

# City of Cody City Council

## AGENDA

Tuesday, December 7, 2021 – 7:00 p.m.

(Pre-Meeting to begin at 6:55 p.m. in Conference Room)

Meeting Place: City of Cody Council Chambers – 1338 Rumsey Avenue, Cody, WY

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Meeting Called to Order

Pledge of Allegiance

Moment of Silence

Roll Call

Mayor's Recognitions and Announcements

### 1. Consent Calendar

All items under the consent calendar will be acted upon in one motion unless a Councilmember or member of the public requests that an individual item be taken up under Conduct of Business.

- a. Approval of Minutes: Regular Minutes from November 16, 2021 and Special Work Session Minutes from November 30, 2021.
- b. Approve Vouchers and payroll in the amount of \$464,433.39
- c. Authorize the Mayor to sign the agreement between the City of Cody and BankCard USA for the merchant card services at the City water crane facility.
- d. Award Bid 2021-12 to Tractor and Equipment Company for one (1) 2022 CAT GP25N2 forklift in the amount of \$47,836.00.
- e. Authorize the Wild West Paddle Club an open container and malt beverage permit to be held in conjunction with a free concert at City Park on August 13, 2022. Also authorize Mobile Vendors to participate in this event and reserve parking spaces accordingly. Organizers will reserve the Park and pay fees associated with this through the Rec Center and will be required to provide liability insurance.

2. Public Comments: The City Council welcomes input from the public. In order for everyone to be heard, please limit your comments to five (5) minutes per person. The Guidelines for the Conduct of City Council Meetings do not allow action to be taken on public comments.

### 3. Public Hearing.

### 4. Conduct of Business

- a. Accept the auditor's report and related financial statements for the fiscal year ending June 30, 2021

Staff Reference: Leslie Brumage, Finance Officer

Spokesperson: James Seckman, Seckman & Thomas, CPA

- b. Approve the final plat for the Best Choice Subdivision, a 5-lot subdivision, subject to conditions of approval.  
Staff Reference: Todd Stowell, City Planner
- c. Approve the preliminary and final plat for the Blessing 2<sup>nd</sup> Addition subdivision, a 5-lot subdivision, subject to conditions of approval.  
Staff Reference: Todd Stowell, City Planner
- d. Ordinance 2021-08 – First Reading  
An Ordinance to Rezone Lots 1-7 and Lots 10-16 of the Bakken Subdivision from Medium-High Density Residential (R-3) to Medium to Low Density Residential (R-2)  
Staff Reference: Todd Stowell, City Planner
- e. Ordinance 2021-09 – First Reading  
An Ordinance Rezoning 235 West Cooper Lane, located within the City of Cody, Park County, Wyoming to Limited Business (D-1).  
Staff Reference: Todd Stowell, City Planner
- f. Consider approval of the Professional Services Agreement with Stantec Consulting Services Inc for the Big Horn Corridor Study and authorize the Mayor to sign all associated documents.  
Staff Reference: Phillip Bowman, Public Works Director
- g. Ordinance 2021-07 – Second Reading  
An Ordinance Amending Title 8 Chapter, 2 of the City of Cody Code Municipal Code to Modify and Set Treated Water and Raw Water Service Fees and Rates and make Minor Updates and Modifications to the Code.  
Staff Reference: Phillip Bowman, Public Works Director

5. Tabled Items

6. Matters from Staff Members

7. Matters from Council Members

8. Adjournment

**Upcoming Meetings:**

**December 14, 2021 – Tuesday– Work Session – 5:30 p.m.**

**December 21, 2021 – Tuesday – Regular Council Meeting – 7:00 p.m.**

**City of Cody  
Council Proceedings  
Tuesday, November 16, 2021**

A regular meeting of the Cody City Council was held in the Council Chambers at City Hall in Cody, Wyoming on Tuesday, November 16, 2021 at 7:00 p.m.

Present: Mayor Matt Hall, Council Members Andrew Quick, Justin Baily, Jerry Fritz, Heidi Rasmussen and Diane Ballard, City Administrator Barry Cook, City Attorney Scott Kolpitcke, and Administrative Services Officer, Cindy Baker

Absent: Council Members Emily Swett

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

Council Member Ballard made a motion seconded by Council Member Rasmussen to approve the Consent Calendar as presented. Approved Consent Calendar included minutes from Regular Meeting on November 2, 2021 and Special Work Session Minutes from November 9, 2021; approve Vouchers and payroll in the amount of \$1,799,317.01, authorize the City Administrator Barry Cook to enter into and sign an agreement with River Oaks Communications Corporation and the City of Cody for professional services relating to franchise renewal and authorize the Mayor to enter into a revised agreement with Next Gen Park County to design, build and install a new playground for the softball complex located on Sheridan Ave. Vote was unanimous.

At 7:07 p.m. the Mayor entered into a Public Hearing to determine if it is in the public interest to adopt and implement the 2021 City of Cody Water Master Plan. Public Works Director, Phillip Bowman provided information on the 2021 Water Master Plan. After calling for comment three times and there being none. The Mayor closed the Public Hearing at 7:10 p.m.

Council Member Fritz made a motion seconded by Council Member Ballard to authorize the Park County Travel Council to utilize City property at 836 Sheridan Ave (Cody Country Chamber of Commerce) to construct Dining Dome(s) on said property. Vote was unanimous.

**Resolution 2021-20**

A Resolution to Approve and Adopt the 2021 City of Cody Water Master Plan. Council Member Baily made a motion seconded by Council Member Quick to approve Resolution 2021-20. Vote was unanimous.

**Ordinance 2021-07 – First Reading**

An Ordinance Amending Title 8, Chapter 2 of the City of Cody Municipal Code to Modify and Set Treated Water and Raw Water Service Fees and Rates and make Minor Updates and Modifications to the Code. Council Member Rasmussen made a motion seconded by Council Member Baily to approve Ordinance 2021-07 on First Reading. Vote was unanimous.

Mayor Hall adjourned the meeting at 7: 32 p.m.

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Mayor, Matt Hall

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Cindy Baker, Administrative Services Officer







**City of Cody**  
**Council Proceedings**  
**Tuesday, November 30, 2021**

A special meeting of the Cody City Council was held in Council Chambers of Cody City Hall on Tuesday, November 30, 2021 at 5:30 p.m.

Present: Mayor Matt Hall, Council Members Diane Ballard, Emily Swett, Andrew Quick, Jerry Fritz, and Heidi Rasmussen, City Administrator, Barry Cook and Administrative Service Officer, Cindy Baker.

Absent: Council Member Justin Baily.

Mayor Hall called the meeting to order at 5:30 p.m.

The Governing Body conducted Planning and Zoning Board Interviews. Appointments will be made at a future regular Council Meeting.

Mayor Hall adjourned the Work Session at 6:37 p.m.

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Cynthia D Baker  
Administrative Services Officer

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Matt Hall  
Mayor

## Report Criteria:

Invoice Detail.Input date = 11/30/2021

Invoice.Batch = {NOT LIKE} "1"

Secondary Name	Invoice	Description	Invoice Date	Total Cost
<b>ANIXTER INC (130622)</b>				
	4880989-00	50KVA URD TRANSFORMERS	11/10/2021	8,473.41
	4880991-00	50KVA URD TRANSFORMERS	11/10/2021	5,648.94
	4880991-00	50KVA URD TRANSFORMERS	11/10/2021	16,946.82
	4880993-00	50KVA URD TRANSFORMERS	11/10/2021	5,648.94
	4904746-01	600AMP SEC. BASEMENT	11/22/2021	316.97
	4904746-01	600 AMP SEC. BASEMENT	11/22/2021	316.97
	4904746-01	600 AMP SEC. BASEMENT	11/22/2021	316.97
Total :				37,669.02
Total ANIXTER INC (130622):				37,669.02
<b>BLUE &amp; GOLD AWARDS (1345)</b>				
	26439	PICKLEBALLS	11/13/2021	119.96
Total :				119.96
Total BLUE & GOLD AWARDS (1345):				119.96
<b>BORDER STATES INDUSTRIES, INC (1420)</b>				
	922950328	DEAD-END BELLS	10/04/2021	267.66
	922950329	1/0 COOPER ELBOWS	10/04/2021	72.98
	923208097	SECONDARY SPOOLS	11/12/2021	54.21
Total :				394.85
Total BORDER STATES INDUSTRIES, INC (1420):				394.85
<b>CENTURY LINK (10091)</b>				
	111921	UTILITIES - CENTURY LINK	11/19/2021	44.34
Total :				44.34
Total CENTURY LINK (10091):				44.34
<b>CONDREY &amp; ASSOCIATES INC (131423)</b>				
	110921	COMPENSATION STUDY	11/09/2021	13,750.00
Total :				13,750.00
Total CONDREY & ASSOCIATES INC (131423):				13,750.00
<b>DANA KEPNER COMPANY (3410)</b>				
	2233700-00	1" METERS	11/05/2021	1,499.70
Total :				1,499.70
Total DANA KEPNER COMPANY (3410):				1,499.70
<b>EAGLE RECOVERY, LLC (126679)</b>				
	19994	VEHICLE TOW - CASE# 21-893	10/24/2021	370.00

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total :				370.00
Total EAGLE RECOVERY, LLC (126679):				370.00
<b>EASTMAN, RINDA (129952)</b>				
	113021	PERSONAL TRAINER - REC CENTER	11/30/2021	292.60
Total :				292.60
Total EASTMAN, RINDA (129952):				292.60
<b>ENDEAVOR BUSINESS MEDIA LLC (132853)</b>				
	225203	VACANCY AD - PD IT	10/14/2021	99.00
Total :				99.00
Total ENDEAVOR BUSINESS MEDIA LLC (132853):				99.00
<b>ENERGY LABORATORIES, INC (4120)</b>				
DEPARTMENT 6250	437630	COLIFORM TESTING	11/19/2021	110.00
Total :				110.00
Total ENERGY LABORATORIES, INC (4120):				110.00
<b>GILMORE, JACOB (132851)</b>				
	11.1460.49	REFUND UTILITY DEPOSIT	11/05/2021	282.03
Total :				282.03
Total GILMORE, JACOB (132851):				282.03
<b>H B I INSURANCE (12306)</b>				
	3413	SURETY BOND - BALLARD COUNCIL PRES	11/19/2021	100.00
	3414	SURETY BOND - MAYOR HALL	11/19/2021	100.00
	3415	FINANCE OFFICER BOND	11/19/2021	100.00
Total :				300.00
Total H B I INSURANCE (12306):				300.00
<b>HARRIS TRUCKING AND CONSTRUCTION CO. (4780)</b>				
	136721	ASPHALT PATCH - MASHIE AND 11TH & BIRCH	11/07/2021	2,324.93
	136721	11TH ST PATCH	11/07/2021	804.37
	136743	ASPHALT - 33RD ST	11/14/2021	1,709.78
Total :				4,839.08
Total HARRIS TRUCKING AND CONSTRUCTION CO. (4780):				4,839.08
<b>HARRISON, TIMOTHY BRUCE (131713)</b>				
BLUE ASPEN ENTERPRISES LLC	210015	REPLACE MOTOR FOR HVAC AT REC	11/08/2021	375.00
Total :				375.00
Total HARRISON, TIMOTHY BRUCE (131713):				375.00

Secondary Name	Invoice	Description	Invoice Date	Total Cost
<b>HOTSY WY-MONT (5100)</b>				
	19710	HOTSY REPAIR	11/03/2021	125.00
	19710	HOTSY REPAIR	11/03/2021	125.00
Total :				250.00
Total HOTSY WY-MONT (5100):				250.00
<b>HUME, ADAM (132825)</b>				
	103121	MILEAGE REIMBURSEMENT	11/09/2021	31.81
Total :				31.81
Total HUME, ADAM (132825):				31.81
<b>ICON ENTERPRISES INC (129304)</b>				
CIVICPLUS	218913	SSL SECURITY CERTIFICATE FOR WEBSITE DOMAIN	11/07/2021	49.09
CIVICPLUS	218938	SSL SECURITY CERTIFICATE FOR WEBSITE DOMAIN	11/11/2021	48.27
Total :				97.36
Total ICON ENTERPRISES INC (129304):				97.36
<b>JONES, AMY (129954)</b>				
	112421	PERSONAL TRAINER - REC CENTER	11/24/2021	488.43
Total :				488.43
Total JONES, AMY (129954):				488.43
<b>LOCAL GOVERNMENT LIABILITY POOL (6176)</b>				
	13600	CLAIM AGAINST CITY	09/29/2021	169.63
Total :				169.63
Total LOCAL GOVERNMENT LIABILITY POOL (6176):				169.63
<b>MARTIN, WILL (132855)</b>				
	111921	REFUND WATER CRANE CARD BALANCE	11/19/2021	40.00
Total :				40.00
Total MARTIN, WILL (132855):				40.00
<b>MSPS (127866)</b>				
MOUNTAIN STATES PIPE & SUPPLY	INV20773	100 METERS AND ITRONS	11/01/2021	21,483.02
Total :				21,483.02
Total MSPS (127866):				21,483.02
<b>NATIONAL MEDICAL SERVICES INC (129797)</b>				
NMS LABS	1158638	BLOOD DRAW - CASE 21-545	10/31/2021	205.00
Total :				205.00
Total NATIONAL MEDICAL SERVICES INC (129797):				205.00

Secondary Name	Invoice	Description	Invoice Date	Total Cost
<b>NORCO, INC. (128948)</b>				
	33595302	BAND SAW BLADES	11/23/2021	134.12
Total :				134.12
Total NORCO, INC. (128948):				134.12
<b>ONE-CALL OF WYOMING (127665)</b>				
	61266	ONE - CALL FEES	11/08/2021	27.94
	61266	ONE - CALL FEES	11/08/2021	27.94
	61266	ONE - CALL FEES	11/08/2021	27.94
	61266	ONE - CALL FEES	11/08/2021	27.93
Total :				111.75
Total ONE-CALL OF WYOMING (127665):				111.75
<b>PARK COUNTY PUBLIC HEALTH (7720)</b>				
	61	FLU SHOTS	11/10/2021	25.00
	61	FLU SHOTS	11/10/2021	20.00
Total :				45.00
Total PARK COUNTY PUBLIC HEALTH (7720):				45.00
<b>PARK COUNTY PUBLIC HEALTH - POWELL (129595)</b>				
	3668	FLU VACCINATIONS	11/09/2021	70.00
Total :				70.00
Total PARK COUNTY PUBLIC HEALTH - POWELL (129595):				70.00
<b>PARK DISTRICT COURT (132610)</b>				
	11242021	GARNISHMENT Civil #29877	11/24/2021	196.97
Total :				196.97
Total PARK DISTRICT COURT (132610):				196.97
<b>PETERSON, RAY (132854)</b>				
	10.1930.14	REFUND CREDIT BALANCE	11/16/2021	121.76
Total :				121.76
Total PETERSON, RAY (132854):				121.76
<b>PURCHASE POWER (8240)</b>				
	112921	POSTAGE - FINANCE/AP	11/29/2021	459.36
	112921	POSTAGE - HR	11/29/2021	121.91
	112921	POSTAGE - COURT	11/29/2021	78.92
	112921	POSTAGE - UTILITIES	11/29/2021	805.51
	112921	POSTAGE - CITY CLERK	11/29/2021	43.62
	112921	POSTAGE - PD	11/29/2021	23.05
	112921	POSTAGE - REC CENTER	11/29/2021	372.44
	112921	POSTAGE - WATER	11/29/2021	1.75
	112921	POSTAGE - COM DEV	11/29/2021	106.42

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total :				2,012.98
Total PURCHASE POWER (8240):				2,012.98
<b>QUALITY ASPHALT PAVING, INC (125010)</b>				
	2268	PATCHING ON 33RD	11/08/2021	3,225.00
Total :				3,225.00
Total QUALITY ASPHALT PAVING, INC (125010):				3,225.00
<b>QUALITY UTILITY EQUIP SUPPLY &amp; TOOLS INC (124974)</b>				
	65308	CRIMPER REPAIRS	10/29/2021	498.36
Total :				498.36
Total QUALITY UTILITY EQUIP SUPPLY & TOOLS INC (124974):				498.36
<b>ROCKY MOUNTAIN POWER (7570)</b>				
	111721	UTILITIES - ROCKY MOUNTAIN POWER	11/17/2021	28.83
	111721	UTILITIES - ROCKY MOUNTAIN POWER	11/17/2021	206.17
Total :				235.00
Total ROCKY MOUNTAIN POWER (7570):				235.00
<b>SABER PEST CONTROLL LLC (131183)</b>				
	AUD157	PEST CONTROL - AUDITORIUM	11/15/2021	80.00
	CH157	PEST CONTROL - CITY HALL	11/15/2021	60.00
	REC157	PEST CONTROL - REC CENTER	11/15/2021	90.00
	REC157	PEST CONTROL - REC CENTER	11/15/2021	90.00
Total :				320.00
Total SABER PEST CONTROLL LLC (131183):				320.00
<b>SCHOCK, JANET (132852)</b>				
	33690800	REC CENTER REFUND	11/10/2021	33.00
Total :				33.00
Total SCHOCK, JANET (132852):				33.00
<b>SYSTEMS GRAPHICS INC (129162)</b>				
ADVANCED INFO SYSTEMS	15648	OUTSOURCE BILLS	11/05/2021	9.19
ADVANCED INFO SYSTEMS	15648	OUTSOURCE BILLS	11/05/2021	56.78
ADVANCED INFO SYSTEMS	15648	OUTSOURCE BILLS	11/05/2021	51.98
ADVANCED INFO SYSTEMS	15648	OUTSOURCE BILLS	11/05/2021	51.63
ADVANCED INFO SYSTEMS	15648	OUTSOURCE BILLS	11/05/2021	64.16
ADVANCED INFO SYSTEMS	15666	OUTSOURCE BILLS	11/12/2021	17.27
ADVANCED INFO SYSTEMS	15666	OUTSOURCE BILLS	11/12/2021	106.74
ADVANCED INFO SYSTEMS	15666	OUTSOURCE BILLS	11/12/2021	97.73
ADVANCED INFO SYSTEMS	15666	OUTSOURCE BILLS	11/12/2021	97.07
ADVANCED INFO SYSTEMS	15666	OUTSOURCE BILLS	11/12/2021	120.62
ADVANCED INFO SYSTEMS	15667	OUTSOURCE BILLS	11/23/2021	6.40
ADVANCED INFO SYSTEMS	15667	OUTSOURCE BILLS	11/23/2021	39.57
ADVANCED INFO SYSTEMS	15667	OUTSOURCE BILLS	11/23/2021	36.23

