 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 the 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 the 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.**

7.5 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 8

##### LIABILITY FOR TRANSACTIONS, FEES, AND OTHER CHARGES; UNASSIGNED CARDS

8.1 The "Pricing Schedule" means the terms, conditions, and limitations set forth in Schedule B to these Terms and Conditions, as amended by the Bank from time to time in accordance with the Agreement, including all Account Fees and Charges that the Company, Employees, and Cardholders must pay the Bank and for any benefits and related services the Bank provides to the Company. 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. The Bank shall charge interest on Transactions and charge all Account Fees and Charges in the time and manner provided in the Pricing Schedule.

8.2 The Bank may agree to provide the Company certain benefits, subject to the terms, conditions and limitations as provided in the Pricing Schedule. The Company shall be liable and pay the Bank for all Transactions and all applicable Account Fees and Charges as established by the

Agreement and the Pricing Schedule, even those that might exceed a Credit 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 Account Fees and Charges under the Program and any applicable Cardholder Agreement, if such Cardholder liability has been established through an Application, Cardholder Agreement, the Commercial Card Agreement signed by the Company, and/or other schedules and addendums to the Agreement and its Terms and Conditions. The Company shall immediately pay the Bank for any Transactions and Account 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 the Agreement, regardless of the validity and enforceability of the Cardholder's obligations to the Bank under any Cardholder Agreement.

8.3 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 Account 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.

8.4 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 2.3 or Article 10 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 2.3 or Article 10 that such person is no longer authorized by the Company to use any such Card. The Company shall 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.

#### ARTICLE 9 MERCHANT DISPUTES; TRANSACTIONS IN FOREIGN CURRENCIES

9.1 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 Account Fees and Charges in accordance with the terms of the Agreement.

9.2 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 the Agreement and any related Cardholder Agreement for all transaction and conversion fees and charges associated with any such Transactions, as detailed in the Pricing Schedule.

#### ARTICLE 10 REPORTING UNAUTHORIZED USE; CARD ASSOCIATION LIABILITY PROGRAM

10.1 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.

10.2 Each Program Administrator, designated Company representative, Employee and/or Cardholder must promptly examine each Consolidated Billing Statements or Card Account Statement as soon as it is 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 the Agreement and any applicable Cardholder Agreement. 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.

10.3 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 10.1, 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.

10.4 The Company's liability for Unauthorized Transactions by Employees may be reduced to the extent of liability protection insurance coverage that a Card Association or a third-party insurer may separately agree to provide to the Company (the "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 11  
REPRESENTATIONS, WARRANTIES, AND COVENANTS**

- 11.1 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 the 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 the Agreement and to observe all of the provisions of the Agreement;
  - (d) The making and the performance by the Company of the 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 6.3 and doing so does not infringe upon or violate any rights or interest held in those marks by any third party or Company Affiliate.
- 11.2 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 the Agreement. The representations and warranties in this Article 11 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 11 shall constitute continuing representations and warranties, until such time as the 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 the Agreement have been paid in full.
- 11.3 The Bank represents, warrants and covenants that the 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 the Agreement, including, without limitation, those of merchantability or fitness for a particular purpose.**

*To the extent allowed by law:* **ARTICLE 12  
INDEMNIFICATION; LIMITATION OF LIABILITY**

- 12.1 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 the Agreement, or the Bank's enforcement of any of its rights or remedies under or pursuant to the 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.
- 12.2 The Bank shall not incur any liability for any failure or delay in carrying out any of its obligations under the 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.
- 12.3 The Bank shall have no responsibility and shall incur no liability to the Company, an Employee, a Cardholder or any user of a Card or a Card Account (including the user of an Unassigned Card), if the Bank refuses or fails to authorize use of any Card, Card Account or Account for any reason, or 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.
- 12.4 The liability of the Bank to the Company for any loss or damage arising from or relating to the 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 the Agreement will in no event exceed the Account 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 the Agreement.

**ARTICLE 13  
CONFIDENTIALITY**

- 13.1 The term "**Confidential Information**," with respect to the Bank and regardless of whether the Agreement is then in effect, shall mean: (i) the 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; and (v) any other documentation with respect to the Agreement or the Program that the Bank has designated as confidential or proprietary. The Company agrees that it, the Company Affiliates, and each Employee or Cardholder shall

safeguard and not disclose any Confidential Information of the Bank to any party other than the Bank, Bank Affiliates, or the agents or Employees of the Company or its Company Affiliates, except to the extent any such disclosure is required by applicable law, expressly authorized by the Agreement or a Cardholder Agreement, or expressly permitted by a written instrument signed by an authorized representative of the Bank. The Company agrees to limit the internal access, disclosure and distribution of any and all such Confidential Information of the Bank to those Company Affiliates, Employees, Cardholders, or agents of the Company who have a need to know such information. The Company shall, at all times, have appropriate written policies and procedures in effect to ensure that such Confidential Information of the Bank remains confidential, secure, and protected from disclosure or use by any third party not affiliated with or retained by the Company or the Bank. The Company will be responsible for the acts and omissions of the Company, its Company Affiliates, Employees, Cardholders, and any other agents or representatives of the Company with respect to any and all Confidential Information of the Bank.

13.2 The term "**Confidential Information**," with respect to the Company and regardless of whether the Agreement is then in effect, shall mean: (i) nonpublic personal information or financial information about any Employee or Cardholder that the Bank receives from the Company, an Employee, or a Cardholder, not including Card Account Statements, Consolidated Billing Statements, or any other Card Account information resulting from or directly related to transactions or experiences between the Bank and the Company or its Employees or Cardholders; (ii) nonpublic financial information about the Company that the Bank receives from the Company, not including Card Account Statements, Consolidated Billing Statements, or any other Account or Card Account information resulting from or directly related to transactions or experiences between the Bank and the Company; and (iii) any other documentation with respect to the Agreement or the Program that the Company has designated as confidential or proprietary. The Bank agrees that it shall safeguard and not disclose any Confidential Information of the Company or its Employees and Cardholders to any party other than the Company, Company Affiliates, Employees, Cardholders, Bank Affiliates, or the employees, agents, or subcontractors of the Bank or its Bank Affiliates, except to the extent the Bank is required or permitted to do so by applicable law, required or permitted to do so by the Agreement or a Cardholder Agreement, or authorized to do so by the Company or its applicable Employee or Cardholder. The Bank agrees to limit the internal access, disclosure and distribution of any and all such Confidential Information to those employees, agents, or subcontractors of the Bank or a Bank Affiliate who have a need to know such information. The Bank shall, at all times, have appropriate written policies and procedures in effect to ensure that such Confidential Information of the Company, its Employees and Cardholders remains confidential, secure, and protected from disclosure or use by any third party not affiliated with or retained by the Bank or the Company. The Bank will be responsible for the acts and omissions of the employees, agents, or subcontractors of the Bank or Bank Affiliates with respect to any and all Confidential Information of the Company, its Employees and Cardholders.

#### ARTICLE 14

##### ASSIGNMENT AND SUBCONTRACTS; AMENDMENTS

14.1 A Party may not assign the 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 the 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 the Agreement or alter the Company's rights against the Bank under the Agreement, although all entities entering into a subcontract with the Bank shall be entitled to rely on and benefit from the provisions of the Agreement as if they were the Bank (including, without limitation, the limitations on liability and indemnities in the Agreement). The Agreement shall be binding upon and inure to the benefit of both Parties and, unless otherwise contemplated in the Agreement, their representatives and their respective successors and assigns. Any attempted assignment of rights or delegation of obligations contrary to the provisions of the Agreement shall be void.

14.2 The Agreement, including the Commercial Card Agreement, the Terms and Conditions, and their respective Schedules, Exhibits and Addenda, constitutes the entire understanding between the Parties and it supersedes all prior agreements and negotiations.