Secondary Name	Invoice	Description	Invoice Date	Total Cost
ADVANCED INFO SYSTEMS	15667	OUTSOURCE BILLS	11/23/2021	35.99
ADVANCED INFO SYSTEMS	15667	OUTSOURCE BILLS	11/23/2021	44.73
Total :				836.09
Total SYSTEMS GRAPHICS INC (129162):				836.09
<b>THOMSON REUTERS - WEST (128108)</b>				
	845280495	CLEAR INVESTIGATIONS	11/01/2021	163.77
Total :				163.77
Total THOMSON REUTERS - WEST (128108):				163.77
<b>VAN AUKEN, TRUTH (131597)</b>				
	112121	PERSONAL TRAINER	11/21/2021	159.60
Total :				159.60
Total VAN AUKEN, TRUTH (131597):				159.60
<b>VAUGHN, SHERI (129873)</b>				
INSTANT EXPRESSIONS PHOTO BOO	112921	PHOTO BOTH FOR HALLOWEEN CARNIVAL	11/29/2021	250.00
Total :				250.00
Total VAUGHN, SHERI (129873):				250.00
<b>WELLS FARGO COMMERICAL CARD (132565)</b>				
	112421	pizza for birthday party	11/24/2021	55.78
	112421	pizza for birthday party	11/24/2021	55.78
	112421	splash pad back up battery	11/24/2021	307.68
	112421	AED supplies	11/24/2021	152.00
	112421	chlorine and reagents	11/24/2021	172.58
	112421	chlorine and reagents	11/24/2021	172.59
	112421	fly glueboards	11/24/2021	144.95
	112421	sealant for slide	11/24/2021	22.30
	112421	floats, balls for no school days	11/24/2021	114.72
	112421	birthday party supplies	11/24/2021	605.50
	112421	birthday party supplies	11/24/2021	169.18
	112421	Repairs to exercise bike in therapy pool	11/24/2021	398.00
Total Aquatics:				2,371.06
	112421	Halloween Putt Putt	11/24/2021	87.89
	112421	all staff meeting	11/24/2021	165.98
	112421	All staff meeting	11/24/2021	39.52
	112421	to get cornhole boards	11/24/2021	70.00
	112421	to get cornhole boards	11/24/2021	101.92
	112421	to go get cornhole boards	11/24/2021	106.70
	112421	to get cornhole boards	11/24/2021	66.22
	112421	to get cornhole boards	11/24/2021	122.94
	112421	Fuel to transport cornhole boards	11/24/2021	110.97
Total Athletics:				872.14
	112421	squeegee for steam room	11/24/2021	15.99
	112421	sealer for main street restroom	11/24/2021	14.39



Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	razor blades	11/24/2021	3.59
	112421	adhesive remover to clean tape at City hall	11/24/2021	4.59
	112421	shredding for city hall	11/24/2021	163.50
	112421	nuts and bolts nut setter for roof at rec	11/24/2021	39.96
	112421	valve for toilets	11/24/2021	46.02
	112421	valve for toilets	11/24/2021	46.02
	112421	batteries for rec center	11/24/2021	47.97
Total City Facilities:				382.03
	112421	2021 International property maint code	11/24/2021	48.50
	112421	VariDesk Pro Plus	11/24/2021	391.05
	112421	2018 Practice Exam - residential plans	11/24/2021	34.99
	112421	Print Head for plotter	11/24/2021	726.00
Total Community Development:				1,200.54
	112421	PAINT, LAGS	11/24/2021	551.28
	112421	PROPANE	11/24/2021	63.36
	112421	FOOD	11/24/2021	96.24
	112421	FOOD	11/24/2021	178.77
	112421	PAINT	11/24/2021	664.60
	112421	PAINT	11/24/2021	639.04
	112421	PAINT	11/24/2021	664.60-
	112421	FR CLOTHING	11/24/2021	1,064.78
Total Electric:				2,593.47
	112421	adobe pro	11/24/2021	448.00
	112421	adobe pro	11/24/2021	449.00
	112421	Random testing annual fee	11/24/2021	75.00
	112421	Notebook dividers	11/24/2021	19.53
	112421	MSHA Training	11/24/2021	150.00
	112421	scan disk memory card	11/24/2021	23.62
	112421	Budget simulator software	11/24/2021	150.00
	112421	Budget simulator software	11/24/2021	562.00
	112421	Budget simulator software	11/24/2021	91.00
	112421	Budget simulator software	11/24/2021	42.00
	112421	Budget simulator software	11/24/2021	60.00
	112421	Budget simulator software	11/24/2021	446.00
	112421	Budget simulator software	11/24/2021	144.00
	112421	Budget simulator software	11/24/2021	93.00
	112421	Budget simulator software	11/24/2021	27.00
	112421	Budget simulator software	11/24/2021	361.00
	112421	Budget simulator software	11/24/2021	796.00
	112421	Budget simulator software	11/24/2021	592.00
	112421	Budget simulator software	11/24/2021	1,536.00
	112421	magnetic office clips	11/24/2021	13.99
	112421	Security Contract - City Hall	11/24/2021	130.35
	112421	Security Contract - Rec Center	11/24/2021	69.30
	112421	Security Contract - Rec Center	11/24/2021	69.30
	112421	planners - Ted, Tanner, Rob	11/24/2021	25.95
	112421	planner - Stan	11/24/2021	7.98
	112421	planner - James	11/24/2021	7.98
	112421	planner - Hank	11/24/2021	7.98
	112421	paper towels - lab	11/24/2021	19.88
	112421	coffee	11/24/2021	10.12
	112421	coffee	11/24/2021	10.12

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	scour pads	11/24/2021	4.68
	112421	advertising PD IT	11/24/2021	506.00
	112421	Notary stamp	11/24/2021	26.95
	112421	CD Sleeves	11/24/2021	6.95
	112421	Utilities - TCT	11/24/2021	87.56
	112421	Utilities - TCT	11/24/2021	1,535.20
	112421	Utilities - TCT	11/24/2021	56.45
	112421	Utilities - TCT	11/24/2021	199.00
	112421	Utilities - TCT	11/24/2021	531.34
	112421	Utilities - TCT	11/24/2021	530.94
	112421	Utilities - TCT	11/24/2021	87.56
	112421	Utilities - TCT	11/24/2021	198.50
	112421	Utilities - TCT	11/24/2021	204.51
	112421	Utilities - TCT	11/24/2021	89.06
	112421	Utilities - TCT	11/24/2021	62.40
	112421	Utilities - TCT	11/24/2021	56.46
	112421	calendar paper and bindings	11/24/2021	47.16
	112421	tissues and disinfecting wipes	11/24/2021	18.78
	112421	tissues and disinfecting wipes	11/24/2021	18.78
	112421	planner - Ron	11/24/2021	7.98
	112421	steel wool	11/24/2021	6.60
	112421	bleach for samples	11/24/2021	5.98
	112421	rags	11/24/2021	5.97
	112421	label tape	11/24/2021	24.98
	112421	vacancy ad	11/24/2021	152.50
	112421	vacancy ad	11/24/2021	282.00
	112421	Office chair	11/24/2021	518.84
	112421	adapters	11/24/2021	33.59
	112421	W2 irs forms	11/24/2021	211.45
	112421	raw water ad	11/24/2021	84.00
	112421	Risk assessments	11/24/2021	191.70
	112421	display ports	11/24/2021	46.56
	112421	Utilities - City of Cody	11/24/2021	1,736.77
	112421	Utilities - City of Cody	11/24/2021	4,100.70
	112421	Utilities - City of Cody	11/24/2021	351.94
	112421	Utilities - City of Cody	11/24/2021	267.56
	112421	Utilities - City of Cody	11/24/2021	593.16
	112421	Utilities - City of Cody	11/24/2021	8,722.49
	112421	Utilities - City of Cody	11/24/2021	961.21
	112421	Utilities - City of Cody	11/24/2021	6,166.78
	112421	Utilities - City of Cody	11/24/2021	6,163.42
	112421	Utilities - City of Cody	11/24/2021	15.44
	112421	Utilities - City of Cody	11/24/2021	795.08
	112421	Utilities - City of Cody	11/24/2021	1,373.97
	112421	Utilities - City of Cody	11/24/2021	1,373.97
	112421	Utilities - City of Cody	11/24/2021	304.50
	112421	Utilities - City of Cody	11/24/2021	562.41
	112421	Utilities - City of Cody	11/24/2021	39.00
	112421	Utilities - City of Cody	11/24/2021	11.00
	112421	Utilities - City of Cody	11/24/2021	4.32
	112421	Utilities - City of Cody	11/24/2021	147.32
	112421	label tape	11/24/2021	13.98
	112421	Utilities - Verizon	11/24/2021	297.50
	112421	Utilities - Verizon	11/24/2021	165.52
	112421	Utilities - Verizon	11/24/2021	242.80
	112421	Utilities - Verizon	11/24/2021	41.38
	112421	Utilities - Verizon	11/24/2021	41.38
	112421	Utilities - Verizon	11/24/2021	96.30

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	Utilities - Verizon	11/24/2021	629.80
	112421	Utilities - Verizon	11/24/2021	233.98
	112421	Utilities - Verizon	11/24/2021	13.66
	112421	Utilities - Verizon	11/24/2021	14.07
	112421	Utilities - Verizon	11/24/2021	41.38
	112421	Utilities - Verizon	11/24/2021	122.77
	112421	Utilities - Verizon	11/24/2021	89.76
	112421	Utilities - Verizon	11/24/2021	106.51
	112421	Utilities - Verizon	11/24/2021	41.38
	112421	Utilities - Verizon	11/24/2021	96.30
	112421	Utilities - Verizon	11/24/2021	36.29
	112421	Utilities - Verizon	11/24/2021	32.28
	112421	Utilities - Verizon	11/24/2021	132.48
	112421	Utilities - Verizon	11/24/2021	13.11
	112421	Utilities - Verizon	11/24/2021	52.10
	112421	Utilities - Verizon	11/24/2021	112.77
	112421	Utilities - Verizon	11/24/2021	137.45
	112421	Utilities - Verizon	11/24/2021	13.65
	112421	Utilities - Verizon	11/24/2021	24.19
	112421	Utilities - Verizon	11/24/2021	40.01
	112421	Utilities - Verizon	11/24/2021	40.01
	112421	Utilities - Verizon	11/24/2021	40.01
	112421	annual financial report	11/24/2021	384.75
	112421	vacancy aquatic	11/24/2021	121.00
	112421	vacancy ad police	11/24/2021	776.02
	112421	advertising - minutes and other legal	11/24/2021	5,211.45
	112421	publications council boards	11/24/2021	390.60
	112421	position advertising - police IT	11/24/2021	224.26
	112421	random drug testing	11/24/2021	36.00
	112421	random drug testing	11/24/2021	13.50
	112421	random drug testing	11/24/2021	27.00
	112421	random drug testing	11/24/2021	40.50
	112421	random drug testing	11/24/2021	9.00
	112421	random drug testing	11/24/2021	45.00
	112421	random drug testing	11/24/2021	94.50
	112421	Store billed City account for another businesses charge - credit on next statement	11/24/2021	132.96
	112421	filter SC001	11/24/2021	4.62
	112421	filter A12 and A06, manifold gasket plugs A07, battery A19	11/24/2021	547.21
	112421	filter return B03, filter B21 B07, headlight B21	11/24/2021	8.54
	112421	filters C04 C03 G11, clamp C07	11/24/2021	132.58
	112421	filters B44 F07	11/24/2021	95.58
	112421	battery D07	11/24/2021	245.30
	112421	filters J40 B09 E04 D08 B42, brake clean J40, sensor B09	11/24/2021	185.69
	112421	Utilities - City of Cody	11/24/2021	980.53
	112421	Utilities - City of Cody	11/24/2021	43.39
	112421	Utilities - City of Cody	11/24/2021	360.46
	112421	Utilities - City of Cody	11/24/2021	10,872.06
	112421	Utilities - City of Cody	11/24/2021	90.50
	112421	folders	11/24/2021	40.46
	112421	switch	11/24/2021	31.99
	112421	wellness reward visa	11/24/2021	45.98
	112421	wellness reward visa	11/24/2021	84.43
	112421	wellness reward visa	11/24/2021	19.53
	112421	wellness reward visa	11/24/2021	19.53
	112421	wellness reward visa	11/24/2021	25.70
	112421	wellness reward visa	11/24/2021	44.52
	112421	wellness reward visa	11/24/2021	38.38
	112421	wellness reward visa	11/24/2021	16.69

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	wellness reward visa	11/24/2021	38.38
	112421	wellness reward visa	11/24/2021	23.03
	112421	wellness reward visa	11/24/2021	13.82
	112421	wellness reward visa	11/24/2021	35.31
	112421	Batteries	11/24/2021	26.35
	112421	Membership renewal	11/24/2021	219.00
	112421	returned item	11/24/2021	31.99-
	112421	Utilities - City of Cody	11/24/2021	316.42
	112421	Utilities - City of Cody	11/24/2021	.79
	112421	AAA batteries	11/24/2021	10.99
	112421	cable adapters	11/24/2021	62.86
Total General Government:				71,087.56
	112421	Mower wheel	11/24/2021	236.48
	112421	Irrigation blowout	11/24/2021	1,875.00
	112421	Clothing	11/24/2021	71.97
	112421	Industrial supplies	11/24/2021	21.74
	112421	Rake	11/24/2021	22.99
	112421	Gloves	11/24/2021	18.98
	112421	Industrial supplies	11/24/2021	96.09
	112421	Playground repair	11/24/2021	9.99
	112421	Tools	11/24/2021	261.98
	112421	Anitifreeze for winterizing RR	11/24/2021	15.54
	112421	Cellphone accessories	11/24/2021	39.82
	112421	Supplies	11/24/2021	6.62
	112421	Shop supplies	11/24/2021	9.99
	112421	Greenhouse	11/24/2021	43.95
	112421	Greenhouse irrigation	11/24/2021	17.95
	112421	Chemical boots	11/24/2021	14.99
	112421	Bottle jack	11/24/2021	19.99
	112421	Greenhouse irrigation	11/24/2021	116.55
	112421	Tools	11/24/2021	50.95
	112421	Greenhouse irrigation	11/24/2021	31.03
	112421	Greenhouse irrigation	11/24/2021	13.14
	112421	Patriot light rental	11/24/2021	305.36
	112421	Greenhouse	11/24/2021	65.76
	112421	Greenhouse roof	11/24/2021	73.98
	112421	Christmas decorations	11/24/2021	34.98
	112421	Tools	11/24/2021	15.99
	112421	Shop supplies	11/24/2021	13.99
	112421	Christmas lights	11/24/2021	49.98
	112421	Christmas lights	11/24/2021	95.96
	112421	Electric box	11/24/2021	3.99
	112421	Fencing	11/24/2021	5.37
	112421	Shop supplies	11/24/2021	19.99
	112421	Industrial supplies	11/24/2021	21.68
	112421	Shop supplies	11/24/2021	9.78
	112421	Mutt mitts	11/24/2021	3,533.22
	112421	Safety lanyard	11/24/2021	55.98
	112421	Christmas lights	11/24/2021	99.96
	112421	Greenhouse repair	11/24/2021	276.00
	112421	Christmas lights	11/24/2021	3.99
	112421	Christmas lights	11/24/2021	75.98
Total Parks:				7,757.68
	112421	SD cards and readers for detective cameras	11/24/2021	119.24

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	Duty gloves C15	11/24/2021	70.00
	112421	Car Wash C07	11/24/2021	9.00
	112421	WLEA PO Basic Travel GAS C10 C17	11/24/2021	71.37
	112421	SD cards for detective cameras	11/24/2021	94.47
	112421	Car Wash C04	11/24/2021	9.00
	112421	Car Wash C05	11/24/2021	9.00
	112421	coffee, plates	11/24/2021	153.26
	112421	Faith and Blue refreshments	11/24/2021	45.72
	112421	sponges, scrubber, dish soap	11/24/2021	25.27
	112421	UA to Lab x2	11/24/2021	22.28
	112421	Duty Boots C18	11/24/2021	325.00
	112421	RETURN Duty Gaiters C18	11/24/2021	44.10-
	112421	Tire clean and shine	11/24/2021	31.06
	112421	Clasp envelopes	11/24/2021	84.41
	112421	Armorall	11/24/2021	21.08
	112421	Wall calendar	11/24/2021	38.90
	112421	Wall calendar	11/24/2021	19.99
	112421	Duty boots C09	11/24/2021	134.95
	112421	Desk calendar	11/24/2021	19.99
	112421	Uniform Embroidery C05	11/24/2021	48.00
	112421	Tire clean and shine	11/24/2021	11.48
	112421	Online Training C03	11/24/2021	125.00
	112421	Car Wash C07	11/24/2021	9.00
	112421	Car Wash C04	11/24/2021	9.00
	112421	WLEA PO Basic Travel Gas C10 C17	11/24/2021	72.17
	112421	UA to Lab	11/24/2021	11.14
	112421	Class A shirt C17	11/24/2021	75.60
	112421	Car Wash C06	11/24/2021	9.00
	112421	Evidence photographing scales	11/24/2021	134.88
	112421	Class A pants C17	11/24/2021	94.67
	112421	Evidence photographing scales	11/24/2021	80.27
	112421	RETURN Duty Boots C18	11/24/2021	325.00-
	112421	Class A shirt C10	11/24/2021	59.00
	112421	Class A pants C17	11/24/2021	80.00
	112421	Evidence photographing scales	11/24/2021	30.26
	112421	Car Wash C07	11/24/2021	9.00
	112421	Uniform Embroidery C07 C19 C21	11/24/2021	91.00
	112421	Bubble wrap, packing tape, letterhead paper	11/24/2021	87.10
	112421	Car Wash C22	11/24/2021	3.71
	112421	Car Wash C04	11/24/2021	9.00
	112421	Car Wash C24	11/24/2021	4.00
	112421	WLEA PO Basic Travel Gas C10 C17	11/24/2021	74.02
	112421	On site test kits	11/24/2021	490.11
	112421	Flash drive for download, case 21-881	11/24/2021	36.22
	112421	Car Wash C20	11/24/2021	9.00
	112421	Duty boots C06	11/24/2021	190.00
	112421	Cell phone to lab on warrant, Case 21-881, and UA to Lab	11/24/2021	29.27
	112421	UA to Lab	11/24/2021	12.94
	112421	TIPS Trainer ReCert C06	11/24/2021	75.00
	112421	WLEA PO Basic Travel GAS C10 C17	11/24/2021	65.46
	112421	Duty shirts C13	11/24/2021	229.96
	112421	Extended warranty x2 for detective cameras	11/24/2021	132.00
	112421	Uniform laundering C16	11/24/2021	12.95
	112421	Car Wash C12	11/24/2021	9.00
	112421	Duty lapel light C10 C13 C17	11/24/2021	74.88
	112421	Car Wash C03	11/24/2021	9.00
	112421	Car Wash C15	11/24/2021	9.00
	112421	Car Wash C08	11/24/2021	9.00

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	Gas to Casper to pick up evidence	11/24/2021	51.00
	112421	Duty sunglasses C13	11/24/2021	122.72
	112421	Uniform embroidery C16	11/24/2021	34.00
	112421	Car Wash C04	11/24/2021	9.00
	112421	Travel to Casper to pick up evidence, C08 Meal	11/24/2021	15.99
	112421	Duty shoes C19	11/24/2021	122.51
	112421	Car Wash C19	11/24/2021	2.75
	112421	Digital cameras with extra batteries for detectives	11/24/2021	1,454.95
	112421	Car Wash C07	11/24/2021	9.00
	112421	Copy paper	11/24/2021	375.92
	112421	WLEA PO Basic Travel GAS C10 C17	11/24/2021	79.51
	112421	SRO Duty boots C09	11/24/2021	119.96
	112421	Reading materials for SWAT Leadership course C15	11/24/2021	33.16
	112421	Uniform laundering C16	11/24/2021	12.95
	112421	WY Criminal and Traffic Law Books	11/24/2021	1,160.25
	112421	UA to Lab x2	11/24/2021	22.28
	112421	Car Wash C20	11/24/2021	9.00
Total Police:				7,090.93
	112421	A14 hub cap	11/24/2021	62.12
	112421	Training	11/24/2021	150.00
	112421	B25 chip repair	11/24/2021	40.00
	112421	Dish strainer	11/24/2021	6.38
	112421	Lights	11/24/2021	433.44
	112421	office hanger	11/24/2021	7.35
	112421	coupler salt tank	11/24/2021	16.99
	112421	B 21 rear glass	11/24/2021	375.00
	112421	Salt sprayer rack	11/24/2021	1,902.00
	112421	F07 thermostat	11/24/2021	57.32
	112421	Safety vests	11/24/2021	58.65
	112421	F07 radio	11/24/2021	43.99
	112421	G02 filters	11/24/2021	107.61
	112421	electric connectors	11/24/2021	54.95
	112421	D12 fuel tank strap	11/24/2021	405.21
	112421	Dye	11/24/2021	7.98
	112421	Sweeper wire	11/24/2021	2,632.50
	112421	C01 fuel tank, accident	11/24/2021	1,677.51
	112421	Welding supplies	11/24/2021	7.58
	112421	K25 pin	11/24/2021	3.49
	112421	K25 wheel plug	11/24/2021	5.25
	112421	A08 alignment	11/24/2021	139.95
	112421	B28 belt tensioner	11/24/2021	110.68
	112421	B10 tires	11/24/2021	810.56
	112421	A08 and A20 tires	11/24/2021	1,012.00
	112421	D12 fuel tank strap	11/24/2021	383.41
	112421	D12 credit tax was charged the first time	11/24/2021	405.21-
	112421	Large wrenches	11/24/2021	108.37
	112421	Fork lift propane	11/24/2021	28.35
	112421	Co5 parts	11/24/2021	463.44
	112421	shirts	11/24/2021	798.00
	112421	Sanitation particulate filter	11/24/2021	2,224.82
	112421	Freight on C05 parts	11/24/2021	72.59
	112421	F07 parts	11/24/2021	252.12
	112421	Zip Ties	11/24/2021	27.98
Total Public Works:				14,082.38

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	snacks for ASAP	11/24/2021	7.24
	112421	motor for HVAC	11/24/2021	611.01
	112421	cleaning supplies	11/24/2021	15.52
	112421	birthday party supplies	11/24/2021	20.91
	112421	journals and composition books	11/24/2021	18.88
	112421	paper for stop watches for runners stampede	11/24/2021	43.80
	112421	ASAP gogurt	11/24/2021	29.70
	112421	snacks for ASAP	11/24/2021	83.88
	112421	shipping to repair stopwatch for runners stampede	11/24/2021	28.19
	112421	transformer for security system at rec	11/24/2021	54.51
	112421	crepe paper returned	11/24/2021	13.99-
	112421	cleaning supplies	11/24/2021	482.69
	112421	cleaning supplies	11/24/2021	482.69
	112421	Cleaning supplies	11/24/2021	482.69
	112421	Cleaning supplies	11/24/2021	482.69
	112421	replace HVAC motor	11/24/2021	1,076.74
	112421	chlorine calibration	11/24/2021	70.00
	112421	Halloween baskets for carnival	11/24/2021	5.00
	112421	facial tissue	11/24/2021	5.00
	112421	office supplies	11/24/2021	226.60
	112421	spotify music	11/24/2021	9.99
	112421	cleaning supplies	11/24/2021	219.25
	112421	cleaning supplies	11/24/2021	136.00
	112421	transformer for security system at rec	11/24/2021	115.77
	112421	clock for birthday party wall	11/24/2021	8.99
	112421	repairs to fitness machines	11/24/2021	60.39
	112421	clamp for roof	11/24/2021	60.30
	112421	clamp for rec roof	11/24/2021	57.98
	112421	key chain holders	11/24/2021	14.50
	112421	clamp for rec roof	11/24/2021	60.30-
	112421	sealant nuts bolts for rec roof	11/24/2021	37.17
	112421	t-shirts for runners stampede	11/24/2021	120.00
	112421	timing equipment for runners stampede	11/24/2021	12.79
	112421	ping pong table	11/24/2021	397.98
	112421	speaker repair in fitness room	11/24/2021	140.00
	112421	lifeguard shorts for Wyatt	11/24/2021	16.99
	112421	motion sensor for therapy pool door	11/24/2021	21.99
	112421	facial tissue	11/24/2021	19.88
	112421	chairs for auditorium	11/24/2021	3,533.85
Total Recreation:				9,137.27
	112421	hydraulic fluid	11/24/2021	584.45
	112421	propane	11/24/2021	28.50
	112421	propane	11/24/2021	1.50
	112421	propane	11/24/2021	23.75
	112421	propane	11/24/2021	1.25
	112421	gloves	11/24/2021	301.54
	112421	keys	11/24/2021	7.16
	112421	propane	11/24/2021	26.12
	112421	propane	11/24/2021	1.38
	112421	propane	11/24/2021	23.27
	112421	propane	11/24/2021	1.23
	112421	DEF	11/24/2021	221.30
	112421	propane	11/24/2021	25.17
	112421	propane	11/24/2021	1.33
	112421	floor dry	11/24/2021	73.74
	112421	propane	11/24/2021	22.46

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	112421	propane	11/24/2021	1.19
	112421	coffee	11/24/2021	15.12
Total Solid Waste:				1,360.46
	112421	dual check valves for meters	11/24/2021	1,415.68
	112421	flat bar	11/24/2021	33.99
	112421	gloves	11/24/2021	10.99
	112421	pliers	11/24/2021	37.98
	112421	light bulbs	11/24/2021	4.99
	112421	vac tube repair	11/24/2021	47.50
	112421	WARWS online conference	11/24/2021	169.00
	112421	coliform shipping	11/24/2021	36.00
	112421	lab supplies	11/24/2021	302.64
	112421	parts for valve install	11/24/2021	118.39
	112421	Valve and parts	11/24/2021	1,890.06
	112421	sample shipping	11/24/2021	43.47
	112421	Online classes	11/24/2021	46.95
	112421	sample shipping	11/24/2021	37.26
	112421	saw blades	11/24/2021	21.50
	112421	sockets	11/24/2021	46.10
Total Wastewater:				4,262.50
	112421	solvent	11/24/2021	8.27
	112421	poly pipe	11/24/2021	561.23
	112421	safety glasses	11/24/2021	13.50
	112421	marking flags	11/24/2021	78.20
	112421	cord	11/24/2021	39.99
	112421	safety glasses	11/24/2021	10.49
	112421	fittings	11/24/2021	19.30
Total Water:				730.98
Total WELLS FARGO COMMERICAL CARD (132565):				122,929.00
<b>WESCO RECEIVABLES CORP (131137)</b>				
WESCO DBA:WESCO/KVA/MODERN	734948	O-DIE H-TAP COVERS	11/08/2021	316.00
Total :				316.00
Total WESCO RECEIVABLES CORP (131137):				316.00
<b>WEST PARK HOSPITAL (10500)</b>				
DBA CODY REGIONAL HEALTH	103121	BLOOD DRAW - CASE 21-899	11/02/2021	250.00
Total :				250.00
Total WEST PARK HOSPITAL (10500):				250.00
<b>WESTERN UNITED ELECTRIC SUPPLY (10605)</b>				
	6047521	100AMP CUTOUTS; 4/0 WRAPLOCK	11/11/2021	3,434.15
	6048168	H-TAPS; COMPRESSION LUGS	11/19/2021	908.36
Total :				4,342.51
Total WESTERN UNITED ELECTRIC SUPPLY (10605):				4,342.51



Secondary Name	Invoice	Description	Invoice Date	Total Cost
<b>WINTER, EMILY (132850)</b>				
OR WAGNER, TAMMY	2.0430.20	REFUND UTILITY DEPOSIT	11/05/2021	151.53
Total :				151.53
Total WINTER, EMILY (132850):				151.53
<b>WYOMING ASSOCIATION OF MUNICIPALITIES (10770)</b>				
	16916	WINTER WAM CONFERENCE	11/08/2021	230.00
Total :				230.00
Total WYOMING ASSOCIATION OF MUNICIPALITIES (10770):				230.00
<b>WYOMING ASSOCIATION OF RURAL WATER (10760)</b>				
	17112	2022 MEMBERSHIP DUES	11/18/2021	450.00
Total :				450.00
Total WYOMING ASSOCIATION OF RURAL WATER (10760):				450.00
<b>ZIVARO INC (131755)</b>				
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	28.24
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	282.40
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	9.41
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	28.24
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	56.48
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	37.65
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	367.12
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	47.07
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	28.24
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	28.24
	IC0452684	EVAULT CLOUD DATA STORAGE	11/19/2021	28.25
Total :				941.34
Total ZIVARO INC (131755):				941.34
Grand Totals:				220,934.61

Report GL Period Summary

GL Period	Amount
11/21	220,934.61
Grand Totals:	220,934.61

Vendor number hash: 5111042  
Vendor number hash - split: 65846055  
Total number of invoices: 60  
Total number of transactions: 530

Terms Description	Invoice Amount	Discount Amount	Net Invoice Amount
Open Terms	220,934.61	.00	220,934.61
Grand Totals:	220,934.61	.00	220,934.61
		Payroll 11/24/21	243,498.78
			464,433.39

Report Criteria:  
Invoice.Detail.Input date = 11/30/2021  
Invoice.Batch = {NOT LIKE} "1"

## **AGENDA ITEM SUMMARY REPORT**

### **Agreement with BankCard USA for Merchant Card Services**

#### **ACTION TO BE TAKEN:**

Authorize the Mayor to sign the agreement between the City of Cody and BankCard USA for merchant card services at the City water crane facility.

#### **SUMMARY OF INFORMATION:**

The City Council recently approved the purchase of a new AquaFlow bulk water sales system. This is a PIN- operated system that allows customers to add funds to their water crane account and monitor their bulk water purchases electronically using debit or credit cards. The City will need to enter into a merchant card agreement with BankCardUSA for the debit and credit card processing. The City of Cody already utilizes BankCard USA for merchant card processing at the Recreation Center and we were offered the same terms and conditions as that agreement.

#### **FISCAL IMPACT**

The pricing proposal includes an interchange rate of 2.14% plus \$0.10 per transaction and a monthly portal fee of \$10.00. We do not have a way to determine how many water crane transactions currently take place so the per-transaction fees cannot be estimated. Based on the water crane sales, the estimated merchant card charges at 2.9% and the monthly fee plus the monthly internet cost would be approximately \$1,600 annually.

#### **ATTACHMENTS**

1. BankCard USA Terms and Conditions
2. Addendum to Terms and Conditions
3. Merchant Account Application



Merchant  
Services

Program  
Terms and  
Conditions  
(Program Guide)

## PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept. These Program Terms and Conditions ("the Program Guide") presents terms governing the acceptance of Visa®, MasterCard® and Discover® Network Credit Card and Non-PIN Debit Card payments and American Express® Card transactions and applicable to Non-Bank Services.

**This Program Guide, your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), contains the terms and conditions under which Processor and/or Bank and/or other third parties, will provide services. We will not accept any alterations or strike-outs to the Agreement and, if made, any such alterations or strike-outs shall not apply. Please read this Program Guide completely.**

**You acknowledge that certain Services referenced in the Agreement may not be available to you.**

### **IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:**

**Discover Network Card Transactions, American Express Card Transactions and other Non-Bank Services are not provided to you by Bank, but are provided by Processor and/or third parties.**

**The provisions of this Agreement regarding Discover Network Card Transactions, American Express Card Transactions and other Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Network Card Transactions, American Express Card Transactions and other Non-Bank Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Network Card Transactions, American Express Card Transactions and Non-Bank Services.**

### **OTHER IMPORTANT INFORMATION:**

Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Cards, you should be aware that you are also accepting these risks.

Visa U.S.A., Inc. ("Visa") MasterCard Worldwide ("MasterCard"), DFS Services LLC ("Discover Network"), and American Express Company, Inc. ("American Express") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of MasterCard and Visa transactions) or network acquirers (in the case of Discover Network and American Express transactions) that acquire them from merchants such as yourself through the appropriate Card Organization, to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange fees, program pricing and/or assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these interchange fees, pricing and assessments.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organization Rules that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules and applicable laws and regulations. The Card Organization Rules and applicable laws and regulations give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant, including Chargeback rights.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for certain capitalized terms used in the Agreement, including this Preface (if not defined above).

Capitalized terms not otherwise defined in the Agreement may be found in the Card Organization Rules.

**PROCESSOR INFORMATION:** Name: BankCard USA Merchant Services  
 Address: 28720 Roadside Drive, #299, Agoura Hills, CA 91301  
 URL: \_\_\_\_\_ Customer Service #: 1-800-589-8200

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa and Discover. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 19 of the Program Guide).
2. **We may debit your bank account** (also referred to as your Settlement Account) from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or Settlement Account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 21, 28.7, and 31.3 of the Card General Terms.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 24, Term; Events of Default and Section 25, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you will be responsible for the payment of an early termination fee as set forth in Part III, A.3 under "Additional Fee Information".

#### 9. Card Organization Disclosure

##### Visa and MasterCard Member Bank Information: Westamerica Bank

The Bank's mailing address is 3750 Westwind Blvd. Suite 210 Santa Rosa, CA 95403, and its phone number is (800) 939-9942.

##### Important Member Bank Responsibilities:

- a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
- b) The Bank must be a principal (signer) to the Agreement.
- c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard rules with which merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.
- f) The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor also will assist you with any such problems).

##### Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization Rules and applicable law and regulations.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at:  
[http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- g) You may download "MasterCard Regulations" from MasterCard's website at:  
<http://www.mastercard.com/us/merchant/support/rules.html>

Print Client's Business Legal Name: \_\_\_\_\_

By its signature below, Client acknowledges that it has received the Merchant Processing Application, Program Terms and Conditions [version BUSAb1712(ia)] consisting of 40 pages [including this Confirmation Page and the applicable Third Party Agreement(s)].

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM TERMS AND CONDITIONS WILL BE ACCEPTED.**

#### Client's Business Principal:

**Signature** (Please sign below):

**X** \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Please Print Name of Signer

**PROCESSOR INFORMATION:** Name: BankCard USA Merchant Services  
Address: 28720 Roadside Drive, #299, Agoura Hills, CA 91301  
URL: \_\_\_\_\_ Customer Service #: 1-800-589-8200

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

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7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
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- c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard rules with which merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.
- f) The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor also will assist you with any such problems).

##### Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization Rules and applicable law and regulations.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at:  
[http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- g) You may download "MasterCard Regulations" from MasterCard's website at:  
<http://www.mastercard.com/us/merchant/support/rules.html>

Print Client's Business Legal Name: \_\_\_\_\_

By its signature below, Client acknowledges that it has received the Merchant Processing Application, Program Terms and Conditions [version BUSAb1712(ia)] consisting of 40 pages [including this Confirmation Page and the applicable Third Party Agreement(s)].