14.3 The Bank may, at any time, in its sole discretion, and without advance notice or consent of the Company, modify the Credit Limit of the Account or any Card Account as provided in Section 2.1 or suspend or terminate transaction privileges on the Account or any Card Account. **The Parties agree that the Bank may unilaterally change the Account Fees and Charges, annual percentage rates, fees and other terms of the Agreement at any time, including after the Account or any Card Account is closed (and regardless of the reason Company or Bank closed the Account or any Card Account).** This includes modifications, deletions and the addition of new provisions, including non-financial provisions (for example, Bank may add provisions relating to enforcement rights or the resolution of claims and disputes). If Bank makes changes, Bank will send Company a written notice, if required by law. Unless Bank explains otherwise in a change in terms notice Company receives, the following rules will apply: (1) changes will be automatically effective on the date Bank specifies and without the necessity of any further assent on Company's part; (2) changed terms will apply to the then outstanding balance of the Account and any Card Accounts as well as to future transactions and balances; (3) use of the Account or any Card Account is not necessary for a change in terms to be effective (but Bank may consider use of the Account or any Card Account as confirmation that Company agrees to all announced changes); (4) if Company disagrees with a change, Company should pay off the balance and, if the Account or any Card Account is still open, stop using the Account and any Card Accounts.

#### ARTICLE 15

##### NOTICES

15.1 The address for written notices for the Parties is listed in the Commercial Card Agreement. Except as otherwise provided herein, any notice or other communication to be given under the 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 in the Commercial Card Agreement, 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.

15.2 Electronic transmissions from the Company to an electronic mail address designated by the Bank shall constitute written notices under the 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.

15.3 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 16

##### EFFECTIVE DATE AND TERMINATION

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

16.2 Upon the expiration or any cancellation or termination of the Agreement, the Account and all Cards and Card Accounts will be canceled by the Bank, the Bank's obligation to provide the Company any incentive payments or benefits under the Pricing Schedule shall terminate, and the Company shall use reasonable efforts to collect and destroy each Card. Upon the expiration or any cancellation or termination of the Agreement, any Online Services Software License 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.

16.3 Either Party may terminate the 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 the 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 the Agreement, immediately terminate the Agreement or any Account or Card Account, refuse to permit further access to any Account or Card Account, and/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: (i) 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 the Agreement; (ii) the Company has made any statement to the Bank or provided the Bank with any credit information that is false in any respect; (iii) the Company (or any guarantor of the Company's obligations under the Agreement) is in default of any other obligation it may owe to the Bank or any Bank Affiliate; or (iv) 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.

16.4 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 the Agreement upon written notice to the Company.

16.5 The expiration or termination of the Agreement shall not terminate, affect or impair any rights or obligations of either Party with respect to any Transactions or any act or failure to act related to the Agreement, including, without limitation, rights or obligations established pursuant to: Schedule C (Online Services Schedule); Articles 1, 8, 12, 13, 14, 15, 17, and 18; and the following Sections: 6.3; 9.1; 10.1; 10.2; 10.4; 11.2; 16.2; and 16.5. Upon expiration or termination of the 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 the Agreement, and the Company waives any demands and notices that might otherwise be required to the extent permitted by law.

#### ARTICLE 17 LIMITATION OF CLAIMS

17.1 When the term "Company" is used in this Article 17, 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 17 include 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. The term "Claim" means: (a) any pre-existing, present or future claim, dispute or controversy that arises from or in any way relates to the 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 the Agreement, any Application, or the benefits, rewards or other products or services that are offered in connection with the 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 the Agreement, the Account, any Card Account, any Card or any benefits, rewards or other products or services related thereto. Such 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. The term "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.

17.2 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 the Agreement and applicable law to make the payment before Bank commences court proceedings. 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.

17.3 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 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.

#### ARTICLE 18 MISCELLANEOUS

18.1 The 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 the 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.

18.2 The 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 the 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.

18.3 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.



18.4 The parties agree that a separate guaranty may be required as indicated in the Agreement or as subsequently requested by the Bank to guaranty the Company's indebtedness, obligations, and liabilities under the Agreement. Such guaranty, in the sole discretion of the Bank, shall be: (i) executed by a person or entity acceptable to Bank; and (ii) in the form provided by the Bank. Notwithstanding any other provision of the Agreement and if such a guaranty is required as detailed in the Agreement, the Agreement shall not be effective until the Bank has received such duly executed guaranty.

18.5 The article and section titles in the Agreement and Terms and Conditions 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.

**Schedule A - Definitions**

**"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.

**"Account Fees and Charges"** means the fees, charges, and interest rates for the Account and the Card Accounts established by the Pricing Schedule (Schedule B to the Terms and Conditions) and payable to the Bank by the Company, Employees and Cardholders.

**"Agreement"** means the Commercial Card Agreement between the Bank and Company, the Terms and Conditions, and their respective Schedules, Exhibits, and Addenda.

**"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.

**"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.

**"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.

**"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.

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

**"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

**"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 the Agreement.

**"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 or Special Offer 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.

**"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.

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

**"Company Marks"** shall mean the trademarks, service marks, trade names, names, logos, copyrights and other proprietary materials and information owned by Company or a Company Affiliate.

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

**"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.

**"Credit Limit"** applies to both the Account and each related Card Account, and means the maximum aggregate unpaid balance of all Transactions and Account Fees and Charges that may be outstanding on the Account or the Card Account at any time, as determined by the Bank.

**"Effective Date"** means the effective date of the Agreement as established by the Commercial Card Agreement between the Bank and Company.

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

**"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.

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

**"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.

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

**"Program Administrator"** means each individual the Company designates as a Program representative, in the form and manner required by and acceptable to the Bank, each of whom is individually authorized to take the actions specified in Section 3.1 in connection with the Program.

**"Program Instructions"** means the features the Company and its Program Administrator have requested or selected in connection with the Program, the Account, the Card Accounts, and the Online Services, as detailed through Set-up Forms and other forms that the Company and the Program Administrator provide to the Bank, in the time and manner established by the Agreement.

**"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 an Cash Advance or Special Offer 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.

**"Special Offer"** means use of a Card or any check, instrument, certificate, device or method the Bank permits for access to the Card Account, to take advantage of special, introductory or promotional offers the Bank may identify from time to time or initiate any transaction other than one designated as an Cash Advance or Purchase 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.

**"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.

**"Transaction"** means any Purchase, Cash Advance or Special Offer.

**"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.

**"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.

**"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.

**Schedule B - Pricing Schedule  
Bank Benefits to Company**

Cards may be eligible for the benefits and rewards available under the General Terms and Conditions established from time to time in connection with the rewards program as indicated in the Agreement.

**Account/Card Account Fees & Charges**

Minimum Finance Charge	A minimum finance charge of \$1.75 will be added to the applicable Purchase and/or Cash Advance balance of the Account or a Card Account if the finance charge earned in any billing cycle is less than that amount.
Cash Advance Transaction Fee	The greater of \$15.00 or 5% of each Cash Advance will be added to the Cash Advance balance of the Account or Card Account for each Cash Advance transaction.
Cash Advance Transaction Fee for Cash Equivalent advances	The greater of \$15.00 or 5% of each Cash Equivalent advance will be added to the Cash Advance balance of the Account or Card Account for each Cash Advance transaction.
Late Fee	If the Bank does not receive the required full payment of an amount due for a Card Account by its applicable Payment Due Date as detailed on a Card Account Statement, the Bank will add the following late fee to the Purchase balance of a Card Account: \$35.00, if the New Balance is less than \$500; and \$39.00, if the New Balance is equal to or greater than \$500.
Overlimit Fee	An overlimit fee of \$39.00 will be added to the Purchase balance if the outstanding balance of an Account or Card Account, including finance charges and fees, exceeds the Credit Limit or Transaction Limit at any time during a billing cycle.
Payment Dishonored Fee	A fee of \$35.00 will be added to the Purchase balance if any payment in any form on the Account or a Card Account is dishonored or returned unpaid to the Bank for any reason.
Stop Payment Fees	A fee of \$35.00 will be added to the Purchase balance for any stop payment request made by the Company or any Cardholder.
Document/Statement Copy Fees	A fee of \$5.00 will be added to the Purchase balance for each sales draft copy requested by the Company or a Cardholder (unless related to an actual billing error), and for each duplicate copy of a Consolidated Billing Statement or Card Account Statement requested by the Company or a Cardholder.
Foreign Transaction Fee	A fee equal to 3% of each foreign transaction, after conversion to U.S. Dollars, will be assessed on all transactions made in currencies other than U.S. Dollars. Fees for foreign Cash Advances will be added to the Cash Advance balance of the Account or Card Account. Fees for foreign Purchases will be added to the Purchase balance of the Account or Card Account.
Expedited Payment Fee	A fee of \$15.00 will be added to the Purchase balance of the Account or a Card Account each time the Company or a Cardholder has the Bank initiate an expedited payment by telephone.
Expedited Delivery Fee	A fee of \$15.00 will be added to the Purchase balance of the Account or a Card Account each time the Company or Cardholder requires expedited delivery by the Bank of additional or replacement Cards.