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM TERMS AND CONDITIONS WILL BE ACCEPTED.**

#### Client's Business Principal:

Signature (Please sign below):

X \_\_\_\_\_

\_\_\_\_\_ Title

\_\_\_\_\_ Date

\_\_\_\_\_  
Please Print Name of Signer

Sales Office: BankCard USA

Westamerica Bank, 3750 Westwind Blvd., Suite 210 Santa Rosa, CA 95403 800-939-9942 acquirer@westamerica.com ☐

Phone Number: 800-589-8200

Sales Rep Name: \_\_\_\_\_

Wells Fargo Bank, N.A., Concord, CA. 844-284-6834 ☐

BUSAb1712(a)		<b>1. BUSINESS INFORMATION</b>				Page 1 of 3 v9.7	
Client's Business Name (Doing Business As):				Client's Corporate/Legal Name (Use Also For Headquarter's Information):			
Business Address:				Billing Address (If Different Than Location Address):			
City:		State:	Zip Code:	City:		State:	Zip Code:
Location Phone #:		Location Fax #:		Contact Name:			
Business E-mail Address:				Contact Fax # / E-mail Address:			
Business Website Address:				Contact Phone #:			
Customer Service Phone #:		Customer Service E-mail Address:		Send Retrieval Requests to: <input type="checkbox"/> Business Location <input type="checkbox"/> Corp/Legal Location Send Merchant Monthly Statement to: <input type="checkbox"/> Business Location <input type="checkbox"/> Corp/Legal Location			
<input type="checkbox"/> INDIVIDUAL/SOLE PROPRIETORSHIP: State in which Certificate of				<input type="checkbox"/> TAX EXEMPT ORGANIZATION (501C) State: _____		<input type="checkbox"/> GOVERNMENT (Federal, State, Local)	
Assumed Name Filed: _____ State: _____		<input type="checkbox"/> INTERNATIONAL ORGANIZATION Location Filed: _____		<input type="checkbox"/> LIMITED LIABILITY COMPANY State Filed: _____			
<input type="checkbox"/> CORPORATION – CHAPTER S, C State: _____		<input type="checkbox"/> ASSOCIATION/ESTATE/TRUST State Filed: _____		<input type="checkbox"/> PARTNERSHIP State Filed: _____			
Name (as it appears on your income tax return)				FEDERAL TAX ID #		<input type="checkbox"/> I certify that I am a foreign entity/ nonresident alien.(If checked, please attach IRS Form W-8.)	
<b>NOTE:</b> Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations. (See Part III, Section A.4 of your Program Guide for further information.)							
*SIC / MCC:		IATA/ARC:		(MCC 4722 Only):			
Note: *If your business is classified as High Risk and assigned (or is later assigned based upon your activity) any of the following Merchant Category Codes (MCC): 4814, 4816, 5966, 5967, 7273, and 7441 <sup>1</sup> , then registration is required with Visa and/or MasterCard within 30 days from when your account becomes active. An Annual Registration Fee of \$500 may apply for Visa and/or MasterCard (total registration fees could be \$1,000.00). Failure to register could result in fines in excess of \$10,000.00 for violating Visa and/or MasterCard regulations <sup>2</sup> . <sup>1</sup> Registration for MCC 7841 is only required for non-face-to-face adult content. <sup>2</sup> Information herein, including applicable MCCs, is subject to change.							
Detailed Explanation of Type of Merchandise, Products or Services Sold:							
<b>2. OWNERS / PARTNERS / OFFICERS</b>							
<b>OWNER / PARTNER / OFFICER 1</b>				<b>OWNER / PARTNER / OFFICER 2</b>			
Name: (First, MI, Last)		% Ownership:		Name: (First, MI, Last)		% Ownership:	
Title:				Title:			
Home Address: (No P.O. Box)				Home Address: (No P.O. Box)			
City:		State:	Zip:	City:		State:	Zip:
Telephone #:		Social Security #:		Telephone #:		Social Security #:	
D.O.B.:		DL #:	State:	D.O.B.:		DL #:	State:
<b>3. COMPANY HISTORY</b>							
Date Business Started:		Prior Bankruptcies? <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Business and / or <input type="checkbox"/> Personal					
<b>4. SETTLEMENT INFORMATION</b>							
Deposit Bank:				Bank Contact:			
Transit / ABA #:				Deposit Account #:			
ACH Detail Flag: <input type="checkbox"/> Individual <input type="checkbox"/> Combined <input checked="" type="checkbox"/> Separate (defaults to Combined if option not selected)							
<b>5. EQUIPMENT/THIRD PARTY INFORMATION</b>							
Network (Front End): <input type="checkbox"/> Omaha <input type="checkbox"/> North <input type="checkbox"/> Nashville <input type="checkbox"/> Buypass <input type="checkbox"/> TSYS Do you use any third party to store, process or transmit cardholder data? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, give name/address: _____ Please identify any Software used for storing, transmitting, or processing Card Transactions or Authorization Requests: _____							
<b>6. SERVICE FEE SCHEDULE</b>							
Accept all MasterCard, Visa, Discover Network and American Express Transactions (presumed, unless any selections below are checked)							
<b>MasterCard Acceptance</b>		<b>Visa Acceptance</b>		<b>Discover Network Acceptance</b>		<b>American Express Acceptance</b>	
<input type="checkbox"/> Accept MC Credit Transactions only		<input type="checkbox"/> Accept Visa Credit Transactions only		<input type="checkbox"/> Accept Discover Network Credit Transactions only		<input type="checkbox"/> Accept Amex Transactions only	
<input type="checkbox"/> Accept MC Non-PIN Debit Trans. only		<input type="checkbox"/> Accept Visa Non-PIN Debit Trans. only		<input type="checkbox"/> Accept Discover Network Non-PIN Debit Trans. only			
<input checked="" type="checkbox"/> Discount Collected		<input checked="" type="checkbox"/> Daily		<input type="checkbox"/> Monthly		See Section 1.9 of the Program Guide for details regarding limited acceptance.	

Initial



BUSAb1712(ia)		<b>6. SERVICE FEE SCHEDULE (cont'd)</b>		BUSAb1712(ia)	
<input type="checkbox"/> ERR	Visa/MC/Discover Network:	Discount Rate	Non-Qual Fee	Monthly Service Fee	\$ 10
<input type="checkbox"/> TIERED	Check / Debit Cards	_____ %	_____ %	Application Fee	\$ 0
	Credit Card	_____ %	_____ %	Portfolio Manager	\$ 0
<b>The following fees will be passed through:</b> Each card organization (Visa, MasterCard, Discover, American Express) assess fees to merchants in connection with transactions outside of the bank's control, such as dues and assessments, fixed acquirer network fees, MasterCard location fee, monthly voltage encryption fee, international/cross-border transaction fees, network access and data usage charges. These fees apply to all merchants based in the United States, regardless of bank, processor or ISO affiliation. Because these fees are frequently modified by the card organizations, a detailed list of these fees has been posted online at <a href="http://www.bankcardusa.com/cardassociationfees">www.bankcardusa.com/cardassociationfees</a> where these fees are kept up to date. As an added value, these fees are passed through at cost to you, the merchant, and are not marked up. Should you have any questions about these pass-through fees and how they appear on your monthly statement, please contact the customer service number on your monthly statement. By signing this application you accept and agree to these pass-through fees and understand that they may change from time-to-time without notice.				Wireless Fee (per unit)	\$ 0
				Min. Monthly Discount Fee	\$ 0
				Retrieval Fee	\$ 5.00
				Chargeback Fee	\$ 25.00
				Debit Network Access	\$ 0
				Clover & TransArmor Svc Monthly Fee (per station)	\$ 0
				Other:	
TRANSACTIONS:		Per Trans / American Express	MPG TXN Fee	PIN Debit	
Per Batch	Communication Per Trans /	Communication (per downgrade)	(plus the applicable network fees)		
\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	

AMERICAN EXPRESS: New Service Requested? ☐ Yes ☐ No American Express Discount Rate: .25 % Flat Per Transaction Fee \$ .10

American Express Prepaid Discount Rate: \_\_\_\_\_ % Flat Per Transaction Fee \$ \_\_\_\_\_

\*American Express Monthly Flat Fee or Discount Rate may apply. The 0.30% non-swiped fee is applied to any Charge for which American Express did not receive both(i) the full Magnetic Stripe and (ii) the indicator as to whether the Card was swiped. 0.30% downgrade will be charged by American Express for transactions whenever a CNP or Card Not Present Charge occurs. CNP means a Charge for which the Card is not present at the point of purchase. Note: The CNP Fee is applicable to transactions on all American Express Cards, including Prepaid Cards. This fee applies to all American Express programs. Network Access fee of 0.15% will apply to all American Express transactions.

7. TRANSACTION INFORMATION	
FINANCIAL DATA	WHERE IS SALE TRANSACTED? (must = 100%)
Average Monthly MC/Visa/Discover Network/American Express Volume	Store Front / Swiped _____ %
Average MC/Visa/Discover Network/American Express Ticket	Internet _____ %
Annual American Express Volume	Mail Order / Telephone Order _____ %
Highest MC/Visa/Discover Network/American Express Ticket	Face to Face Keyed _____ %
Seasonal? <input type="checkbox"/> No <input type="checkbox"/> Yes High Volume Months Open: _____	Total _____ %

8. SIGNATURE (S)
<p>Client certifies that all information set forth in this completed Merchant Processing Application is true and correct and that Client has received a copy of the Program Guide and Confirmation Page, which is part of this Merchant Processing Application (consisting of Sections 1-8), and by this reference incorporated herein. Client acknowledges and agrees that we, our Affiliates and our third party subcontractors and/or agents may use automatic telephone dialing systems to contact Client at the telephone number(s) Client has provided in this Merchant Processing Application and/or may leave a detailed voice message in the event that Client is unable to be reached, even if the number provided is a cellular or wireless number or if Client has previously registered on a Do Not Call list or requested not to be contacted Client for solicitation purpose. Client hereby consents to receiving commercial electronic mail messages from us, our Affiliates and our third party subcontractors and/or agents from time to time. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone or Internet order. However, if your Application is approved based upon contrary information stated in Section 7, Transaction Information section above, you are authorized to accept transactions in accordance with the percentages indicated in that section.</p> <p>By signing below, each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to verify the information contained in this Application and to request and obtain from any consumer reporting agency and other sources, including bank references, personal and business consumer reports and other information and to disclose such information amongst each other for any purpose permitted by law. If the Application is approved, each of the undersigned also authorizes us, our Affiliates and our third party subcontractors and/or agents to obtain subsequent consumer reports and other information from other sources, including bank references, in connection with the review, maintenance, updating, renewal or extension of the Agreement or for any other purpose permitted by law and disclose such information amongst each other. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us, our Affiliates and our third party subcontractors and/or agents. Each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received subsequent thereto from all references, including banks and consumer reporting agencies for any purpose permitted by law. It is our policy to obtain certain information in order to verify your identity while processing your account application.</p> <p>As part of our approval, processing services, continuing fraud prevention and account review processes, the undersigned consents to the use of information gathered online or that you submit to us, and/or automated electronic computer security screening, by us or our third party vendors.</p> <p>Client authorizes BUSA and Bank and their affiliates to debit Client's designated bank account via Automated Clearing House (ACH) for costs associated with equipment hardware, software and shipping. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC).</p> <p><b>Client certifies, under penalties of perjury, that the federal taxpayer identification number and corresponding filing name provided herein are correct. Client agrees to all the terms of this Merchant Processing Application and Agreement. This Merchant Processing Application and Agreement shall not take effect until Client has been approved and this Agreement has been accepted by BUSA and Bank.</b></p> <p><b>Client's Business Principal/Officer:</b></p> <p>Merchant certifies that all individuals who own, directly or indirectly, 25% or more of the equity interest in the legal entity and an individual with responsibility of managing the legal entity on this Application are listed on this Merchant Application and/or supplemental documents provided to the ISO and Bank. The financial institution may also ask to see a copy of a driver's license or other identifying document for each beneficial owner listed on this form.</p> <p>If approved for Opt Blue the attached following conditions apply to MERCHANT's participation in the AMERICAN EXPRESS OptBlue Program ("AMERICAN EXPRESS CARD ACCEPTANCE"). The American Express Merchant Operating Guide ("MOG") sets forth the policies and procedures governing Merchant's acceptance of the American Express Card. It is a part of, and is hereby incorporated by reference into, the Agreement. MERCHANT agrees to be bound by and accept all provisions in the MOG (as changed from time to time) as if fully set out in the Agreement and as a condition of MERCHANT'S agreement to accept the Card. MERCHANTS may obtain the latest version of the MOG by visiting <a href="http://www.americanexpress.com/merchantopguide">www.americanexpress.com/merchantopguide</a> or by contacting BANK.</p>

Signature

X

Title:

Signature X

Print:

Date:

Print:

Date:

**Personal Guarantee:** The undersigned guarantees to BUSA and Bank the performance of this Agreement, and any addendum thereto by Client, and in the event of default, hereby waives Notice of Default and agrees to indemnify the other parties, including payment of all sums due and owing and costs associated with enforcement of the terms thereof. BUSA and Bank shall not be required to first proceed against Client or enforce any other remedy before proceeding against the under signed individual. This is a continuing guarantee and shall not be discharged or affected by the death of the under signed and shall bind the heirs, administrators, representatives and assigns and be enforced by or for the benefit of any successor of BUSA and Bank. The term of this guarantee shall be for the duration of the Merchant Processing Application and Agreement, and the American Express Card Acceptance Agreement, if applicable and any addendum thereto, and shall guarantee all obligations which may arise or occur in connection with my activities during the term thereof, though enforcement may be sought subsequent to any termination.

**Personal Guarantee**

Signature

X

Signature X

Title:

Print:

Date:

Print:

Date:

Accepted By BankCard USA Merchant Services, Inc.

Bank

Signature X

Title:

Signature X

Title:

Print:

Date:

Print:

Date:

If your application is denied, you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact: the Member Bank listed on Part I Confirmation Page within 60 days from the date you are notified of our decision. We will send you a written statement or reason for the denial within 30 days of receiving your request for the statement.

9. ADDITIONAL CREDIT / SITE SURVEY INFORMATION

Are you using a Vendor? ☐ Yes ☐ No If yes, please supply a copy of Vendor's report.

1. Zone: ☐ Business District ☐ Industrial ☐ Residential
2. Location: ☐ Mall ☐ Office ☐ Home ☐ Shopping Area  
☐ Mixed ☐ Apartment ☐ Isolated
3. How many employees: \_\_\_\_\_
4. How many registers / Terminals: \_\_\_\_\_
5. Is proper license visible? ☐ Yes ☐ No, explain: \_\_\_\_\_
6. Where is the merchant name displayed at the site?  
☐ Window ☐ Door ☐ Store Front
7. Merchant Occupies: ☐ Ground Floor Other \_\_\_\_\_
8. # of Floors/Levels: ☐ 1 ☐ 2-4 ☐ 5-10 ☐ 11+
9. Remaining Floor(s) Occupied by:  
☐ Residential ☐ Commercial ☐ Combination
10. Approximate Square Footage:  
☐ 0-250 ☐ 251-500 ☐ 501-2,000 ☐ 2,001 plus
11. Are customers required to leave a deposit?  
☐ No ☐ Yes If Yes, % of deposit required: \_\_\_\_\_
12. Return Policy: ☐ Full Refund ☐ Exchange Only ☐ None
13. Do you have a refund policy for MC / Visa / Discover Network / Amex Express? ☐ Yes ☐ No If yes, check one:  
☐ Exchange ☐ Store Credit ☐ MC / Visa / Discover Network  
☐ American Express  
If MC / Visa / Discover Network / American Express, within how many days do you submit credit transactions?  
☐ 0-3 ☐ 4-7 ☐ 8-14 ☐ Over 14
14. Advertising Method (*Attach at least one*):  
☐ Catalog ☐ Brochure ☐ Direct Mail ☐ TV / Radio  
☐ Internet ☐ Phone ☐ Newspaper ☐ Other  
*Marketing Materials required for Mail Order, B to B, Internet over \$1 Million in annual volume. Attach Web Page for Internet Merchant.*

15. Your Previous Processor: \_\_\_\_\_

16. Check Reason For Leaving:  
☐ Rate ☐ Service ☐ Terminated Other: \_\_\_\_\_

**Mail / Telephone Order / Business to Business / Internet Information**  
(All Questions must be Answered)

1. What % of total sales represent business to business (*vs business to consumer*):  
Business to Business \_\_\_\_\_ % + Business to Consumer \_\_\_\_\_ % = 100% (sales)
2. What % of bankcard sales represent business to business (*vs business to consumer*):  
Business to Business \_\_\_\_\_ % + Business to Consumer \_\_\_\_\_ % = 100% (sales)
3. What is the time frame from transaction to delivery? (*% of orders delivered in*):  
**0-7 days** \_\_\_\_\_ % + 8-14 days \_\_\_\_\_ % + 15-30 days \_\_\_\_\_ % + over 30 days \_\_\_\_\_ % = 100%
4. MC/Visa/Discover Network/American Express sales are deposited?  
☐ Date of order ☐ Date of delivery Other: \_\_\_\_\_
5. Who performs product / service fulfillment? ☐ Direct ☐ Vendor ☐ Other If vendor, add  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_  
*Please describe how the transaction works, from order taking to merchant fulfillment (attach additional sheet if necessary):*
6. Does any of your cardholder billing involve automatic renewals or recurring transactions (i.e. cardholder authorizes initial sale only)? ☐ Yes ☐ No

Sales Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## CONFIRMATION PAGE

**PROCESSOR  
INFORMATION:**Name: BankCard USA Merchant Services, Inc.Address: 2625 Townsgate Road, Suite 100, Westlake Village, CA 91361URL: www.bankcardusa.comCustomer Service #: 1-800-589-8200

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 19 of the Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 21 of the Card Processing General Terms.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 24, Term; Events of Default and Section 25, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part III, A.3 under "Additional Fee Information."

**9. Card Organization Disclosure****Visa and MasterCard Member Bank Information:** Westamerica BankThe Bank's mailing address is 3750 Westwind Blvd., Suite 210 Santa Rosa, CA 95403, and its phone number is (800) 939-9942 [acquirer@westamerica.com](mailto:acquirer@westamerica.com)**Important Member Bank Responsibilities:**

- a) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

**Important Merchant Responsibilities:**

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>

Print Client's Business Legal Name: \_\_\_\_\_

By its signature below, Client acknowledges that it has received the complete Program Guide [version BUSAb1712(ia)] consisting of 40 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

Client's Business Principal:

Signature (Please sign below) :



X \_\_\_\_\_

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

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

Please Print Name of Signer: \_\_\_\_\_

## CONFIRMATION PAGE

**PROCESSOR  
INFORMATION:**Name: BankCard USA Merchant Services, Inc.Address: 2625 Townsgate Road, Suite 100, Westlake Village, CA 91361URL: www.bankcardusa.comCustomer Service #: 1-800-589-8200

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8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part III, A.3 under "Additional Fee Information."

**9. Card Organization Disclosure**

**Visa and MasterCard Member Bank Information:** Wells Fargo Bank N.A.

The Bank's mailing address is PO Box 6079, Concord, CA 94524, and its phone number is (844) 284-6834.

**Important Member Bank Responsibilities:**

- a) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

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- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>

Print Client's Business Legal Name: \_\_\_\_\_

By its signature below, Client acknowledges that it has received the complete Program Guide [version BUSAb1712(ia)] consisting of 40 pages (including this confirmation).

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**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

Client's Business Principal:

Signature (Please sign below) :



X

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

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

Please Print Name of Signer: \_\_\_\_\_

**31 CFR 1010.230 BENEFICIAL OWNERS CERTIFICATION (Legal Entity Customers)**

**ENTITY INFORMATION**

Entity Legal Name:	Merchant Account #(s):
This Certification Regarding Beneficial Owners of Legal Entity Customers shall be attached to and made a part of the original Merchant Agreement between Westamerica Bank, and BankCard USA the undersigned.	

**SECTION I: GENERAL INFORMATION**

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

**Who has to complete this form?**

This form must be completed by the person opening a new account or requesting maintenance on an existing account on behalf of a legal entity. For the purposes of this form, a legal entity includes a Corporation, Limited Liability Company, Partnership, and any other similar business entity formed in the United States.

**What information do I have to provide?**

This form requires you to provide the name, address, date of birth, and social security number (or passport number or other similar information, in the case of non-US Persons) for the following individuals (beneficial owners):

- i. Each individual, if any, who owns directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); and
- ii. An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

**A verified or copy of a valid driver's license or other government issued identifying document for each beneficial owner on this**

**SECTION II: CERTIFICATION OF BENEFICIAL OWNER(S)**

Persons opening an account or maintaining a business relationship on behalf of the legal entity must provide the following information.

**A: LEGAL ENTITY INFORMATION (REQUIRED):**

Legal Entity Name			Entity Type	
Entity Address (No P.O.Box)		City	State	Zip

**B: PERSON OPENING OR REQUESTING MAINTENANCE ON ACCOUNT (REQUIRED):**

Last Name	First Name	Title
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**C: BENEFICIAL OWNERSHIP INFORMATION:** Provide the following information for each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interest of the legal entity listed on this form. If no individual meets this definition, check the box **BENEFICIAL OWNERSHIP NOT APPLICABLE** and skip to D: Managing Responsibility below

#1	Last Name	First Name	M.I.	DOB	% of Ownership
Address (No P.O.Box)		City	State	Zip	SSN (US Persons)
ID Type	ID #	Exp. Date	Issuing State/County	Passport Number (non-U.S. Person)	
#2	Last Name	First Name	M.I.	DOB	% of Ownership
Address (No P.O.Box)		City	State	Zip	SSN (US Persons)
ID Type	ID #	Exp. Date	Issuing State/County	Passport Number (non-U.S. Person)	
#3	Last Name	First Name	M.I.	DOB	% of Ownership
Address (No P.O.Box)		City	State	Zip	SSN (US Persons)
ID Type	ID #	Exp. Date	Issuing State/County	Passport Number (non-U.S. Person)	
#4	Last Name	First Name	M.I.	DOB	% of Ownership
Address (No P.O.Box)		City	State	Zip	SSN (US Persons)
ID Type	ID #	Exp. Date	Issuing State/County	Passport Number (non-U.S. Person)	

**D: MANAGING RESPONSIBILITY (REQUIRED):** Provide information below for one individual with significant responsibility for managing the legal entity previously listed on this form, such as, an executive officer or senior manager (e.g. Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or Any other individual who regularly performs similar functions. If appropriate, an individual listed in C: BENEFICIAL OWNERSHIP INFORMATION (above) may be listed in this section.

**INDIVIDUAL WITH SIGNIFICANT CONTROL:**

Last Name	First Name	M.I.	DOB	% of Ownership
Address (No P.O.Box)		City	State	Zip
ID Type	ID #	Exp. Date	Issuing State/County	Passport Number (non-U.S. Person)
Email Address	Phone Number			Title

**SECTION III: CERTIFICATION AGREED TO (REQUIRED)**

I, (print name) \_\_\_\_\_, hereby certify, to the best of my knowledge, that the information provided on this form is complete and correct for all accounts. It is further agreed that Westamerica Bank and BankCard USA will be immediately notified by the legal entity of any change in such information provided on this form.

**Signature X:** \_\_\_\_\_ **Printed Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## CORPORATE GUARANTY

This Corporate Guaranty (this "Guaranty"), effective as of the date set forth below, is made by \_\_\_\_\_ (the "Guarantor") in favor and for the benefit of BankCard USA Merchant Services, Inc., a California corporation ("BUSA").

For good and valuable consideration, the receipt and adequacy of such consideration being hereby acknowledged, Guarantor hereby guarantees to BUSA the prompt payment of the "Guaranteed Indebtedness" (hereinafter defined), and performance of the "Guaranteed Obligations" (hereinafter defined) upon the following terms and conditions;

1. The term "**Guaranteed Indebtedness**," as used herein shall mean: (a) all indebtedness of every kind and character, without limit as to amount, whether now existing or hereafter arising, of \_\_\_\_\_ ("Merchant") to BUSA and whether such indebtedness be fixed or contingent, incurred in accordance with the certain Merchant Processing Agreement by and between Merchant and BUSA dated as of \_\_\_\_\_, 2015 (the "Merchant Agreement"); and (b) any and all costs, attorney's fees, and expenses suffered by BUSA by reason of Merchant's default in payment of any of the foregoing indebtedness.
2. The term "**Guaranteed Obligations**" shall mean the undertakings, covenants and agreements required to be undertaken by Merchant in accordance with the Merchant Agreement; and any and all costs, attorney's fees, and expenses incurred by BUSA by reason of Merchant's default in the performance of the foregoing obligations.
3. This Guaranty shall be an absolute and continuing guaranty, and shall apply to the Guaranteed Indebtedness and Guaranteed Obligations including any renewals, extensions and modifications thereof.
4. If Guarantor becomes liable for any indebtedness or obligations owing by Merchant to BankCard USA, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of BUSA hereunder shall be cumulative of any and all other rights that BUSA may ever have against Guarantor. The exercise by BUSA of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy.
5. In the event of default by Merchant in either payment of the Guaranteed Indebtedness, or any part thereof, when such indebtedness becomes due, or if the performance of Guaranteed Obligations shall be required, Guarantor shall, on demand and without further notice of dishonor, default, protest, notice of intention to accelerate the maturity or any portion of the Guaranteed Indebtedness or Guaranteed Obligations, without any notice having been given to Guarantor previous to such demand of the acceptance by BUSA of the Guaranty and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness, pay the amount due thereon to BankCard USA, or cause the performance of the obligations required and it shall not be necessary for BankCard USA, in order to enforce such payment or performance by Guarantor, either first to institute suit or exhaust its remedies against Merchant or others liable on such indebtedness or obligations, or to enforce its rights against any guaranty or security which shall ever have been given to secure such indebtedness or obligations.

6. Guarantor hereby agrees that Guarantor's obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Indebtedness or Guaranteed Obligations; (b) any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Indebtedness or Guaranteed Obligations; (c) any partial release of the liability of Guarantor hereunder; (d) the bankruptcy of Merchant, the Guarantor, or any party at any time liable for the payment of any or all of the Guaranteed Indebtedness or performance of the Guaranteed Obligations, whether now existing or hereafter occurring; (e) any renewal, extension, and/or rearrangement of the payment of any or all of the Guaranteed Indebtedness or Guaranteed Obligations, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by BUSA to Merchant; (f) any neglect, delay, omission, failure, or refusal of BUSA to take or prosecute any action for the collection of the Guaranteed Indebtedness or enforcement of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any instrument or agreement evidencing or securing all or part of the Guaranteed Indebtedness or Guaranteed Obligations; (g) any failure of BUSA to notify Guarantor of any release of any security or any other action taken or refrained from being taken by BUSA against Merchant or any new agreement between BUSA and Merchant, it being understood that BUSA shall not be required to give Guarantor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Guaranteed Indebtedness or Guaranteed Obligations; (h) in the event that Merchant is a corporation, or partnership, or is hereafter incorporated, the unenforceability of all or any part of the Guaranteed Indebtedness or Guaranteed Obligations against Merchant by reason of the fact that the Guaranteed Indebtedness exceeds the amount permitted by law, the act of creating the Guaranteed Indebtedness or Guaranteed Obligations, or any part thereof is ultra vires, or the officers creating same acted in excess of their authority; or (i) any payment by Merchant to BUSA is held to constitute a preference under the bankruptcy laws or if for any reason Merchant is required to refund such payment or pay the amount thereof to someone else.

7. This Guaranty is for the benefit of BUSA and its successors and assigns, and in the event of a permitted assignment of the Merchant Agreement, or any part thereof, the rights and benefits hereunder to the extent applicable to the Merchant Agreement so assigned, may be transferred with such indebtedness. This Guaranty may not be assigned by Guarantor or amended without the written consent of BUSA. This Guaranty is binding not only on Guarantor, but also on Guarantor's successors and assigns.

8. Guarantor represents that Guarantor is the owner of a direct or indirect interest in Merchant and that Guarantor will receive a direct and material benefit from the performance by BUSA of obligations under the Merchant Agreement.

9. This Guaranty is executed and delivered as an incident to the above reference Merchant Agreement, negotiated, consummated, and performable in Los Angeles County, California and shall be construed according to the laws of the Commonwealth of California.

INVESTIGATIVE CONSUMER REPORT: As an Investigative or Consumer Report may be made in connection with this Guaranty. Guarantor authorizes BUSA or any credit bureau or any credit reporting agency employed by BUSA or any agents of BUSA to investigate the references given or any other statements or data obtained from Guarantor, for the purpose of this Guaranty.



SIGNATURE AND ACCEPTANCE

Executed effective the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

BANKCARD USA MERCHANT SERVICES, INC.

\_\_\_\_\_  
AUTHORIZED SIGNER

\_\_\_\_\_  
SIGNER'S NAME (PLEASE PRINT)

\_\_\_\_\_  
SIGNER'S TITLE (PLEASE PRINT)

GUARANTOR

X

\_\_\_\_\_  
AUTHORIZED SIGNER

X

\_\_\_\_\_  
SIGNER'S NAME (PLEASE PRINT)

X

\_\_\_\_\_  
SIGNER'S TITLE (PLEASE PRINT)



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## A. OPERATING PROCEDURES

This part of the Program Guide (through Section 14) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining authorizations, responding to Chargebacks and Media Retrieval Requests, and other aspects of the operations of our services.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the MasterCard®, Visa® and Discover® Network Cards carried by your customers, as well as to the independent Issuers of American Express®. The Operating Procedures contained in this part seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information and to ensure full compliance with them. They are designed to help you decrease your Chargeback liability and train your employees. (In the event we provide authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa, Discover Network and American Express, you should also consult those independent Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

## I. MasterCard, Visa, Discover Network and American Express Card Acceptance

**I.1. Card Descriptions.** At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card and not visibly altered or mutilated. The name of the Card (e.g., Visa, MasterCard, Discover Network or American Express) should appear in bold letters on the Card. For all MasterCard and Visa Cards and for some Discover Network Cards, the Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, MasterCard, Discover Network and American Express Card designs:

**Visa:** Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and may contain the symbol "V." Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, Visa Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Visa has a new Card design which differs significantly from the previous description. You are required to familiarize yourself with the new design by consulting the document entitled "Card Acceptance Guidelines for Visa Merchants (VRM 04.02.11) and Chargeback Management Guidelines for Visa Merchants" (VRM 04.03.11). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

**MasterCard:** MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Beginning January 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at [www.mastercard.us/merchants](http://www.mastercard.us/merchants). Both the old and new MasterCard Card designs will be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

**Discover Network:** The Discover Network includes Discover, Diners Club International, domestic JCB, UnionPay, BCard, and Dinacard. Valid standard, rectangular plastic Cards bearing a Discover® Acceptance Mark include the following common characteristics and distinctive features:

- The Discover Acceptance Mark may appear on the lower right corner of the front, back, or both sides of the Card.
- Cards display either a three-dimensional hologram on the front or back of the Card OR a three-dimensional holographic magnetic stripe on the back of the Card. Valid Cards do not display holograms on both front and back.
- Card Numbers may be embossed or unembossed and will appear on either the front or back of a Card. Card Numbers begin with the number "6" and are composed of 16 digits that should be clear and uniform in size and spacing.
- The Cardholder name, and if applicable, business name, may be embossed or unembossed and will appear on either the front or back of the Card.
- The "Valid Thru" date may be embossed or unembossed and will appear on either the

front or back of a Card in mm/yy format that indicates the last month in which the Card is valid.

- The words "DISCOVER" or "DISCOVER NETWORK" appears on the front of the Card under an ultraviolet light.
- The signature panel displays the words "DISCOVER" or "DISCOVER NETWORK" and may vary in size. Cards may contain a panel that includes an ultraviolet image of the word "DISCOVER." An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The last four digits of the Card Number may be displayed on the back of the Card and are commonly printed in reverse indent printing on the signature panel.
- On embossed Cards, a security character, displayed as an embossed stylized "D" appears on the front of the Card.
- The 3-digit CID is printed on the back of the Card in a separate box to the right of the signature panel.

**NOTE:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO Cards). Certain valid unembossed Cards or Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., contactless stickers, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the same features described above. Card expiration date and other features listed above are not displayed on such Contactless Payment Devices.

**NOTE:** For unembossed Cards used to conduct a Card Present Card Sales, Merchants must obtain an Authorization Response electronically using a POS Device. A Card Sale involving an unembossed Card may be subject to Dispute if the Merchant "key enters" Card information into a POS Device and does not use the electronic Authorization procedures.

Diners Club International:

- A Diners Club International Acceptance Mark in upper left corner.
- Two-character alphanumeric code printed in the lower right corner
- Embossed 14 – digit Account Number (begins with 36)
- Embossed digits on the card must be clear and uniform in size and spacing within groupings.
- Embossed expiration data appears in mm/yy format and indicates the last month in which the Card is valid.

**NOTE:** Some valid Cards bearing a Diners Club International Acceptance Mark display a printed, unembossed Card number. If a Card sale involving a Diners Club International Card with an unembossed Card number cannot be completed by swiping the card through the POS Device, the card should not be accepted. If submitted, such card sale may be subject to Dispute.

Union Pay:

- A 16 – digit Card number starting with "622," "624," "625," "626," or "628" is embossed on the front of the Card.
- Embossed digits on the Card should be clear and uniform in size and spacing.
- The embossed expiration date appears in mm/yy format and indicates the last month in which the Card is valid.
- The Card contains a magnetic stripe.
- A three-dimensional hologram image of Heaven Temple in the foreground with Chinese characters in the background appears on the front of all such Cards. The hologram reflects light as it is rotated.
- "Valid Thru" and the Cardholder name (which may not be in English) are embossed on the front of the Card.
- The CID appears on the upper right corner of the signature panel.

**NOTE:** Text on Cards bearing a UnionPay Acceptance Mark may not be printed in English.

JCB:

- Card Numbers are made up of 16 digits, starting with "35" embossed or printed on the front of the Card.
- Embossed digits on the Card should be clear and uniform in size and spacing within groupings.
- The Cardholder name and, if applicable, business name embossed on the front of the Card.
- A JCB Acceptance Mark appears on the front of the Card.
- A three-dimensional hologram image of rising sun, rainbow, and "JCB" in micro lettering appears on either the front or the back of the Card. The hologram reflects light as it is rotated.
- The embossed expiration date appears in mm/yy or mm/dd/yy format on the front of the Card and indicates the last month in which the Card is valid.
- The Card contains a magnetic stripe on the back of the Card.
- The name "JCB" appears in ultraviolet ink on the left bottom of the front of the Card when held under an ultraviolet light.
- The first four digits of the Card number match the 4-digit number pre-printed just below the embossed Card number of the front of the Card.

- The first four digits of the Card number displayed on the signature panel on the back of the Card match the last four digits of the Card number that appears on the front of the Card.
- The last four digits of the Card number on the back of the Card followed by the 3-digit CID.
- An overprint on the signature panel reads “JCB” in two colors, blue and green.
- Some Cards have an embedded integrated circuit chip on the front of the Card.
- The words “Good Thru,” “Valid Dates,” “Valid Thru,” or “Expiration Date” must be printed near the expiration date. The corresponding words in the language of the country where the JCB Card is issued may also be printed. The words “Month/Year” or the corresponding words in the language of the country where the JCB Card is issued may be printed above or below the expiration date

**NOTE:** Some valid Cards bearing the JCB Acceptance Mark will have a printed, unembossed Card number on the Card. If a Card sale involving a valid, JCB Card with an unembossed Card number cannot be completed by swiping the Card through the POS Device, the Card should not be accepted. If you accept a Card that displays a printed, rather than embossed, Card number, you are required to obtain a Card imprint, the Card sale may be subject to dispute.

#### American Express:

- All American Express Card Numbers start with “37” or “34.” The Card number appears embossed on the front of the Card. Embossing must be clear, and uniform in sizing and spacing. Some Cards also have the Card Number printed on the back of the Card in the signature panel. These numbers, plus the last four digits printed on the Sales Draft, must match.
- Pre-printed Card Identification (CID) Numbers must always appear above the Card Number on either the right or left edge of the Card.
- Only the person whose name appears on an American Express Card is entitled to use it. Cards are not transferable.
- Some Cards contain a holographic image on the front or back of the plastic to determine authenticity. Not all American Express Cards have a holographic image.
- Some Cards have a chip on which data is stored and used to conduct a charge.
- The signature on the back of the Card must match the Cardholder's signature on the Credit Draft, and must be the same name that appears on the front of the Card. The signature panel must not be taped over, mutilated, erased or painted over. Some Cards also have a three-digit Card Security Code (CSC) number printed on the signature panel.

**1.2. Effective/Expiration Dates.** At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. When an expiration date is expressed in a month/year format, MasterCard transactions are valid through and including the last day of the month and year. When the valid date is expressed in a month/year format, MasterCard transactions that occur before the first day of the month and year are invalid. Do not accept a Card prior to the effective date or after the expiration date. If the Card has expired, you cannot accept it for a Card sale unless you have verified through your Authorization Center that the Card is in good standing, otherwise, you are subject to a Chargeback and could be debited for the transaction.

When a MasterCard PayPass enabled keyfob or mobile phone is presented for payment, verifying a valid expiration date is not required.

**1.3. Valid Signature.** Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the Card must compare favorably with the signature on the Sales Draft. However, comparing the signature on the Card with the signature on the transaction receipt is not applicable when an alternate Card form (MasterCard PayPass keyfob or mobile phone) is presented. The Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, MasterCard and Discover Network Cards have a 3-digit number (CVV2/CVC2/CID) printed on the panel known as the Card Validation Code.

Visa, MasterCard, Discover Network, and American Express: If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

- Review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity.
- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; provided that you must effect PAN Truncation, and must not include the expiration date on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.
- When a MasterCard PayPass enabled keyfob or mobile phone is presented for payment, validating the customer's signature is not required.