**Periodic Rates**

**ACCRUAL OF FINANCE CHARGES:** Except as provided in "Grace Period" below, the Bank will accrue periodic rate finance charges on Purchases, Cash Advances and Special Offers from the date of each transaction or the first day of the billing cycle in which the transaction is added to the Account and/or Card Account, whichever is more recent.

**GRACE PERIOD:** If (1) the Company or Cardholder pays the entire New Balance (including all balances, Transactions and Account Fees and Charges), as shown on the Company's current Consolidated Billing Statement and/or Card Account Statement(s) by the Payment Due Date and (2) the Bank receives payment in full of the Company's New Balance (including all balances, Transactions and Account Fees and Charges) indicated on the previous Consolidated Billing Statement and/or Card Account Statement(s) by the Payment Due Date or that New Balance was zero or a credit; periodic rate finance charges will not be assessed on Purchases shown on the next billing statement. The grace period applies only to Purchases and, if notified, Special Offers. It does not apply to Cash Advances.

**PERIODIC RATE FINANCE CHARGES:** Periodic rate finance charges will be calculated using daily periodic rates, which correspond to certain Annual Percentage Rates. These rates may be different for Purchases, Cash Advances and Special Offers. These rates may be variable. A variable Annual Percentage Rate is determined by adding the applicable Margin to the applicable Index. The daily periodic rate is 1/365th (1/366th during leap years) of the Annual Percentage Rate. The Index is the highest U.S. Prime Rate as published in The Wall Street Journal during the 90 days immediately preceding the last day of each calendar month (the determination date). The Index will be effective for the entire billing cycle that ends in the second month after the determination date. For example, if the applicable Statement Date ends in July, the Bank will use the Index determined on May 31st. An increase in the Index will increase the applicable Annual Percentage Rate and daily periodic rate, which may increase the payment due on the Account and/or Card Account. The Agreement details the Annual Percentage Rates applicable to Purchases and Cash Advances.

**SPECIAL OFFER RATES:** Any Special Offer rate may terminate and increase to the Purchase, Cash Advance or penalty rate if:

(1) a payment is missed to the Bank (a) more than twice in the last 6 months or more than 3 times in the last 12 months, (b) that has remained unpaid 30 days or more at any time in the last 6 months or if this has occurred more than once in the last 12 months, or (c) that has remained unpaid 60 days or more at any time in the last 12 months; or

(2) a payment made to the Bank is dishonored for any reason.

Factors considered in determining whether or not the Special Offer rate will terminate may include how the Account or Card Account has been handled with the Bank and current and historical information regarding the Cardholder's or Company's credit in general.

**PENALTY RATES:** The Annual Percentage Rates, (including preferred rates or Special Offer rates) for all Transactions may increase if one of these "Triggering Events" has occurred:

(1) a payment is missed to the Bank (a) more than twice in the last 6 months or more than 3 times in the last 12 months, (b) that has remained unpaid 30 days or more at any time in the last 6 months or if this has occurred more than once in the last 12 months, or (c) that has remained unpaid 60 days or more at any time in the last 12 months; or

(2) a payment made to the Bank is dishonored for any reason.

In such circumstances, the Bank may increase the Annual Percentage Rates on all Transactions to higher penalty rates equal to those identified herein. Factors considered in determining the higher rates may include how the Account or Card Account has been handled with the Bank and current and historical information regarding the Company's or Cardholder's credit in general. The Bank may at some future time lower the daily periodic rate and corresponding Annual Percentage Rate in its sole discretion. If the daily periodic rate and Annual Percentage Rate are lowered, the lowered rates will not necessarily be as low as the Purchase or Cash Advance rates previously disclosed and will not necessarily apply to the balance of the Account or Card Account which is already outstanding as of the date the rates are lowered. A Card Account or Account that is closed while subject to penalty rates will not be restored to preferred rates after it is closed, regardless of the reason it is closed and regardless of account performance. The Bank is not obligated to give notice that the Annual Percentage Rate is changing to a penalty rate. Even though the Bank gives notice on one or more occasions, the Bank may discontinue providing a notice at any time. Penalty rates will apply as provided above, regardless of whether, when or how notice is received.

**FINANCE CHARGES AND BALANCE CALCULATIONS:** The Account and/or Card Account will generally have monthly billing cycles, but the first billing cycles may be more or less than one month. The Bank uses the Average Daily Balance (including new purchases) method to compute a portion of the Finance Charges on the Account and/or Card Account.

The Bank calculates periodic rate finance charges separately for each Transaction Category.

- (A) To compute Billed Periodic Rate Finance Charges:
  - (1) For each Transaction Category, the Bank multiplies the Daily Balance (see below) by the applicable daily periodic rate for each day of the billing cycle; then
  - (2) The Bank adds together all of the products calculated in (1) above.
- (B) To compute the Daily Balance for each Transaction Category:
  - (1) The Bank takes the Beginning Balance of each day;
  - (2) Adds any new Transactions (such as Purchases, Cash Advances and related Transaction fees, other Account Fees and Charges and debit adjustments)\*\*\*;
  - (3) Subtracts any applicable payments, credits, or credit adjustments; and
  - (4) The Bank treats a credit balance as a balance of zero.

\*\*\* For Card Accounts where Cardholders are jointly and severally liable with the Company or where Cardholders are not jointly and severally liable but are required by their Company to make payments, the annual fee, credit life fee, SecureCredit® program fee and, in certain circumstances, the overlimit fee, are not included in the Daily Balance calculation until the first day of the next billing cycle. For Card Accounts where Cardholders are not jointly and severally liable with the Company and are not required by their Company to make payments, the annual fee, credit life fee, SecureCredit® program fee and, in certain circumstances, the overlimit fee are included in the Daily Balance calculation on the first day of the billing cycle in which they post to the applicable Account and/or Card Account.

The Bank adds the amount calculated in accordance with (A)(1) above to the Daily Balance and this amount becomes the Beginning Balance for the next day.

On the Consolidated Billing Statement and/or Card Account Statement, the Bank will calculate an Average Daily Balance for each Transaction Category by adding all the Daily Balances for that Transaction Category and dividing that amount by the number of days in the billing cycle. If you multiply the Average Daily Balance for a Transaction Category by its daily periodic rate and multiply the result by the number of days in the billing cycle, the total will equal the Billed Periodic Rate Finance Charges for that Transaction Category, except for minor variations due to rounding.

Cash Advance and foreign Transaction fee finance charges, if any, are added to the Billed Periodic Rate Finance Charges for all Transaction Categories and may be shown on the Consolidated Billing Statement and/or Card Account Statement as Total Billed Finance Charges. The Annual Percentage Rate shown on the front of the Consolidated Billing Statement and/or Card Account Statement may be based on the Total Billed Finance Charges. The Agreement provides for daily compounding of finance charges and fees.

**MINIMUM FINANCE CHARGE:** If periodic rate finance charges are billed in any billing cycle, the minimum Billed Periodic Rate Finance Charge will be as shown above in the Account and Card Account Fees portion of this Schedule. The Bank may allocate the minimum Billed Periodic Rate Finance Charge among the various Transaction Categories in the manner that the Bank selects from time to time.

**PAYMENTS:** The Agreement establishes how the Bank will determine the minimum payment amount that the Company and its Cardholders must pay the Bank by the Payment Due Date that follows each billing cycle. This minimum payment amount will be shown on each Consolidated Billing Statement and Card Account Statement, as applicable. If the Account or any Card Account balance exceeds the applicable Credit Limit or Transaction Limit, the amount necessary to reduce the balance below the Credit Limit or Transaction Limit will be added to the minimum payment due. Payment shall be made on or before the applicable Payment Due Date for each respective billing cycle. Each Payment Due Date for each respective billing cycle will be detailed on the Consolidated Billing Statement and/or Card Account Statements.

**SCHEDULE C - Online Services**

The terms listed below, when used in this Online Services Schedule to the Terms and Conditions, have the following meanings:

**"Browser"** means an Internet browser that complies with specifications set forth in the User Guide, used by the Company in connection with the Online Services and the Online Services System.

**"Devices"** mean the security codes, passwords, and other security materials required for access to the Online Services System, as further described in the User Guide.