**1.4. Users Other Than Cardholders.** A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back

panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing a photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

**1.5. Special Terms.** If you limit refunds or exchanges, or impose other specific conditions for Card sales, you must provide proper disclosure to the Cardholder at the time of transaction in accordance with applicable law. If applicable, the words “No Exchange, No Refund,” etc. must be clearly printed (in 1/4” letters) on the Sales Draft near or above the Cardholder's signature. The Cardholder's copy of the Sales Draft, as well as your copy, must clearly display this information near or above the Cardholder's signature. Applicable disclosures may vary by transaction type.

During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that “All Sales Are Final,” and stamp the Sales Draft with a notice that “All Sales Are Final.”

Generally, do not give cash, check or in-store Credit refunds for Card sales. Visa allows for the following exclusions: A cash refund to the Cardholder for a small ticket transaction or a no signature required transaction, a cash refund, Credit, or other appropriate form of Credit to the recipient of a gift purchased as a Mail/Phone Order transaction, or a cash refund or in-store Credit for a Visa prepaid card transaction if the Cardholder states that the Visa prepaid card has been discarded. **NOTE:** A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Card Organization Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

**1.6. Delayed Delivery or Deposit Balance.** In a delayed delivery transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 3.1), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

Visa: You must obtain an authorization for each Sales Draft on each transaction date. You must assign the separate authorization numbers to each Sales Draft, respectively. You must note on such Sales Drafts the words “delayed delivery,” “deposit” or “balance,” as appropriate, and the authorization dates and approval codes.

MasterCard: For MasterCard transactions, you must obtain an Authorization for each Sales Draft on each Transaction date. You must note on both Sales Drafts the words “delayed delivery,” “deposit” or “balance,” as appropriate, and the authorization date and approval code.

Discover Network: For Discover Network transactions, you must label one Sales Draft “deposit” and the other “balance,” as appropriate.

You shall submit Authorization requests you receive and await receipt of the Authorization Response prior to completing the Card sale. A positive Authorization Response will remain valid for thirty (30) calendar days from the date of the Authorization response for Card sales in the car rental industry, airline and passenger railway industries, the lodging industry and other travel MCCs including passenger transport and **all International Card sales**. A positive Authorization response will remain valid for ten (10) calendar days from the date of the Authorization response for Card sales in all other industries and MCCs.

In addition, you must complete Address Verification at the time of the “balance” authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the “balance” to us for processing until the merchandise/service purchased has been completely delivered.

American Express: For American Express Card transactions, you must clearly disclose your intent and obtain written consent from the Cardholder to perform a delayed delivery transaction before you request an Authorization. You must obtain a separate Authorization Approval for each delayed delivery transaction on their respective Charge dates and clearly indicate on each record that the Charge is either for the deposit or for the balance of the transaction. You must submit the delayed delivery transaction record for the balance of the purchase only after the items have been shipped, provided or services rendered. For deposits, submission must be on the date the Cardholder agreed to pay for the deposit for the purchase. For balances, submission must be on the date the items are shipped, provided or services rendered. You must submit and Authorize each delayed delivery transaction under the same Merchant Account Number and treat deposits on the Card no differently than you treat deposits on all other payment products.

#### **Advance Payment Charges for American Express Transactions.**

An advance payment Charge is a Charge for which full payment is made in advance of you providing the goods and/or rendering services to the Cardholder and such Charges carry higher risk. American Express may withhold settlement for part or all of such Charges until it is determined that the risk has diminished.

You must follow the procedures below if you offer Cardholders the option or require them to make advance payment Charges for the following types of goods and/or services:

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

For an advance payment Charge, you must:



State your full cancellation and refund policies, clearly disclose your intent and obtain written consent from the Cardholder to bill the Card for an advance payment Charge before you request an Authorization. The Cardholder's consent must include his or her agreement to all the terms of the sale (including price and any cancellation and refund policies), and a detailed description and the expected delivery date of the goods and/or services to be provided (including, if applicable, expected arrival and departure dates).

- Complete a Sales Draft. If the advance payment Charge is a Card Not Present Charge, you must also: ensure that the Sales Draft contains the words "Advance Payment;" and within twenty-four (24) hours of the Charge being incurred, provide the Cardholder written confirmation (e.g., email or facsimile) of the advance payment Charge, the amount, the confirmation number (if applicable), a detailed description and expected delivery date of the goods and/or services to be provided (including expected arrival and departure dates, if applicable) and details of your cancellation/ refund policy.

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

In addition to other Chargeback rights, a Chargeback may be exercised for any disputed advance payment Charge or portion thereof if the dispute cannot be resolved in your favor based upon unambiguous terms contained in the terms of sale to which you obtained the Cardholder's written consent.

**1.7. Recurring Transaction and Preauthorized Order Regulations.** If you process recurring transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the transaction amounts, the timing or frequency of recurring Charges and the duration of time for which the Cardholder's permission is granted. For Discover Network transactions, the approval must also include the total amount of recurring Charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Account Number.

If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for authorization has been denied.

If we or you have terminated this Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of this Agreement, and you must inform Cardholders for which you have submitted the recurring transactions that you no longer accept the Card.

You must obtain an Authorization for each transaction and write "Recurring Transaction" (or, "P.O." for MasterCard transactions/"Signature on File" for American Express transactions) on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.

For all recurring transactions, you should submit the 3-digit CID with the first authorization request, but not subsequent authorization requests. Discover Network Card Organization Rules specifically require that you follow this CID procedure for Discover Network recurring transactions.

Also, for Discover Network recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

For American Express recurring transactions, you should periodically verify with Cardholders that their information (e.g., Card Number, expiration date, billing address) is still accurate. This will improve the likelihood of obtaining an approval to an Authorization request.

The method to secure consent for recurring Charges must contain a disclosure that you may receive updated Card account information from the Issuer. You must retain evidence of consent to receive updated Card account information from the Issuer for twenty-four (24) months from the date you submit the last recurring billing Charge. If you offer Cardholders the option to make recurring billing Charges, you must:

- Ensure that your process for cancellation of recurring billing is simple and expeditious;
- Clearly and conspicuously disclose all material terms of the option, including, if applicable, the fact that recurring billing will continue until the option is cancelled by the Cardholder;
- Offer their American Express customers the option to receive written notification for the recurring transaction(s) at least (10) ten days prior to submitting, or any time the Charge amount exceeds a maximum amount that has been set by the Cardholder;
- Within twenty-four (24) hours of incurring the first recurring billing Charge, provide the Cardholder written confirmation (e.g., email or facsimile) of such Charge, including all material terms of the option and details of your cancellation/refund policy; and
- Where the material terms of the option change after submission of the first recurring billing Charge, promptly notify the Cardholder in writing of such change and obtain the Cardholder's express written consent to the new terms prior to submitting another recurring billing Charge.

The cancellation of an American Express Card constitutes immediate cancellation of that Cardholder's consent for recurring Charges. American Express will not have any liability from such cancellation. If an American Express Card is cancelled or a Cardholder withdraws consent to recurring Charges, you are responsible for arranging another form of payment with the Cardholder.

All recurring transactions or preauthorized orders may not include partial payments for goods or services purchased in a single transaction.

You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

If you process recurring payment transactions, the Recurring Payment Indicator must be included in each authorization request, and as applicable, each Batch submission entry. Penalties can be assessed by the Card Organizations for failure to use the Recurring Payment Indicator.

**1.8. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard and Discover Network:

- Your minimum Credit Card acceptance amount cannot exceed \$10.00. Such minimum amount must be established to all Credit Cards regardless of Card Issuer or Card brands. Unless you are a federal government entity or institution of higher learning, you may not establish a maximum amount as a condition for accepting a Card, except that for Discover transactions, you may limit the maximum amount a Discover Network Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer. Setting a minimum transaction amount limit for Debit Cards (Pin Debit or Non-PIN Debit) is prohibited.
- You cannot impose a surcharge or fee for accepting a Debit Card.
- You cannot establish any special conditions for accepting a Card.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address including zip code; or driver's license number) unless instructed by the Authorization Center. The exception to this is for mail/ telephone/Internet order or delivery-required transactions, or as otherwise permitted by applicable law. Any information that is supplied by the Cardholder must not be in plain view when mailed.
- Any tax required to be collected must be included in the total transaction amount and not collected in cash.
- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible.
- You cannot accept a Visa Consumer Credit Card or Commercial Visa Product, issued by a U.S. Issuer, to collect or refinance an existing debt. **NOTE:** Visa Consumer debit and Visa Business debit Card products including prepaid card type can be accepted to collect or refinance an existing debt.
- You cannot submit a transaction or sale that has been previously charged back.
- You must create a Sales Draft or Credit Draft for each Card transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.
- You cannot submit a transaction or sale to cover a dishonored check.
- If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally (e.g., if you accept MasterCard, Visa and Discover Network, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States.
- Failure to comply with any of the Card Organization Rules may result in fines or penalties.

**U.S. Merchants may engage in any of the following:**

- You may direct customers to a particular brand or type of general purpose card or a particular form of payment. U.S. merchants may also encourage customers who initially present a Visa Card to use a payment card with a different network brand, a different type of payment card or a different form of payment.
- You may provide a discount/incentive for a consumer to pay with cash, check, Credit Card, Debit Card, etc., however, you must clearly and conspicuously disclose the discount to consumers. Also, you must offer the discount to all consumers and you cannot discriminate based upon Card brand or Card Issuer. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 1.9.
- You may offer a discount or rebate, including an immediate discount or rebate at the point of sale;
- You may offer a free or discounted product, service or enhanced service
- You may offer an incentive, encouragement, or benefit;
- You may express a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- You may promote a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to a customer;
- You may communicate to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of

general purpose cards or different forms of payment. **NOTE:** Visa Consumer Debit and Visa Business Debit Card products including prepaid Card type can be accepted to collect or refinance an existing debt; or

You may engage in any other practices substantially equivalent to the above.

- You will inform the Cardholder that you are responsible for the Card transaction including your goods and services and for related customer service, dispute resolution and performance of the terms and conditions of the transaction.

**1.9. Card Acceptance.** If you have indicated either in the Merchant Processing Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 1.9 will apply:

**1.9.1.** You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit Card or Debit Cards issued by MasterCard, Visa or Discover Network so long as you accept any type of MasterCard, Visa or Discover Network branded Card.

**1.9.2.** While many Debit Cards include markings indicating debit (such as “Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney”), many Debit Cards may not include any such markings. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Card Organizations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables. You must safeguard BIN information provided by us. If you share our provided BIN information with a third party to use on your behalf, you must require they safeguard it also and use it only for card type identification at the POS.

**1.9.3.** To the extent that you inadvertently or unintentionally accept a transaction that you are not registered to accept, such transaction will downgrade and you will be charged the Non Qualified Rate or, if you are utilizing the Enhanced Recovery Reduced Discount option, you will be charged the Enhanced Recovery Reduced Rate on the volume of said transaction that Client was not registered to accept, in addition to the difference between the MasterCard/ Visa/Discover Network Qualified Rate agreed to in Section 9 of the Service Fee Schedule and the actual interchange rate assessed to the downgraded transaction.

**1.9.4.** Based upon your choice to accept only the Card types indicated in the Application, you must remove from your premises any existing signage indicating that you accept all Visa, MasterCard or Discover Network Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

**1.9.5.** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Card Services.

**1.9.6.** If a MasterCard Card is presented, you must use your best efforts, by reasonable and peaceful means, to retain the card while making an authorization request. In a face-to-face environment, you must give a MasterCard Cardholder the option of a signature based transaction. Unless the Cardholder uses a PIN, the Cardholder must sign the transaction receipt.

**1.9.7. MasterCard revised standards related to the use of Mobile POS (MPOS) terminals.**

Merchants with less than \$100,000 in annual MasterCard transaction volume may use Chip-only MPOS terminals:

- That do not support magnetic stripe capture
- That support either signature or No Cardholder Verification Method (CVM)
- That may offer optional support PIN entry

Merchants with less than \$100,000 in annual MasterCard transaction volume may use MPOS terminals or Chip-only MPOS solutions that do not support electronic signature capture to complete a transaction without obtaining a CVM.

Please **NOTE:** Merchants with more than \$100,000 in annual transactions may use MPOS terminals if the MPOS terminal complies with MasterCard's requirements for POS terminals or hybrid POS terminals (if chip cards are accepted).

**1.10. Deposits of Principals.** Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 1.10 is deemed a cash advance, and cash advances are prohibited.

**1.11. Merchants in the Lodging Industry.**

**1.11.1. Generally.** There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and Charges for no shows, advance deposits, overbookings, and priority checkout. If you are a merchant in the lodging industry, you must contact us for these additional rules and requirements. **Failure to do so could result in additional charges or termination of this Agreement.**

**1.11.2. Lodging Service Programs.** In the event you are a lodging merchant and wish to participate in Visa's and/or MasterCard's lodging services programs, please contact your sales representative or relationship manager for details and the appropriate MasterCard and Visa requirements.

**1.11.3. Written Confirmation of Guaranteed Reservations.** You must provide the Cardholder with written confirmation of a guaranteed reservation. The confirmation must contain:

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated where required by applicable law to you or us and Card expiration date if present, unless prohibited by applicable law to you or us.
- Reservation confirmation number.
- Anticipated arrival date and length of stay.
- The cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire.
- Any other pertinent details related to the reserved accommodations.

**1.11.4. Cancellation of Guaranteed Reservations.** If a Cardholder requests a cancellation in accordance with Merchant's cancellation policy and specified time frames, Merchant must provide the Cardholder with a cancellation number and instructions to retain a record of it. If a Cardholder requests a written confirmation of the cancellation, Merchant must forward this confirmation within three (3) Business Days of the Cardholder's request. The cancellation confirmation must contain: Cardholder's reference that Charges were placed on the Card, if applicable, or a guarantee that a “no-show” Charge will not be placed on the Card.

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated as required by applicable law to you or us.
- Card expiration date, if present, unless prohibited by applicable law to you or us.
- Reservation cancellation number.
- Date of cancellation.
- The name of the Merchant's employee that processed the cancellation.
- Any other pertinent information related to the reserved accommodations.

**1.12. Customer Activated Terminals and Self-Service Terminals.** Prior to conducting Customer Activated Terminal (“CAT”) transactions or Self-Service Terminal transactions **you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of this Agreement.**

**Customer Activated Terminals for American Express Transactions**

Charges for purchases at your Customer Activated Terminals (CATs) must meet the requirements for Sales Draft as detailed below:

You must include:

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

American Express will not be liable for actual or alleged fraudulent Charges occurring through Customer Activated Terminals (CAT) and will have the right to Chargeback for those Charges.

**1.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover Network, and, if applicable, other Card Organization decals and program Marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Card Organization Rules, if you elected to accept such Card payments on your Application. You may not indicate that Visa, MasterCard, and Discover Network, or any other Card Organization endorses your goods or services.

Your right to use the program Marks of the Card Organizations terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Card Organization terminates (e.g., if your right to accept Discover Network Cards terminates, you are no longer permitted to use Discover Network Program Marks), (ii) delivery of notice by us or the respective Card Organization to you of the termination of the right to use the Mark(s) for that Card Organization, or (iii) termination of the license to use the program Marks by the respective Card Organization to us.

**American Express:** If you elected to accept the American Express Card on your Application, whenever payment methods are communicated to customers, or when customers ask what payments are accepted, you must indicate your acceptance of the American Card and display the American Express Marks (including any Card application forms provided to you) as prominently and in the same manner as you do for any other Card or payment products. You must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the American Express Marks, nor (without prior written consent from us) indicate that American Express endorse your goods or services. You shall only use the American Express Marks as permitted by the Agreement and shall cease using the American Express Marks upon termination of the Agreement

**1.13.1. Discover Network Sublicense to Use Discover Network Program Marks.**

You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by us. “Discover Network Program Marks” means the brands, emblems, trademarks and/or logos that identify Discover Network Cards, including, without limitation, Diners Club International Cards, JCB, UnionPay, BCCard, and Dinacard.

Additionally, you shall not use the Discover Network Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting the Discover Network Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any Person any of the rights to use the Program Marks.

**I.13.2. American Express sublicense to Use American Express Marks.** You shall only use the American Express Marks as reasonably necessary to perform your obligations under the Agreement. The guidelines listed below apply to the Merchant's use of the American Express "Blue Box" logo.

- The "BlueBox" logo must always be shown in the pre-approved "American Express Blue" or, in one- or two-color communications or black.
- The space around the "Blue Box" must equal at least 1/3 the size of the box.
- The "Blue Box" logo minimum size is 3/8" and 1/2" is the preferred size.
- A minimum distance of 1-1/2 times the size of the "Blue Box" must be allowed between the "Blue Box" logo and another Mark.
- For additional guidelines on the use of the American Express Marks, you can visit the American Express website at [www.americanexpress.com/decals](http://www.americanexpress.com/decals).
- You must remove American Express Marks from your website and wherever else they are displayed upon termination of the Agreement or if do not elect to accept or are not authorized to accept American Express Cards.

**I.14. Cash Payments by and Cash Disbursements to Cardholders.** You must not accept any direct payments from Cardholders for Charges of merchandise or services which have been included on a Sales Draft; it is the right of the Issuer to receive such payments. You may not make any cash disbursements or cash advances to a Cardholder as part of a Card transaction unless you are a financial institution with express authorization in writing in advance from Servicers. For Discover, cash advances in authorized jurisdictions other than the United States may be conducted in an originating currency provided that cash advances may be subject to dispute and/or Acquirer fees.

**I.15. Discover Network Cash Over Transactions.** Cash Over transactions are not available for MasterCard or Visa transactions. You may issue Cash Over in connection with a Discover Network Card sale, provided that you comply with the provisions of this Agreement, including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of the goods/ services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.
- Cash Over may only be offered with a Card Present Card Sale that includes a purchase of goods or services by the Cardholder. You must not issue Cash Over as a stand-alone transaction. Merchants that offer Cash Over may require the total amount of a Card Sale with a Credit product, including Cash Over, to meet a minimum transaction amount of up to \$10.00.
- You shall not assess or charge fees of any type or amount, including any surcharges, on Cash Over transactions. None of the fees or charges applicable to Cash Advances shall be applied to Cash Over transactions.
- Cash Over may not be dispensed in connection with Credits, Cash Advances, or any Card Sale for which you are unable to electronically capture Track Data using the POS Device.
- The maximum amount of cash that you may issue as Cash Over is \$100.00.