**"Online Account Information"** means information about the Program, Account, Card Accounts, Cardholders, Employees, and pending and posted Transactions, which the Bank provides and makes available to the Company in connection with its use of the Online Services System.

**"Online Services"** shall have the meaning assigned in Section 1 of this Online Services Schedule.

**"Online Services Materials"** means the User Guide and all other documents and materials the Bank provides or makes available to the Company in connection with its use of the Online Services, the Online Services Software, and the Online Services System.

**"Online Services Software"** means the software accessible to the Company through the Online Services System, in connection with its use of Online Services.

**"Online Services Software License"** means the personal, nonexclusive and nontransferable license the Bank grants to the Company, and the Company accepts from the Bank, to use software accessible to the Company through the Online Services System.

**"Online Services System"** means one or more operating systems, applications, and platforms through which the Bank provides or makes available Online Services to the Company, as described more specifically through the User Guide.

**"Program Instructions"** means the features the Company and its Program Administrator have requested or selected in connection with the Program, the Account, the Card Accounts, and the Online Services, as detailed through Set-up Forms and other forms that the Company and the Program Administrator provide to the Bank, in the time and manner established by the Agreement.

**"Security Procedures"** means the security procedures for using the Devices required for access to the Online Services System, as described in the User Guide.

**"Set-up Forms"** means the forms the Company provides to the Bank to request Online Services through the Online Services System.

**"User Guide"** means the user manuals and other user materials, individually and collectively, that the Bank furnishes to the Company in connection with its Program, the Online Services System, and any related Online Services.

1. As specified in the Set-Up Forms the Company provides to the Bank, the Bank will provide and make available the following services to the Company through one or more Online Services Systems, all as more specifically described in the User Guide (the **"Online Services"**):
  - a. The Bank will provide and make available Online Account Information to the Company; and
  - b. The Bank will access the Online Services System and provide Online Services System access to the Company in connection with the maintenance of:
    - i. Card Accounts (including adding new Card Accounts based on existing ones and canceling or modifying the applicable limitations or information related to any existing Card Account); and
    - ii. The Program Instructions.
2. The communication of Program Instructions through the Online Services System will constitute written notice of such Program Instructions in accordance with the applicable provisions of the Agreement. The communication of Program Instructions through the Online Services System will also comply with and satisfy any requirement in the Agreement for written documentation, including any requirement that the Company provide a completed Application for a Card Account (except for an Application for the Account or the first Card Account requested by the Company, which must be physically completed, signed and received by the Bank).
3. The Bank grants to the Company, and the Company accepts from the Bank, an Online Services Software License, subject to and in accordance with the terms of this Online Services Schedule. This Online Services Software License shall be effective while such Online Services Software is in use by the Company on the Online Services System. The Company acknowledges and agrees that:
  - a. The Company will not have any ownership or other proprietary rights in the Online Services Software, the User Guide, and any other Online Services Materials;
  - b. The Online Services Software and Online Services Materials are protected by the copyright laws of the United States and the Bank's products and security relating to the Online Services Software and Online Services Materials are confidential and proprietary trade secrets and of substantial value to the owner of the Online Services Software and the Online Services Materials, and their use and disclosure must be carefully and continuously controlled by the Company and its Employees and Cardholders;
  - c. The protected Online Services Materials must include all copyright, trade secret and any other proprietary notices and legends on the initial copy of the Online Services Materials and on each copy of the Online Services Materials that the Company is permitted to make;
  - d. The Company will not:
    - i. Remove, alter or obscure any trademark, trade names, logos, copyright or other notice contained or included in any of the Online Services Software or Online Services Materials;
    - ii. Transfer or license the Online Services Software or any portion of the Online Services Software;
    - iii. Change or modify the Online Services Software or the source code for the Online Services Software;
    - iv. Create derivative works from the Online Services Software or Online Services Materials;
    - v. Reverse engineer or attempt to reverse engineer the Online Services Software; or
    - vi. Attempt to discern the source code residing on the server on which the Online Services Software is run;
  - e. The Online Services Software will only be used by the Company and not used for or on behalf of others;
  - f. The Company will not disclose, publish, release, transfer or otherwise make the Online Services Software or Online Services Materials available in any form to, or for the use or benefit of, any other person or entity, other than its Employees and agents having need for such disclosure and only as authorized in this Online Services Schedule;
  - g. The Company will be fully responsible for compliance with all of the terms and conditions of the Agreement by its Employees and agents; and
  - h. The Company will not directly or indirectly copy, duplicate, or furnish to others any physical or magnetic version of the Online Services Software or Online Services Materials or permit others to do so.
4. The Bank will generate and provide the Company with the Devices required for access to the Online Services System, as further described in the User Guide and the Security Procedures for the Devices. The Company agrees that the Security Procedures provide it with a commercially reasonable level of security for use of the Online Services and access to the Online Services System. The Company and each user must safeguard the Devices and keep them confidential and secure from unauthorized use. The Company must promptly report any breach of security to the Bank. The Company

acknowledges and agrees that the Bank may rely on, and the Company will be bound by, any and all requests for Online Account Information and any and all Program Instructions when accompanied by the applicable Devices and received in good faith by the Bank. The Bank has no duty or responsibility to discover, audit, or report to the Company any breach of security, but the Bank will use reasonable efforts to notify a Program Administrator if it learns about any such breach. The Bank will not incur any liability to the Company for any failure or delay by the Bank in providing the Company with any such notice.

5. The Company must use a Browser that complies with specifications set forth in the User Guide. The Online Services may be accessed by Company through the public Internet. The Company agrees to use the Online Services, as described in the User Guide, in compliance with all applicable laws and regulations. The Company understands that Online Account Information is updated periodically and therefore, at any point in time, may not reflect information on the Bank's records at such time, as more fully described in the User Guide. The Company acknowledges and agrees that the Online Services do not include any recommendation, guaranty, representation or warranty whatsoever. The Bank shall not be responsible for errors in Online Account Information provided to the Bank by non-Bank sources.
6. The Bank recommends that the Company have appropriate security measures for Internet use, including, a proxy server and/or firewalls to control and protect Internet access. The Bank shall not be responsible for (i) inability to contact the Online Services through the Internet resulting from a problem with an Internet service provider or online service provider or (ii) unknown hazards of Internet use. If the Company fails or is unable to access the Online Services, the Bank's sole responsibility shall be to use its commercially reasonable efforts to correct the problem and the Bank shall not suffer or incur any other liability in connection therewith.
7. The Bank will not be responsible for any data that is lost or destroyed in connection with the use of the Online Services. In addition, the Bank will not be responsible for the Company's inability to use the Online Services due to a mechanical hard drive failure or other system failure (including, but not limited to, a "lock-up" resulting from the Company's use of software). The Bank recommends that the Program Administrator take the necessary measures to ensure that the Company performs daily back-ups of data used in connection with the Online Services and the hard drives of the personal computers and/or the servers used in connection therewith.
8. In no event will the Bank have any liability whatsoever in connection with:
  - a. Any application errors in or security breaches of any Browser;
  - b. The Company's inability to use the Online Services or access the Online Services System due to any Internet or Browser problem or any other cause beyond the Bank's control; or
  - c. Any interception of any Online Account Information as a result of the use of the Internet.
9. The Bank hereby reserves the right to suspend the Online Services without notice to the Company. The Bank may terminate the Online Services upon notice to the Company.
10. Any separate Online Business Banking Services Agreement between the Company and the Bank shall supplement the Agreement, including the provisions of this Online Services Schedule, with respect to the Online Services. If a provision of the Agreement conflicts or is inconsistent with any provision of the Online Business Banking Services Agreement, then whichever provision is more protective of or beneficial to the Bank shall control.
11. The provisions of this Online Services Schedule shall survive termination of the Agreement.



**RESOLUTION R-2016-01-00444**  
(Vox Commercial Credit Card Agreement)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS,  
APPROVING THE VOX CREDIT CARD AGREEMENT; AND PROVIDING FOR  
AN EFFECTIVE DATE.**

**WHEREAS**, the First National Bank of Omaha Commercial Card Agreement and all respective schedules, addenda, and exhibits are approved ; and

**WHEREAS**, the individuals designated in the Agreement, being duly qualified and designated by the City of Lucas, and holding the title or position shown in such Agreement, are authorized and directed to a) borrow money on behalf and in the name of the City of Lucas, b) execute the Agreement on behalf of the City of Lucas, as well as any notes, drafts, agreements and other documents and instrument, pledge and encumber property for the City of Lucas, including without limitation, bank accounts, and c) name and appoint the individuals who shall be authorized to instruct First National Bank of Omaha to issue credit cards under the Agreement and perform all other duties identified in the agreement on behalf of the organization. If there is more than one authorized official listed in the Agreement, each shall independently have full and complete authority to act on behalf of the City of Lucas as designated herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF LUCAS, TEXAS:**

**SECTION 1.** That the City Council of the City of Lucas, Texas does hereby approve the Vox Credit Card Agreement attached as Exhibit and shall remain in effect until such agreement has been modified or terminated.

**SECTION 2.** That this resolution shall become effective immediately from and after its passage.

**DULY PASSED** by the City Council of the City of Lucas, Texas, on this the 7th day of January, 2016.

City of Lucas, Texas

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Jim Olk, Mayor

ATTEST:

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Stacy Henderson, City Secretary



# City of Lucas City Council Agenda Request January 7, 2015

**Requester:** Development Services Director Joe Hilbourn

## **Agenda Item:**

Consider adopting Ordinance 2016-01-00827 amending Chapter 10 of the Code of Ordinances titled "Subdivision" by amending definitions and the procedure for filing plats including amending plats to be consistent with Chapter 212 of the Local Government Code; amending the chapter to replace the planning and zoning manager with the Director of Development Services and providing for other non-substantive changes to division 2, titled Platting Procedure.

## **Background Information:**

At the November 5, 2015 City Council meeting, the City Council reviewed and recommended changes to Chapter 10, Subdivision Regulations. Those changes have been incorporated for Council approval.

## **Attachments/Supporting Documentation:**

1. Ordinance 2016-01-00827 – Chapter 10 Subdivision Regulations
- 2.

## **Budget/Financial Impact:**

N/A

## **Recommendation:**

Approve as presented or suggest changes deemed necessary.

## **Motion:**

I make a motion to adopt Ordinance 2016-01-00827 amending Chapter 10 of the Code of Ordinances titled "Subdivision" by amending definitions and the procedure for filing plats including amending plats to be consistent with Chapter 212 of the Local Government Code; amending the chapter to replace the planning and zoning manager with the Director of Development Services and providing for other non-substantive changes to division 2, titled Platting Procedure.



**ORDINANCE 2016-01-00827**  
**[AMENDING CODE OF ORDINANCE CHAPTER 10]**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, AMENDING THE LUCAS CODE OF ORDINANCES BY AMENDING CHAPTER 10 TITLED "SUBDIVISIONS" BY AMENDING ARTICLE 10.01 TITLED "GENERAL PROVISIONS" BY AMENDING SUBSECTION 10.01.001 TITLED "PLATTING AND PLAN REVIEW FEES"; BY AMENDING ARTICLE 10.02 TITLED "IMPACT FEES" BY AMENDING SUBSECTION 10.02.002 TITLED "DEFINITIONS", BY AMENDING SUBSECTION 10.02.005 TITLED "ASSESSMENT AND COLLECTION; EXCEPTIONS"; BY AMENDING ARTICLE 10.03 TITLED "SUBDIVISION AND DEVELOPMENT ORDINANCE" BY AMENDING DIVISION 1 TITLED "GENERAL" BY AMENDING SUBSECTION 10.03.005 TITLED "DEFINITIONS", BY AMENDING SUBSECTION 10.03.007 TITLED "FILING FEES"; BY AMENDING DIVISION 2 TITLED "PLATTING PROCEDURE" BY AMENDING SUBSECTION 10.03.040 TITLED "DATA REQUIREMENT FOR PRELIMINARY PLAT", BY AMENDING SUBSECTION 10.03.042 TITLED "AMENDMENTS TO OPTIONAL LAND STUDY OR PRELIMINARY PLAT", BY AMENDING SUBSECTION 10.03.046 TITLED "EXECUTION AND RECORDATION OF FINAL PLAT", BY AMENDING SUBSECTION 10.03.048 TITLED VACATING PLATS, REPLATS AND AMENDMENTS OF PLATS"; BY AMENDING DIVISION 4 TITLED "STANDARDS AND REQUIREMENTS" BY AMENDING SUBSECTION 10.03.123 TITLED "STREETS AND DRAINAGE"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, THAT:**

**Section 1.** The Code of Ordinances of the City of Lucas, Texas, is hereby amended by amending Chapter 10 “Subdivisions”, to read as follows:

**“CHAPTER 10**

**SUBDIVISIONS**

**ARTICLE 10.01 GENERAL PROVISIONS**

**Sec. 10.01.001 Platting and plan review fees**

The fees for final and preliminary plats, replats, concept plans, landscape plans, architectural plans, filing fees, costs, miscellaneous fees and outside consultant fees shall be and are hereby changed and/or established as set forth in Appendix “C” titled “Fee Schedule” of this code.

**ARTICLE 10.02 IMPACT FEES**

...

**Sec. 10.02.002 Definitions**

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Advisory committee. The members of the planning and zoning commission and the representatives appointed by the city council as required by the enabling legislation for this article.

...

Capital improvements plan. A plan contemplated by this article that identifies capital improvements or facility expansions for which impact fees may be assessed.

...

Impact fee. A charge or assessment imposed as set forth in this article against a new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

- (1) Dedication of land for public parks or payment in lieu of the dedication to serve park needs;

- (2) Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;
- (3) Lot or acreage fees to be placed in trust funds for the purposes of reimbursing developers for oversizing or constructing water or sewer mains or lines; or
- (4) Other pro-rata fees for reimbursement of water or sewer mains or lines extended

...

Off-site. For impact fee assessment purposes only, located entirely on property which is not included within the bounds of the plat being considered for fee impact purposes.

On-site: For impact fee assessment purposes only, located at least partially on the plat which is being considered for impact fee.

...

Service unit. That standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the city during the previous ten years. The applicable service units shall be shown on the conversion table in the capital improvements plan and impact fee calculation which can be converted to equivalent single-family residential p.m. peak-hour average vehicle trip ends per acre for roadway facilities and water meter equivalents, as the context indicates, which also serves as the standardized unit of measure or consumption or discharge for water and wastewater facilities.

...

#### **Sec. 10.02.005            Assessment and collection; exceptions**

(a) Impact fees shall be assessed to new development at the time of recordation of the subdivision plat or other plat required by the subdivision ordinance of the city. If the city has water and wastewater capacity available, impact fees shall be collected at the time the city issues a building permit; or, for land platted outside the corporate boundaries, the city shall collect the fees at the time an application for an individual meter connection to the city's water or wastewater system is filed; or, where the city lacks authority to issue a building permit in an area where an impact fee applies, the fee shall be collected at the time an application is filed for an individual meter connection to the city's water or wastewater system. Impact fees for properties platted prior to the adoption of this article shall be collected at any time after one year of adoption of this article (May 12, 1997) and shall be due and payable prior to or at the time of issuance of the building permit or connection to the city's water and waste water system, whichever occurs first

...

**ARTICLE 10.03 SUBDIVISION AND DEVELOPMENT ORDINANCE**

**Division 1. General**

...

**Sec. 10.03.005 Definitions**

The following words and phrases when used in this article shall have the meaning respectively ascribed to them in this section:

*Alley.* A minor right-of-way, dedicated to public use, which affords only secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

*Channel.* Any drainage system including a bar ditch.

*City council.* The governing body of the City of Lucas, Texas.

...

*Development services director.* The city manager or the person appointed by the city manager as the development services director of the city who oversees the daily operations involving the development of the city.

...

*Water master plan.* The master plan for the city for water facilities adopted and amended by ordinance from time to time.

...

**Sec. 10.03.007 Filing fees**

(a) Filings fees for plats established by ordinance by the city council from time to time shall be paid by the developer at time of application.

...

**Division 2. Platting Procedure**

...

**Sec. 10.03.040            Data requirement for preliminary plat**

...

(b) The preliminary plat shall contain or be accompanied by the following:

(1) The required number of copies of the preliminary plat and the approved engineering and construction plans for all public infrastructure improvements in accordance with the design standards of the city, to include all streets, water mains and services, sewer system and services, and drainage systems required to develop the proposed subdivision.

...

(6) The name and location of adjacent subdivisions or unplatted tracts drawn to scale shown in dotted lines and in sufficient detail to accurately show the existing streets, alleys and other features that may influence the layout and development of the proposed subdivision. The abstract name and number, and name of the owner of the adjacent unplatted tracts shall be shown.