**(Cash Over may not be available in certain markets. Contact us for further information).**

**I.16. Telecommunication Transactions.** Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. **(NOTE: Pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales).** Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

## 2. Suspect Transactions

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

### Ask yourself, does the Customer:

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items or the same items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the Card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time or right before closing time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?
- tell you he has been having some problems with his Issuer and request that you call a number (that he provides) for a "special" handling or authorization?
- have a previous history of disputed Charges?
- place orders to be shipped to an address other than the billing address, or use anonymous/ free email domains?
- place orders sent to zip codes or countries where you show a history of fraudulent claims?
- frequently make purchases and then return goods for cash?
- use a prepaid Card to purchase other prepaid Cards?
- use a large numbers of prepaid Cards to make purchases?

### Does the Card:

- have characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the Card?
- have an altered Magnetic Stripe?
- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?
- have "valid from" (effective) and "valid thru" (expiration) dates consistent with the sale date?

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.

### Fraud-Prone Merchandise Tips:

- Gift Cards, jewelry, video, stereo, computer and camera equipment, shoes, and men's clothing are typically fraud-prone because they can easily be resold.
- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

### If you suspect fraud:

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.
- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

**REMEMBER: AN AUTHORIZATION CODE ONLY INDICATES THE AVAILABILITY OF A CARDHOLDER'S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER. IF PROPER PROCEDURES ARE NOT FOLLOWED AT THE TIME OF THE TRANSACTION, YOU ARE SUBJECT TO A CHARGEBACK AND YOUR ACCOUNT MAY BE DEBITED FOR THE AMOUNT OF THE TRANSACTION.**

## 3. Completion of Sales Drafts and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a copy of it or a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

**3.1. Information Required.** All of the following information must be contained on a single page document constituting a Sales Draft:

- Cardholder's account number must appear on the Credit Draft or Sales Draft in the manner required by applicable law and Card Organization Rules. **NOTE:** The copy of the Sales Draft or Credit Draft you provide to a Cardholder must not include the Cardholder's Card expiration date or any more than the last four digits of the Cardholder's Card



number. Some states have similar requirements that also apply to the Sales Drafts or Credit Drafts you retain. MasterCard requires that Card expiration dates be excluded from the Sales Drafts or Credit Drafts your business retains. You are solely responsible to determine the Card account number truncation requirements and Card expiration date exclusion requirements for your state/jurisdiction;

- Clear imprint of the Card. Whenever the term “imprint” is used it refers to the process of using a manual imprinting machine to make an impression of the Card on the same side of a signed Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use an electronic device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL, TELEPHONE, INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 3.2;
- Cardholder's signature. However, eligible merchants participating in MasterCard's Quick Payment Service Program, Visa Easy Payment Program, American Express No Signature Program, and Discover Network's No Signature Program, and/or certain Discover Network transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program;
- Date of the transaction;
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g., “clothing” instead of “one pair of pants, one shirt”). Do not carry information onto a second Sales Draft;
- Description of your merchandise return and Credit/refund policy;
- A valid authorization code; and
- Merchant's Doing Business As (“D/B/A”) name and location (city and state required) and Merchant Account Number.

When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or Summary Adjustment to your account.

For Discover Network sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper Sales Draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Network Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.

Discover Card Sales in an amount more than \$50.00 including sales taxes, tip, surcharge and/or Cash Over amount are not eligible for treatment as No Signature Card Sales and you may lose a dispute of such a Card Sale if the Merchant fails to obtain the Cardholder's Signature on the Sales Draft.

Eligible merchants participating in Visa Easy Payment Service (“VEPS”) (Visa's No Signature Required Program), Quick Payment Service and/or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.

**NOTE:** For Visa, MasterCard and Discover Network transactions, if you are a merchant operating under certain merchant category codes (“MCC”) approved by Visa, MasterCard and Discover Network, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is below the applicable program floor limit (MasterCard/Discover/American Express is \$50 or less. Visa's program limit remains at \$25 or less excluding U.S. grocery stores (MCC 5411) and discount stores (MCC 5310) where the limit has been raised to \$50.

For MasterCard, if you are operating vending machines under MCC 5499 (Miscellaneous Food Stores-Convenience Stores, Markets, Specialty Stores), you need not provide a receipt at the time a transaction is conducted. If a vending machine cannot provide a printed receipt, you must disclose and post instructions advising customers how a receipt may be obtained.

#### **Sales Drafts for American Express Transactions.**

You must create a Sales Draft for every Charge. For each Charge submitted electronically, you must create an electronically reproducible Sales Draft. The Sales Draft (and a copy of the customer's receipt) must disclose your return and/or cancellation policies.

If the Cardholder wants to use different Cards for payment of a purchase, you may create a separate Sales Draft for each Card used. However, if the Cardholder is using a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge, nor shall you create more than one Sales Draft.

- Submit the Charge to American Express directly, or through your Processor, for payment.
- Retain the original Sales Draft (as applicable) and all documents evidencing the Charge, or reproducible records thereof, for the timeframe listed in our country-specific policies.

- Provide a copy of the Sales Draft to the Cardholder.

You may be able to create more than one Sales Draft if the purchase qualifies for a delayed delivery Charge. The retention time frame for Sales Drafts is twenty-four (24) months from the date you submitted the corresponding Charge to us. Pursuant to applicable law, truncate the Card number and do not print the Card's expiration date on the copies of Sales Drafts delivered to Cardholders. Truncated Card number digits must be masked with replacement characters such as “x,” “\*” or “#,” and not blank spaces or numbers.

If you submit Charges on paper, you must create a Sales Draft containing all of the following required data:

- Full Card number and expiration date (pursuant to applicable law), and if available, Cardholder name.
- The date the Charge was incurred.
- The amount of the Charge, which must be the total price for the purchase of goods and services (plus applicable taxes and gratuities) purchased on the Card.
- A clear description of the goods or services purchased by the Cardholder.
- An imprint or other descriptor of you name, address, Merchant Account Number and, if applicable, store number.
- The words “no refunds” if you have a no refund policy, and you return and/or cancellation policies.

#### **American Express No Signature.**

You may participate in the American Express No Signature Program. The No Signature Program allows establishments not to request a signature from Cardholders on the Sales Draft. To qualify for the No Signature Program, both the establishment and each Charge must meet the following criteria:

##### **Establishment Criteria.**

If your establishment is classified in an industry that accepts in-person Charges, then the establishment may participate in the No Signature Program with the exception of the following categories:

- Merchants who do not conduct in-person Charges (i.e., internet, mail order or telephone order).
- Prohibited transactions as set forth in Section 14.4 or illegal transactions or activity, as described in Section 35.2.
- High Risk Merchants (e.g., establishments whose business type has had historically high occurrences of fraud and disputed charges with American Express or as compared to other similarly situated merchants (or both); examples include internet electronic services or nightclubs/lounges) as determined by American Express in its sole discretion.
- Merchants placed in our Fraud Full Recourse Program.

##### **Charge Criteria:**

- The amount or Charge must meet the threshold established in American Express' country specific policy.
- The Charge Submission must include the appropriate indicator to reflect that the Card and the Cardholder were present at the point of sale.
- The Charge Submission must include a valid approval.

Under the No Signature Program, Chargebacks will not be exercised for such Charges based solely on the establishment's failure to obtain the Cardholder's signature at the point of sale. If a disproportionate amount or a number of disputed Charges under the No Signature Program occur, you must cooperate to reduce the amount or number of disputed Charges. If such efforts fail, you may be placed in American Express Chargeback programs (see American Express Card Organization Rules regarding “chargeback programs”), or your establishment's participation in the No Signature Program may be modified or terminated. The established threshold for charges to qualify under the No Signature Program is \$50.00 or less.

**3.2. Mail / Telephone / Internet (Ecommerce) Orders and Other Card Not Present Sales.** You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total payment Card volume reflected on your Application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using MasterCard or Visa Cards must have special codes (an “Electronic Commerce Indicator”) added to their authorization and settlement records. Discover Network does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Card Organizations.

Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/ Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:

- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and

shipping address; authorization code; and merchant's name and address (city and state required); provided, that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.

- For mail orders, write "MO"; for telephone orders, write "TO" on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Network Card Not Present Transactions, and if you do not receive a positive match through AVS, you may not process the Discover Network Card Not Present Transaction. If you do not have AVS, contact us immediately.
- You should obtain the 3- or 4 digit Card Validation Code number and include it with each authorization request. Discover Network Card Organization Rules specifically require that you submit the Card Validation Code with the authorization request for all Discover Network Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (The Card Organizations will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.
- Notify the Cardholder of delivery time frames and special handling and/or cancellation policies. Merchandise shipping dates must be within seven (7) days of the date authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder and reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.
- If you accept orders via the Internet, your web site must include the following information in a prominent manner:
  - Complete description of the goods or services offered;
  - Description of your merchandise return and Credit/refund policy;
  - Customer service contact, including email address and/or telephone number;
  - Transaction currency (U.S. dollars, unless permission is otherwise received from Servicers);
  - Any applicable export or legal restrictions;
  - Delivery policy;
  - Consumer data privacy policy;
  - A description of the transaction security used on your website;
  - The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited;
  - Your identity at all points of interaction with the Cardholder;
  - Address of merchant including country;
  - Cancellation policy; and
  - Date any free trial period ends.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

**NOTE:** AVS (and other fraud mitigation tools such as Verified by Visa, MasterCard Secure Code, CVV2, CVC2 and CID verification) does not guarantee against Chargebacks, but used properly, it assists you in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an Authorization and will provide a separate response. A transaction may not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

#### American Express Internet Charges.

For internet orders, you must use separate Merchant Account Numbers provided to you for internet orders on all your requests for Authorization and submission of charges, provide at least one (1) month's prior written notice of any change in your internet address, and comply with any additional requirements that may be added from time to time. Additionally, if a disputed Charge arises involving a Card Not Present Charge that is an internet electronic delivery Charge, a Chargeback may be exercised for the full amount.

#### Processing a Card Not Present Charge for American Express Transactions you must:

- Submit the Charge to American Express;

For Card Not Present Charges, you must create a Sales Draft and ask the Cardholder to provide:

- Card number;
- Card expiration date;

In addition, it is recommended that you ask for:

- Name as it appears on the Card,
- Cardholder's billing address, and
- Ship-to address, if different from the billing address.

American Express will not Chargeback for such charges based solely upon a Card- member claim that he or she did not receive the disputed goods if you have:

- Verified the address to which the goods were shipped was the Cardholder's full billing address.
- Provided proof of delivery signed by the Cardholder or an authorized signer of the Card indicating the delivery of the goods or services to the Card- member's full billing address.

American Express will not be liable for actual or alleged fraudulent transactions over the internet and will have the right to Chargeback for those charges. For Internet Orders, you must:

- Use any separate merchant numbers (seller ID) established for your internet orders in all of your requests for Authorization and Submission of charges.
- Provide us with at least one (1) month's prior written notice of any change in your internet address.
- Comply with any additional requirements that American Express provides from time to time. Additionally, if a disputed Charge arises involving a Card Not Present Charge that is an internet electronic delivery Charge, American Express may exercise Chargeback for the full amount of the Charge and place you in any of its Chargeback programs.

When providing Proof of Delivery, a signature from the Cardholder or an authorized signer of the Card is not required.

**3.2.1. Discover Network Protocol for Internet Transactions.** Each Internet Discover Network Card transaction accepted by you and submitted to us shall comply with Discover Network standards, including, without limitation, Discover Network standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Network Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Network Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

**3.3. Customer Service Telephone Numbers** for Card types which are funded by individual non-bank Card Organizations include:

<b>American Express</b>	<b>See Part III, Section A.5 – Cust. Service #</b>
<b>JCB, International</b>	<b>1-800-366-4522</b>
<b>(For YEN and CAD currency only)</b>	
<b>Voyager</b>	<b>1-800-987-6591</b>
<b>WEX</b>	<b>1-800-492-0669</b>

**Available 24 hours/day; 7 days/week.**

#### 4. Data Security

**THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES AND LIABILITIES FOR UNAUTHORIZED DISCLOSURE AND TERMINATION OF THIS AGREEMENT.**

**4.1. Payment Card Industry Data Security Standards (PCI DSS).** Visa, MasterCard, Discover Network, JCB and American Express aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting Payment Card Industry Data Security Standards (PCI DSS) defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI DSS is the name used to identify those common data security requirements. The Cardholder Information Security Program (CISP) is Visa USA's data security program, the Site Data Protection (SDP) program is MasterCard's data security program, Discover Network Information Security and Compliance (DISC) is Discover Network's data security program, each based on the PCI DSS and industry aligned validation requirements. PCI DSS compliance validation is focused on Merchant Equipment (as defined below) where Cardholder data is processed, stored or transmitted, including:

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance);
- All connections to and from the authorization and settlement environment (i.e., connections for employee access or for devices such as firewalls, and routers); and
- Any data repository outside of the authorization and settlement environment.



For the purposes of this Section 4, “Merchant Equipment” means any and all equipment you use in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and software, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by you, Merchant Providers or other Persons used by you.

The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Services under this Agreement for any actual or suspected data security compromise. You agree that you will not request any Authorizations, submit any Sales Drafts or Credit Drafts until you have read and understood the PCI DSS, CISP, SDP and DISC for which you acknowledge we have provided you sufficient information to obtain, and you will be deemed to have done so upon our receipt of your request or submission of any Authorizations, Sales Drafts or Credit Drafts.

You must comply with the data security requirements described in this Section 4.1, including, without limitation, PCI DSS, SDP, CISP, DSOP and DISC, and any additional Card Organization requirements applicable to payment applications and PIN transactions.

Detailed information about PCI DSS can be found at the PCI DSS Council's website: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Detailed information about Visa's CISP program can be found at Visa's CISP website: [www.visa.com/cisp](http://www.visa.com/cisp).

Detailed information about MasterCard's SDP program can be found at the MasterCard SDP website: [www.mastercard.com/sdp](http://www.mastercard.com/sdp).

Detailed information about DISC can be found at Discover Network's DISC website: <http://www.discovernetwork.com/merchants/data-security/disc.html>.

Detailed information can be found at American Express' DSOP website: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

#### **4.2. Data Security Requirements. You must comply with the data security requirements shown below:**

- You must install and maintain a secure network firewall to protect data across public networks.
- You must protect stored data and data sent across networks, using methods indicated in the PCI DSS.
- You must use and regularly update anti-virus software and keep security patches up-to-date.
- You must restrict access to data by business “need to know,” assign a unique ID to each person with computer access to data and track access to data by unique ID.
- You must not use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.
- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card) after final transaction authorization.
- You cannot store or retain Magnetic Stripe data, PIN data, chip data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- You must keep all systems and Media containing Card account, Cardholder, or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.
- You must use only services and Merchant Equipment that have been certified as PCI-DSS compliant by the Card Organizations.

**4.3. Compliance Audits.** You may be subject to ongoing validation of your compliance with PCI DSS standards. Furthermore, we retain the right to conduct an audit at your expense, performed by us or a Person designated by us to verify your compliance, or that of your agents or Merchant Providers, with security procedures and these Operating Procedures.

**4.4. Immediate Notice Required.** In the event that transaction data is known or suspected of having been accessed or retrieved by any unauthorized Person, you must contact us immediately, and in no event more than 24 hours after becoming aware of such activity.

**4.5. Investigation.** You must, at your own expense (i) perform or cause to be performed an independent investigation, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Card Organizations in accordance with Card

Organization standards, of any data security breach of Card or transaction data, (ii) provide a copy of the certified forensic vendor's final report regarding the incident to us and the Card Organizations, (iii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iv) cooperate with us in the investigation and resolution of any security breach. Notwithstanding the foregoing, if required by a Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, and your and Merchant Providers' procedures and records and issue a written report of its findings.

**4.6. Required Information for Discover Network Security Breaches.** For security breaches involving Discover Network transactions and/or track data, you must provide us and/or Discover Network with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) your security personnel contacts; (v) the name of any person (including law enforcement) assisting you with your investigation of such breach; and (vi) any other information which we reasonably request from you concerning such breach, including forensics reports. You shall provide such information as soon as practicable, and the items listed in (i)-(v) shall be provided to us in any event within 48 hours of your initial notification to us of the breach.

**4.7. Merchant Providers.** The data security standards set forth in this Section 4 also apply to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. You acknowledge and agree that you will not use, or provide Cardholder data access to, any Merchant Provider until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations. You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules, including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may be required by us or the Card Organization Rules) and registration of any Merchant Providers.

Your use of the Services, equipment, software, systems, materials, supplies or resources of third parties regarding your Card transactions processing, including, without limitation, Merchant Providers and any third party lessors or licensors, will not affect your obligations under this Agreement to us which will apply to the same extent as if you had not used them. We have no liability or responsibility to you or others regarding these third parties, even if we referred them to you. These third parties are your agents, and you are solely responsible for (i) determining whether they can meet your needs and standards, (ii) their actions, inactions and compliance with the terms of this Agreement and the Card Organization Rules and (iii) any and all fees, costs, expenses and other obligations owed to them by you or owed by them to us or to Card Organizations.

**4.8. Noncompliance Fees.** If we have not received receipt of your validation of compliance with your PCI DSS standards within the first 90 days of the date of the Agreement, you will be charged a monthly non-receipt of PCI Validation fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 90 day period, until such time as you are compliant or this Agreement is terminated, whichever comes first. This monthly non-receipt of PCI Validation fee is in addition to any and all other fees for which you are responsible related to your failure to be compliant as required hereunder.

**4.9. Costs.** If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information, or caused Cardholder data to be put at risk (together, “Compromised Data Events”) and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, “Data Compromise Losses”). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

## **5. Authorizations**

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

An Authorization Approval Code only indicates the availability of Credit on an account at the time the Authorization is requested. It does not guarantee or warrant that the person presenting the Card is the rightful Cardholder, the Charge is in fact valid or bona fide, nor is it a promise or guarantee that you will be paid for the Charge and not be subject to a Chargeback.