...

(22) Copy of any proposed property owner or homeowners' association agreements, covenants and restrictions.

...

**Sec. 10.03.042            Amendments to optional land study or preliminary plat**

...

(b) The director of development services may approve or disapprove a minor amendment. Disapproval may be appealed to the commission. Major amendments may be approved by the commission at a public meeting in accordance with the same requirements for the approval of a preliminary plat.

...

**Sec. 10.03.046            Execution and recordation of final plat**

...

(c) City staff shall be responsible for filing the final plat with the county clerk. Simultaneously with the filing of the final plat, the city staff shall record such other agreements of dedication and legal documents as shall be required to be recorded by the city secretary or the city attorney. The final plat, bearing all required signatures, shall be recorded after final approval

and within five working days of its receipt. One (1) copy of the recorded final plat, with street addresses assigned, will be forwarded to the owner by the city staff.

...

**Sec. 10.03.048          Vacating plats, replats and amendment of plats**

(a)    Vacating plats.

- (1)    The owners of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat. Subject to review and approval by both the planning and zoning commission and the city council.

...

(d)    Plat amendments and corrections.

- (1)    The director of development services is allowed to approve the following:
  - (A)    Amending the plats described in Section 212.016 of the Texas Local Government Code.
  - (B)    Minor plats involving four or fewer lots fronting an existing street and not requiring the creation of any new street or extension of facilities; and
  - (C)    A replat under Section 212.0145 of the Texas Local Government Code that does not require the creation of any new street or the extension of municipal facilities.
- (2)    The director of development services may for any reason elect to present an amending plat, minor plat or replat meeting the requirements of (1) above to the planning and zoning commission for approval.
- (3)    Any amending plat, minor plat or replat meeting the requirements of (1) above which the planning and zoning manager fails or refuses to approve shall be submitted to the planning and zoning commission for approval.

**Sec. 10.03.049          Expiration of final plat approval**

- (a)    If public improvements for a subdivision have not been constructed and accepted by the city and the corresponding final plat for said subdivision has not [been] filed in the county plat records within two (2) years after the date of final plat approval by the planning and zoning commission, said final plat shall be null and void and shall conclusively be deemed to be

withdrawn without further action by the city. This provision shall not apply to final plats approved by the city prior to the effective date of this section [ordinance adopted July 7, 2006].

...

#### **Division 4. Standards and Requirements**

...

#### **Sec. 10.03.123 Streets and drainage**

(a) Streets.

- (1) All street widths shall conform to the master thoroughfare plan and shall be as follows:

<b>Street or Thoroughfare Type</b>	<b>Minimum Right-of-Way Width</b>	<b>Pavement Width (measured from edge to edge)</b>
Arterial (Type A)	120 ft.	39 ft. (each direction)
Major collector (Type B)	90 ft.	64 ft.
Collector (Type C)	60 ft.	34 ft.
Residential	50 ft.	24 ft.
Private drive (Type D)	50 ft.*	24 ft.

- \* Private drives shall not be in ROW but within an access, drainage, and utility easement.

- (2) All street rights-of-way shall be dedicated to the city as part of the platting process and without cost to the city.

...

(i) Street lighting shall be provided at street intersections within new subdivisions and at streets connecting to new subdivisions and shall conform to the latest edition of the Illuminating Engineering Society Handbook and the city's lighting ordinances. The use of sodium vapor lights for street and parking lot illumination shall not be allowed in the city. Cost of installation of street lighting shall be borne by the subdivider. Cost of ongoing service and utilities shall be borne by the subdivider and included in a maintenance agreement as part of the homeowners' association documents.

(j) The city engineer may, based on field conditions, modify the requirements of this section.

...”

**Section 2.** All ordinances of the City of Lucas in conflict with the provisions of this Ordinance shall be, and same are hereby, repealed, provided, however, that all other provisions of said Ordinances are not in conflict herewith shall remain in full force and effect.

**Section 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or of the City of Lucas Code of Ordinances, as amended hereby, be adjudged or held to be voided or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinances or the City of Lucas Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**Section 4.** An offense committed before the effective date of the Ordinance is governed by prior law and the provisions of the City of Lucas Code of Ordinances in effect when the offense was committed and the former law is continued in effect for this purpose.

**Section 5.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for the in the City of Lucas Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**Section 6.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Lucas, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**



APPROVED:

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Jim Olk, Mayor

APPROVED AS TO FORM:

ATTEST:

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Joseph J. Gorfida, Jr., City Attorney  
(12-21-15/74772)

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Stacy Henderson, City Secretary



# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** Public Works Director/City Engineer Stanton Foerster

## **Agenda Item:**

Consider authorizing the City Manager to enter into a construction contract with McMahon Contracting recommended by the design consultant for the construction of the Blondy Jhune Road Bridge Replacement Project in the amount of \$2,460,237.50, plus a 20% contingency.

## **Background Information:**

The Blondy Jhune Road Bridge Replacement Project consists of replacing the west and east bridges on Blondy Jhune Road along with respective roadway approaches. The project is located between Country Club Road and Winningkoff Road. Work includes paving, grading, drainage, bridge structures, approach slabs, retaining walls, signage, and pavement markings, etc.

Bid packages were made available in the office of the Purchasing Coordinator at Lucas City Hall beginning at 1:00 PM, November 18 upon payment of a non-refundable fee of one-hundred dollars (\$100.00) per set. The bid package was also available electronically upon request for no charge.

A pre-bid conference was held at 1:30 PM, December 7 in the Lucas City Hall. All potential bidders were expected to visit the proposed project locations and visually inspect the project. Failure to personally inspect the projects could be regarded as unresponsive and may result in removal from consideration.

Sealed bids will be received by the Purchasing Coordinator at City Hall until Tuesday, December 22, 2015 at 2:00 P.M. The Lucas City Council reserves the right to reject any or all bids.

This project was advertised in the Wyle News on November 18, November 25, and December 2.

## **Attachments/Supporting Documentation:**

- a) Bid Tabulations will be sent to the City Councilmembers under separate cover.
- b) Standard Construction Contract will be sent to the City Councilmembers under separate cover.



# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** Public Works Director/City Engineer Stanton Foerster

**Budget/Financial Impact:**

This project is funded using account 21-8210-491-1211, Blondy Jhune Bridges and Safety Projects. This account was established by certificates of obligation sold in mid-2015.

**Recommendation:**

Staff does not have a recommendation at this time.

**Motion:**

I make a motion to approve/deny authorizing the City Manager to enter into a construction contract with McMahon Contracting for the construction of the Blondy Jhune Road Bridge Replacement Project in the amount not to exceed \$2,460,237.50 plus a 20% contingency.



# City of Lucas Council Agenda Request January 7, 2016

**Requester: HR Manager Cheryl Meehan**

## **Agenda Item:**

Consider the following items regarding the Texas Emergency Services Retirement System (TESRS) due to the inability of the City of Lucas to terminate its participation in the volunteer pension plan:

- a. Receive recommendations from the Lucas Volunteer Firefighter Pension Board.
- b. Appropriate funds from the unrestricted fund balance in the general fund in the amount of \$20,000 to finance the required payments to TESRS.
- c. Authorize the City Manager to negotiate a revised contract with to TESRS to reduce the payment per qualified volunteer to \$36 per month which is the minimum contribution rate.

## **Background Information:**

The City of Lucas no longer wishes to participate in the Texas Emergency Services Retirement System (TESRS). However, the City has determined that it cannot currently terminate its participation in the TESRS.

The City of Lucas did not included funding in the current fiscal year 15/16 budget. The Lucas Volunteer Firefighter Pension Board met on December 8, 2015 and is making a recommendation to reduce the contribution rate to \$36 per month per emergency responder volunteer which is the minimum required contribution. The Board also took action to move forward with reconciliation of the outstanding quarterly reports to bring the City current with its financial obligation with TESRS.

Staff is currently working on determining the outstanding balance and is evaluating Chapter 861 of the Government Code to determine which volunteers provided “qualified service” as defined in Section 861.001(10) and meet the definition of “volunteer” in Section 861.001(12). In particular, qualified service requires a volunteer to provide support services for at least 25 percent of the department’s emergencies in a calendar year. City staff is working with the City Attorney to help us accurately determine the City’s financial obligation to TESRS. City staff is in the process of analyzing the call data to determine if which volunteers provide qualified service.

The Lucas Volunteer Firefighter Pension Board discussed the need to have a viable recruiting tool to attract and retain qualified volunteers to maintain adequate staffing levels for the Lucas Fire Department. The Board proposed to the Lucas City Council a 457(e) Length of Service Award Program (LOSAP) and it was approved by City Council on April 2, 2015 and funded in the fiscal year 15/16 budget in the amount of \$135,000 for prefund the plan for existing



# City of Lucas Council Agenda Request January 7, 2016

Item No. 10

**Requester:** HR Manager Cheryl Meehan

volunteers for up to 5 years of service and annual plan payments of up to \$36,000 per year to cover up to 40 volunteer emergency responders. The Lucas Volunteer Firefighter Pension Board recommended no changes to the LOSAP that was approved by City Council and included in the fiscal year 15/16 budget.

### **Attachments/Supporting Documentation:**

1. TESRS Contract
2. Draft Minutes Lucas Volunteer Firefighter Pension Board for December 8, 2015
3. Government Code Title 8 Public Retirement Systems Subtitle H Texas Emergency Services Retirement System Chapter 861 General Provisions

### **Budget/Financial Impact:**

According to the Texas Emergency Services Retirement System, the following is owed and outstanding:

<u>Report Date</u>	<u>Period</u>	<u>Amount</u>
11/30/14	September, October & November, 2014	\$4,620
2/28/15	December 2014, January & February, 2015	\$4,500
5/31/15	March, April & May, 2015	\$4,500
8/31/15	June, July & August, 2015	\$4,500
11/23/15	September, October & November, 2015	\$4,020
TOTAL		\$22,140

The current rate is \$60 per month per volunteer. A credit of \$3,830 has been authorized by TESRS to reduce the outstanding balance.

### **Recommendation:**

Appropriate funds from the unrestricted fund balance in the general fund in the amount of \$20,000 to Line Item 11-6300-1238 Other Retirement to finance the required payments to TESRS upon reconciliation of the amount due.

Authorize the City Manager to negotiate a revised contract with to TESRS to reduce the payment per qualified volunteer to \$36 per month which is the minimum contribution rate.

### **Motion:**



# City of Lucas Council Agenda Request January 7, 2016

**Requester: HR Manager Cheryl Meehan**

I make a motion to appropriate funds from the unrestricted fund balance in the general fund in the amount of \$20,000 to Line Item 11-6300-128 Other Retirement to finance the required payments to TESRS upon reconciliation of the amount due and authorize the City Manager to negotiate a revised contract with to TESRS to reduce the payment per qualified volunteer to \$36 per month which is the minimum contribution rate.

**PENSION SYSTEM CONTRACT AMENDMENT**  
TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM  
CITY OF LUCAS ON BEHALF OF THE LUCAS VOLUNTEER FIRE DEPARTMENT

Effective October 1, 2012

Page 1 of 3

**PENSION SYSTEM CONTRACT AMENDMENT**

The Commissioner of the Fire Fighters' Pension Commission on behalf of the Board of Trustees of the Texas Emergency Services Retirement System ("Pension System") and the City of Lucas (The Governing Entity) hereby agree to this Amendment of the Pension System Contract effective October 1, 2012.

The contract is amended to increase the participating department contribution rate from \$50 per month per member to \$60 per month per member effective October 1, 2012. All other terms of the Pension System contract, effective January 1, 2001, including any portion of the amended document that is not expressly amended below, remain in effect.

**AUTHORITY**

The Pension System Contract Amendment is entered into pursuant to the statutory authority of the Government Code, Title 8 Public Retirement Systems, Subtitle H. Texas Emergency Services Retirement System.

**PARTIES**

The Pension System Contract Amendment is made and entered into by and between the Governing Entity, and the Commissioner of the Fire Fighters' Pension Commission on behalf of the Board of Trustees of the Texas Emergency Services Retirement System. The parties, in consideration of their respective agreements and covenants contained and recited herein; agree to the mutual obligations, and performance of the tasks hereafter described, and contract as set forth below.

**The Governing Entity:** The City of Lucas is a municipality of the state of Texas. The billing address is 665 Country Club, Lucas, TX 75002.

**The Commissioner of the Fire Fighters' Pension Commission:** The Commissioner of the Fire Fighters' Pension Commission serves as the administrator on behalf of the Board of Trustees of the Texas Emergency Services Retirement System. The Fire Fighters' Pension Commission is an agency of the State of Texas which is located at 920 Colorado Street, Austin TX 78701.

**PENSION SYSTEM CONTRACT AMENDMENT PERIOD**

The Pension System Contract amendment is effective October 1, 2012.

**AMENDMENT AND ASSIGNMENT**

Except as otherwise provided herein, any Amendment or other modification of any term of this Pension System Contract amendment must be in writing and signed by all of the parties.

**SERVICES PROVIDED BY THE PENSION FUND**

The Pension System shall provide service retirement benefits, disability benefits and survivor

**PENSION SYSTEM CONTRACT AMENDMENT**  
TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM  
CITY OF LUCAS ON BEHALF OF THE LUCAS VOLUNTEER FIRE DEPARTMENT

Effective October 1, 2012

Page 2 of 3

benefits (in accordance to "Board Rules" of the Pension System) to each person who performs services as a volunteer and auxiliary member of the participating emergency service district. The administration of the Pension System is governed by the Rules of the Texas Emergency Services Retirement System "Board Rules", Texas Administrative Code, Title 34, Public Finance, Part 11.

**MONTHLY CONTRIBUTIONS**

Effective October 1, 2012, the Governing Entity shall make monthly contributions on behalf of each active participating member in the amount of \$60.00.

**MEMBERSHIP RECONCILIATION REPORT**

The Fire Fighters' Pension Commission shall send to the Chairman of the Local Board of Trustees 30 days before the last day of the quarter, a pension roster report detailing the name of each member of the emergency services district who is identified as a member of the Pension System, and a summary of contribution charges and credits. This pension roster report will fully disclose the basis for the billing.

The Chairman of the Local Board of Trustees or administrative head shall review the accuracy of the pension roster report. Personnel forms must be filed appropriately to add or terminate members incorrectly identified in the pension roster report.

**BILLING**

The Fire Fighter's Pension Commission shall bill governing entities on a quarterly basis on the last business day of November, February, May, and August.

To receive payment, the Fire Fighters' Pension Commission shall submit an invoice summarizing contribution charge to the billing address of the Governing Entity.

The Fire Fighters' Pension Commission shall bill the governing entity for:

- ◆ **Monthly contributions for participating members,**
- ◆ **Prior service contributions, if applicable,**
- ◆ **Late payment interest charges,**
- ◆ **Administrative penalties**

Payments are due within 30 days after the invoice date. Late payments accrue interest at the current assumed actuarial rate of return on investments of the fund.

The Governing Entity will submit to the Fire Fighters' Pension Commission the bank account and routing number from which the payment will be made. Based on this information, the Fire Fighters' Pension Commission will initiate an ACH debit to collect payment for the amount due on the date which is indicated on the invoice.



**PENSION SYSTEM CONTRACT AMENDMENT**  
TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM  
CITY OF LUCAS ON BEHALF OF THE LUCAS VOLUNTEER FIRE DEPARTMENT

Effective October 1, 2012

Page 3 of 3

**GOVERNING LAW**

This Pension System Contract Amendment shall be construed in accordance with and governed by the laws of the State of Texas. Venue for the resolution of any and all litigation arising under this Pension System Contract Amendment shall be in the courts of competent jurisdiction in Austin, Travis County, Texas.

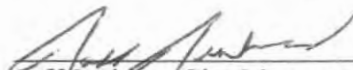
IN WITNESS WHEREOF, the parties intending to be legally bound have caused this Pension System Contract to be executed by their duly authorized officers or other representatives.

FIRE FIGHTERS' PENSION  
COMMISSION

  
\_\_\_\_\_  
Sherri Walker, Commissioner

Date 10/28/2012

CITY OF LUCAS

  
\_\_\_\_\_  
Jeff Jenkins, City Manager

Date: 10/18/12

  
\_\_\_\_\_  
Randy D. Conrad, Battalion Chief

Date: 10/18/12



Lucas Volunteer Firefighter Pension Board  
December 8, 2015 7:00 p.m.  
City Hall - 665 Country Club Road  
Minutes

**Call to Order**

Chairman Larry Bowman called the meeting to order at 7:05 p.m.

All following Trustees were present.

Chairman Larry Bowman	Trustee David Leonard
Trustee Gerald Reining	Trustee Gary Johnson
Trustee Wayne Millsap	

Trustee Jamie Kilpatrick was absent.

Staff:

City Manager Joni Clarke	HR Manager Cheryl Meehan
--------------------------	--------------------------

It was determined that a quorum was present.

**Citizens' Input**

The Citizens' Input portion of the agenda is an opportunity for the public to address the Lucas Volunteer Firefighter Pension Board on any subject. However, in accordance with the Texas Open Meetings Act, the Local Board cannot discuss issues raised or make any decisions at this time but may refer items to City Staff for research and possible inclusion on a future agenda.

1. Citizens' Input.

No Citizens requested to comment.

**Regular Agenda**

2. Consider approval of the minutes of the Lucas Volunteer Pension Board Meeting March 23, 2015.

Motion was made by Trustee D. Coy Leonard to accept the minutes as read. Motion was seconded by Trustee Wayne Millsap, motion carried unanimously.

3. Discuss and consider the following items with respect to the Texas Emergency Services Retirement System:

- a. Consider the position of the Texas Emergency Services Retirement System regarding the inability of the City of Lucas to terminate its participation in the volunteer pension plan.

No action was taken.

- b. Consider the contract with the Texas Emergency Services Retirement System initially executed in October 1998 and increased contributions to \$60 on October 1, 2012. Consider a recommendation to City Council to take action to reduce the contribution rate to \$36 per month per emergency responder volunteer, which is the minimum required by the Texas Emergency Services Retirement System.

Motion was made to recommend to City Council, that we move forward to reduce the monthly contribution for qualifying members to \$36 per month by Trustee Millsap, seconded by Trustee Larry Bowman. Motion carried unanimously.

- c. Consider the Texas Emergency Services Retirement System annual report due on January 31 reporting service credit and training for calendar year 2015.

No action was taken until we receive legal advice on the Qualified Service definition from the Texas Government Code.

- d. Consider the reappointment of Cheryl Meehan as the City of Lucas administrator for the Texas Emergency Services Retirement System online system.

Motion was made to reappoint Cheryl Meehan the City of Lucas Administrator for the Texas Emergency Services Retirement System online system by Trustee Millsap, seconded by Trustee Leonard. Motion carried unanimously.

- e. Consider the reconciliation and approval of the Texas Emergency Services Retirement System invoices for November 30, 2014, February 28, 2015, May 31, 2015, August 31, 2015 and November 30, 2015 and recommend to City Council to appropriate the funding necessary to fund the Texas Emergency Services Retirement System.

Trustee Wayne Millsap made a motion to reconcile the reports, have Chairman Larry Bowman approve the reports and recommend City Council fund these five quarters to bring us up to date with Texas Emergency Services Retirement System. Motion was seconded by Trustee Gerald Reining. Motion carried unanimously.

4. Consider the existing Volunteer Firefighter Insurance System (VFIS) Length of Service Award Program (LOSAP) and the effects on the City of Lucas with the inability of the City of Lucas to terminate its participation in the TESRS volunteer pension plan.

Motion was made to keep the VFIS Length of Service Award Program (LOSAP) for the active volunteers by Chairman Larry Bowman, seconded by Trustee Gerald Reining. Motion carried unanimously.

5. Adjournment. Motion to adjourn the meeting at 8:03 by Trustee Wayne Millsap, Trustee David Leonard seconded the motion. Motion carried unanimously.

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Chairman Larry Bowman

ATTEST:

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Cheryl M. Meehan  
HR Manager, Staff Liaison

## GOVERNMENT CODE

## TITLE 8. PUBLIC RETIREMENT SYSTEMS

## SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

## CHAPTER 861. GENERAL PROVISIONS

Sec. 861.001. DEFINITIONS. In this subtitle:

(1) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and amortize the unfunded accrued actuarial liability in a period that does not exceed 30 years.

(2) "Auxiliary employee" means a person who receives compensation at a rate that does not exceed the federal minimum wage by more than \$2 an hour, as established under the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), for performing emergency services and is certified by a political subdivision of this state as being regularly engaged in the performance of duties for a participating department in an appointive office or position that normally requires services from the person for fewer than 1,000 hours a year, but excludes a person who is eligible to receive credit for the same service in either the Texas County and District Retirement System or the Texas Municipal Retirement System.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1316, Sec. 4.01(2), eff. June 14, 2013.

(4) "Dependent" means an unmarried child, natural or adopted, who:

(A) is less than 18 years of age;

(B) is less than 19 years of age and a full-time student at an elementary or secondary school; or

(C) became disabled before the child's 22nd birthday and remains disabled.

(5) "Emergency services" means only those services relating to fire, rescue, and emergency medical services, including support services for those duties, performed by a volunteer or auxiliary employee of a participating department.

(5-a) "Executive director" means the person appointed

executive director under Section 865.0095.

(6) "Fund" means the Texas emergency services retirement fund.

(7) "Local board" means a local board of trustees established under Section 865.012.

(8) "Member" means a volunteer or auxiliary employee who participates in the pension system.

(9) "Pension system" means the Texas Emergency Services Retirement System.

(10) "Qualified service" means service:

(A) for a participating department that is recognized as an emergency services department by its governing body and that conducts at least 48 hours of training in a calendar year; and

(B) that is performed by a member in good standing in the department who:

(i) attends at least 20 hours of annual training and at least 25 percent of the department's emergencies in a calendar year;

(ii) attends at least 20 hours of annual training and provides support services for at least 25 percent of the department's emergencies in a calendar year; or

(iii) does not attend because the member is absent because of military duty.

(11) "State board" means the state board of trustees established under Section 865.001.

(11-a) "Support services" means services that directly assist in the delivery of emergency services. The term includes directing traffic at an emergency scene, dispatching emergency services personnel, driving an emergency services vehicle, supplying or maintaining equipment at an emergency scene, providing essential recordkeeping for a participating department, and other similar services as determined by a department.

(12) "Volunteer" means a person who performs emergency services for civic, charitable, or humanitarian reasons, receives no monetary compensation from a participating department, and is not subject to the compensation requirements provided for employees by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 697 (H.B. 2751), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 1.01, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 4.01(2), eff. June 14, 2013.

Sec. 861.002. PENSION SYSTEM. The pension system is a public entity. The Texas Emergency Services Retirement System is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.003. POWERS AND PRIVILEGES. The pension system has the powers, privileges, and immunities of a corporation as well as the powers, privileges, and immunities conferred by this subtitle.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.004. EXEMPTION FROM EXECUTION. All benefit payments, contributions, money in the pension system fund, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, and any other process and are unassignable.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.005. NO DIVERSION OF ASSETS. The fund must be maintained for the exclusive benefit of members, retirees, and their beneficiaries. At no time before the termination of the fund and the satisfaction of all liabilities with respect to members, retirees, and

their beneficiaries may any part of the principal of or interest from fund assets be used for or diverted to a purpose other than the exclusive benefit of the members, retirees, and their beneficiaries.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS. (a) The legislature intends that this subtitle be construed and administered in a manner so that the pension system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state board may adopt rules that modify the plan as necessary to meet those qualification requirements.

(b) Notwithstanding any other provision of this subtitle, all distributions under this subtitle must be made in accordance with applicable provisions of the Internal Revenue Code of 1986 and regulations adopted under that code.

(c) The state board by rule may authorize an eligible rollover distribution to be made in the form of a direct trustee-to-trustee transfer.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. A forfeiture that occurs under this subtitle may not be used to increase the benefits that any member would otherwise receive under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.008. IMMUNITY FROM LIABILITY. The state board, executive director, and employees of the pension system are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty or prerogative in connection with the administration of the pension system.



Added by Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 1.02, eff. June 14, 2013.

Sec. 861.009. VENUE. An action in state court by or against the pension system shall be brought in Travis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 1, eff. September 1, 2007.



# City of Lucas City Council Agenda Request January 7, 2016

**Requester:** Mayor Jim Olk

**Agenda Item:**

**Executive Session:**

An Executive Session is not scheduled for this meeting.

**Background Information:**

NA

**Attachments/Supporting Documentation:**

NA

**Budget/Financial Impact:**

NA

**Recommendation:**

NA

**Motion:**

NA