You must obtain an Authorization Approval Code from us (or as authorized, pursuant to Section 5.4) for all transactions. A positive authorization response for MasterCard remains valid for seven (7) days for electronic processed transactions. For true paper merchants for MasterCard and Visa transactions the Authorization remains valid for fourteen (14) days. A positive authorization response for Visa will remain valid for thirty (30) calendar days from the date the Issuer provides the Authorization response for Card Sales in the car rental Industry, airline and passenger railway industries, the lodging industry, and other travel MCCs including passenger transport and ten (10) days from the date of the Authorization response for Card Sales by Merchants in all other industries and MCCs. A positive Authorization response for Discover Network transactions remains valid for ten (10) days for Non T&E transactions and thirty (30) days for T&E transactions. **T&E defined as cruise line, lodging, and vehicle rental industries.** A positive Authorization response for American Express Non T&E transactions are good for seven (7) days. Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 5.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted authorization, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent authorization attempt results in an Authorization Approval Code), your transaction may result in a Chargeback and may be assessed fines or fees by the Card Organizations for which you will be responsible. These currently range from \$25 to \$150 per transaction. To avoid these costs and related Chargebacks, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

For Cards other than MasterCard, Visa and Discover Network (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each. For American Express, you must obtain an Authorization Approval Code except for charges under a floor limit. The Authorization must be for the full amount of the Charge except for merchants that are classified in the restaurant industry.

You may not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-authorizations, you are subject to a Chargeback, Card Organization fines and/or cancellation of your Agreement. Do not discuss reason for decline with a Cardholder rather refer them to the customer service number on the back of the Card.

For Visa, MasterCard and Discover transactions, automated fuel dispensers must ensure that completion messages are submitted for such Card transactions within 60 minutes of the Authorization.

For Discover transactions, Merchants operating in the petroleum industry that conduct Card Sales at Automated Fuel Dispensers (AFDs), may submit an Authorization Request for \$1.00 to verify the validity of the Card presented. Under such circumstances, you must submit an Authorization Advice Message for the actual amount of the Card Sale within sixty (60) minutes of completion of fuel delivery regardless of whether you previously received a Partial Authorization Response or a positive Authorization Response for any other amount. If you do not complete the Card Sale following receipt of an approved Authorization Response for any amount, a request to cancel the Authorization Request must be submitted within sixty (60) minutes of the completion of fuel delivery.

**5.1. Card Not Present Transactions.** You must obtain the 3- or 4 digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests. (See Section 1.7). **NOTE:** For each Card Not Present Discover Network transaction, you must also verify the name and billing address of the Discover Network Cardholder using the Address Verification System (AVS), and if you do not receive a positive match, do not process the Discover Network Card Not Present transaction.

## 5.2. Authorization via Telephone (Other Than Terminal/ Electronic Device Users).

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.
- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.
- If the sale is declined, please remember that our operators are only relaying a message from the Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Issuer.

## 5.3. Authorization via Electronic Devices.

- If you use an electronic terminal to obtain an Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.
- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.
- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a Chargeback to your account.

**5.4. Third Party Authorization System.** If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation.

IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 19.1).

If you use a third party authorization network, you must also comply with Section 4.7.

### Call the following for other Card types:

<b>American Express</b>	<b>1-800-528-5200</b>
<b>JCB, International</b>	<b>1-800-522-9345</b>
<b>(For YEN and CAD currency only)</b>	
<b>Voyager</b>	<b>1-800-987-6589</b>
<b>WEX</b>	<b>1-800-842-0071</b>

**Available 24 hours/day; 7 days/week.**

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All Credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

**5.5. Automated Dispensing Machines.** Records must be produced for all transactions whose origin and data capture are automated dispensing machines or Limited Amount Terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date and amount.

**5.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants.** If you are a business engaged in providing travel and/or entertainment services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization" you must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa, MasterCard or Discover Network authorization at the time of check-in.
- Restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus any applicable tax.
- You must notify the Cardholder of the dollar amount you intend to "Pre-Authorize."
- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.
- VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.
- If you receive a decline on a transaction, you must wait twenty-four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a Chargeback and a fine imposed by the Card Organizations.
- Hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- Pre-Authorization for certain establishments, are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "preauthorized" by more than 20%, you must authorize the additional amount. Estimating the Authorization amount to include a tip is prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.
- You should obtain an authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. **NOTE:** Subsequent authorizations should only be for the additional amount of total charges and not include amounts already authorized.
- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- You do not need to obtain a final authorization if the total sum of charges (the final amount) does not exceed 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

**5.7. Discover Network Procedure for Request for Cancellation of Authorization.** If a Discover Network Card sale is cancelled or the amount of the transaction changes following your receipt of authorization for the sale, you must call your Authorization Center directly and request a cancellation of the authorization. An authorization may be cancelled at any time within ten (10) days of your receipt of the authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the authorization cannot be changed. For an authorization cancellation, you must provide us with the following information, in this order:

- The Discover Network Merchant Account Number used in the authorization;
- The Card number;
- The original amount of the authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the authorization cancellation.

**5.8. Partial Authorization and Authorization Reversal.** Partial authorization provides an alternative to a declined transaction by permitting an Issuer to return an authorization approval for a partial amount, an amount less than the transaction amount requested by the merchant when the available card balance is not sufficient to approve the transaction in full. The Cardholder is able to use up the remaining funds on the card and select another form of payment (i.e., another payment card, cash, check) for the remaining balance of the transaction. For MasterCard transactions, partial authorization is optional for batch

authorized e-commerce transactions, mail order, telephone order transactions and recurring payment transactions. For Discover transactions, partial Authorization support is optional for Card Not Present transactions. If you support partial authorizations, a partial authorization indicator must be included in each authorization request. It is a requirement for all U.S. and U.S. Territory merchants that provide cash-back at Point of Sale to support Visa Partial Authorization.

An authorization reversal must be submitted if the authorization is no longer needed, a partial amount of the total authorized is submitted for the settled transaction, or the Cardholder elects not to complete the purchase. The transaction sent for settlement must be no more than the amount approved in the partial authorization response. In the event that you wish to support the partial authorization functionality, you must contact Processor for additional rules and requirements. An authorization reversal may only be submitted if the transaction has not settled. Once the transaction has settled, only a Credit or refund can occur.

## 6. Submission/Deposit of Sales Drafts and Credit Drafts

**6.1. Submission of Sales for Merchants Other Than Your Business.** You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our Agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

**6.1.1. Factoring.** Factoring is considered merchant fraud and strictly prohibited. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another person, you will suffer any losses associated with the disputes of any such Sales Draft and/or transaction. Also if any fraud is involved, you could face criminal prosecution.

**6.2. Timeliness.** In order to qualify for the lowest interchange Discount Rate, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.

**6.3. Mail/Branch Deposit Procedures.** Complete the appropriate summary form designated for your use. Imprint the completed summary with your Merchant Identification Card, if applicable, and sign it. Please do not staple or clip Sales Drafts together or to summary forms. This will distort the Cardholder's account number and may result in a Summary Adjustment or Chargeback to you. Mail your deposits daily to us, or, if your Agreement allows deposit at a local bank branch, you must make daily deposits.

Do not send us the merchant copies (which are for your records); submit only the Bank hard copies of the transactions. If merchant copies are submitted, they will be returned to you unprocessed.

**6.4. Electronic Merchants: Daily Batching Requirements & Media Submission.** Batches must be transmitted to us by the time indicated in Section A.2. of Part III, of this Agreement) in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal, and have contracted to send the actual Sales Drafts and Credit Drafts to us for imaging and retrieval, the Media must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.
- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).
- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.
- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item when requested by the Issuer.
- It is your responsibility to ensure that the actual Media is batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for imaging.)
- You must confirm that your equipment has transmitted your Batches to us at least once daily. Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

## 7. Settlement

Except as otherwise set forth in this Program Guide, Your funds for MasterCard/Visa/Discover Network and American Express transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution



is not the Bank, your MasterCard/Visa/Discover transactions will ordinarily be processed via the Federal Reserve within two (2) Business Days from the time a Batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

If you have been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, we will not acquire your Discover Network transactions and they will be subject to your agreement with Discover Network.

You acknowledge and agree that if we have not agreed to or do not acquire transactions for any Card type (i) we have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) you will pursue directly with the related Card Organization all claims and disputes regarding those transactions. You agree to pay us for per item processing, authorization and other fees in the Application for any non-acquired transaction services you receive from us. For the avoidance of doubt, with respect to the payments you have elected to accept on your Merchant Processing Application, you authorize us to submit Card transactions to, and receive settlement for such transactions from, the applicable Card Organizations on your behalf.

## 8. Refunds/Exchanges (Credits)

### 8.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the Credit, which must include the following information:
  - The account number and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover Network transactions, the approved currency used and the signature of your authorized representative or employee.
- You cannot process a Credit transaction that does not correspond to a previous transaction on the original Sales Draft.
- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Card sale amount.
- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/illegible.)
- Do not circle or underline any information on the Credit Draft.
- Imprint the Credit Draft with the same Card used by the Cardholder to make the original purchase when applicable. You should not credit an account that differs from the account used for the original transaction.
- Never give cash or check Credit refunds for Card sales.
- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a Credit within five (5) calendar days may result in a Chargeback.
- Authorization is not required for Credits.
- You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.
- You are responsible for paying all refunds submitted to us on your merchant account. We assume no responsibility for verifying any Credits or refunds.
- Do not process a Credit transaction once a Chargeback is received. Credits issued after a Chargeback has been received may not be recoverable and the merchant would be financially responsible for the credit as well as the Chargeback.
- YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

#### 8.1.1 Processing a Credit for American Express Transactions.

These are additional requirements for a Credit for purchases or payments made on an American Express Card.

##### To issue a Credit, you must:

1. Compare the last four digits on the Sales Draft against the Card presented (when applicable).
2. Have the Cardholder sign the Credit Draft (when applicable).
3. Provide a copy of the Credit Draft to the Cardholder.

You must not issue a Credit when there is no corresponding Charge, nor issue a Credit in exchange for cash or other consideration from a Cardholder. You must submit all Credits under the establishment where the Credit originated. A Credit must be issued in the currency in which the original Charge was submitted to us. You must issue Credits to the Card used to make the original purchase; however, if the Credit is for the return of a gift by someone other than the Cardholder who made the original purchase, apply your usual refund policy.

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

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

If you issue a Credit, American Express will not refund the discount or any other fees or assessments previously applied on the corresponding Charge. The discount on Chargebacks will not be refunded.

Your return and cancellation policies must be fair and clearly disclosed at the time of sale in compliance with applicable law. Your policies must be conveyed to the Cardholder prior to completion of the Charge and printed on a copy of a receipt or Sales Draft. Your refund policy for purchases on the American Express Card must be at least as favorable as your refund policy for purchases made with other payment products or other payment methods.

##### Return Policy recommendations.

Provide clear return instructions for your customers, including the following information:

- Customer service telephone number.
- Reference number for the return.
- Expected processing time for the Credit.
- Return address, preferably on a pre-formatted shipping label (if applicable).

You must submit all Credits to us within seven (7) days of determining that a Credit is due.

##### Cancellation Policy Recommendations.

- Provide document cancellation policy and terms and conditions on the contract the Cardholder signs, or on your website, as applicable.
- Provide Cardholder with a cancellation number that can be tracked in your records.

##### American Express Return Policy For Prepaid Products.

If your return policy for the purchase of prepaid products is different from your standard return policy, you must ensure that such prepaid product-specific return policy is clearly disclosed to the Cardholder at the time of purchase in accordance with applicable law and also coded to print on all receipts and copies of Sales Drafts you provide to Cardholders.

### 8.2. Exchanges.

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.
- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 8.1) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

## 9. Retention of Records For Retrievals and Chargebacks

### 9.1. Retain Legible Copies.

For Visa: You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for a period of thirteen (13) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts. The Sales Drafts you retain must comply with all requirements (see Section 3.1).

For MasterCard: You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for a period of thirteen (13) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts. The Sales Drafts you retain must comply with all requirements (see Section 3.1).

For Discover Network: You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep images or other copies of Sales Drafts for no less than three (3) years from the date of the Discover Network transaction.

For American Express: You must submit the Credit **directly** through your Processor, for payment. You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for 24 months from the date you submitted the corresponding Credit to us. You must also provide a copy of the Credit Draft to the Cardholder or as required by applicable law, truncate the Card Number and do not print the Card's expiration date on copies of Credit Drafts delivered to the Cardholder.

**9.2. Provide Sales and Credit Drafts.** You must provide all Sales Drafts and Credit Drafts or other transaction records requested by us within the shortest time limits established by Card Organization Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

## 10. Chargebacks, Retrievals and Other Debits

### 10.1. Chargebacks.

**10.1.1. Generally.** Both the Cardholder and the Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. As a result, we will debit your Settlement Account or settlement funds for the amount of each Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, unless the dispute involves a Discover Network Cardholder, in which case Discover Network rules and regulations expressly prohibit you from contacting the Discover Network Cardholder regarding the dispute. You are responsible for all Chargebacks, our Chargeback fees, and related costs arising from your transactions.

**10.1.2. Transaction Documentation Requests.** In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft, via a request for transaction documentation. We will forward the request to you. You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result. Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8-1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, mail/phone/internet order form, or other form of receipt.
- If a Credit transaction has been processed, a copy of the Credit Draft is also required.
- Letters are not acceptable substitutes for Sales Drafts.
- Fax or mail legible copies of the Sales Draft(s) and Credit Drafts, if applicable, to the fax number or mail address provided on the request form.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to help determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for "non-receipt" for which there is no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if, a transaction documentation request results from a difference in the following information on the Sales Draft and the transmitted record: Merchant name or an incorrect city, state, foreign country and/or transaction date.

**10.1.3. Chargeback Process.** Regardless of whether you respond to a transaction documentation request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by MasterCard, Visa, Discover Network and American Express, it is extremely important that you respond to a Chargeback notification and transaction documentation request within the time frame set forth in the notification.** Do not process a Credit transaction once a Chargeback is received; the Issuer will credit the Cardholder's account. Credits issued after a Chargeback has been received may not be recoverable and you may be financially responsible for the Credit as well as the Chargeback. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representment of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representment and/or reversal is/are ultimately contingent upon the Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representment or reversal is not a guarantee that the Chargeback has been resolved in your favor.

**For Visa Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor, and any other applicable fees and charges imposed by Visa, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For MasterCard Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$150 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor and any other applicable fees and charges imposed by MasterCard as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For Discover Network Chargebacks:** If Discover Network rejects our representment request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover Network. Discover Network charges fees for representment requests and an arbitration fee as published in their fee schedule.

**For American Express Chargebacks:** You may request a Chargeback reversal if the Chargeback was applied in error. In order for us to consider your request, you must have responded to the original inquiry within the specified timeframe set forth in your dispute notification, and provide all supporting documentation to substantiate the error.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, Discover Network and American Express rules and regulations, reversal rights are forfeited. Our only alternative, for Visa and MasterCard non-fraud Chargeback reason codes,

is to attempt a "good faith collection" from the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount). Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

**NOTE:** Discover Network and American Express do not offer good faith collection for Acquirers.

MasterCard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover Network rules and regulations, however, prohibit you and/or us from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover Network transactions, and require you and/or us to submit any responses to dispute notices directly to Discover Network.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Network Cardholder, in which case direct contact with the Discover Network Cardholder regarding the dispute is prohibited by Discover Network Card Organization Rules.
- If you have any questions, call Customer Service.

**10.1.4. Chargeback Reasons.** This section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into six groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

**1. Authorization Issues:** Proper Authorization procedures were not followed and valid Authorization was not obtained.

**The following scenarios could cause an Authorization Related Chargeback to occur:**

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

**To reduce your risk of receiving an Authorization Related Chargeback:**

- Obtain valid Authorization on the day of the transaction.
  - Card Present Transactions-Authorization must be obtained on the transaction date for the amount settled.
  - Card Not Present Transactions-Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date.
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a valid Authorization and obtain an imprint of the card.
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

**2. Cancellations and Returns:** Credit was not processed properly or the Cardholder has cancelled and/or returned items.

**The following scenarios could cause a Cancellation and Return Related Chargeback to occur:**

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

**To reduce your risk of receiving a Cancellation and Return Related Chargeback:**

- Issue Credit to the Cardholder for the same account as the purchase in a timely manner.

- Do not issue Credit to the Cardholder in the form of cash, check or in-store/merchandise Credit as we may not be able to recoup your funds in the event the transaction is charged back.
- Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue the appropriate Credit as needed to the Cardholder in a timely manner.
- Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.
- Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction in accordance with applicable law.
  - Card present, Cardholder signed the Sales Draft containing disclosure.
- If applicable, the words “NO EXCHANGE, NO REFUND,” etc. must be clearly printed in 1/4-inch lettering on the Sales Draft near or above the Cardholder signature.
  - Ecommerce, provide disclosure on website on same page as check out requiring Cardholder to click to accept prior to completion.
  - Card Not Present, provide cancellation policy at the time of the transaction.
  - Provide cancellation numbers to Cardholder’s when lodging services are cancelled.
- Ensure delivery of the merchandise or services ordered to the Cardholder.

**3. Fraud:** Transactions that the Cardholder claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as “high risk.”

**The following scenarios could cause a Fraud Related Chargeback to occur:**

- Multiple transactions were completed with a single card without the Cardholder’s permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

**NOTE:** Visa Fraud Chargebacks: Chargeback representment rights do not exist if you failed to fulfill a retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representment rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

**To reduce your risk of receiving a Fraud Related Chargeback:**

**Card Present Transactions:**

- Pre-notify the Cardholder of billings within ten (10) days
- American Express customers have the option to receive written notification of the recurring transaction at least (10) days prior to submitting, or any time the Charge amount exceeds a maximum amount that has been set by the cardholder.
- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture card information, swipe, dip or wave all Card transactions through your electronic authorization device to capture Cardholder information. When applicable ensure the displayed Cardholder number matches the number on the Card.
- If you are unable to electronically capture the Card or if a Referral response is received, imprint the Card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

**NOTE:** Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction elements to prove the Card was present at the time of the transaction.

- Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.
- Process all transaction one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

**Card Not Present Transactions:**

- Participation in recommended fraud mitigation tools:
  - Verified by Visa Program
  - MasterCard SecureCode
  - Address Verification Services
  - CVV2, CVC2 and CID Verification

**NOTE:** While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.

- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
- Obtain Authorization for all transactions.
- Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.

- Ensure descriptor includes correct business address and a valid customer service number.
- American Express offers fraud mitigation tools for both Card Present and Card Not Present transactions to help verify that a Charge is valid. These tools help you mitigate the risk of fraud at the point of sale, but are not a guarantee that a Charge is in fact valid or bona fide, or that you will not be subject to a Chargeback. For optimal use of the tools, please visit American Express’ Fraud Prevention Information at: [www.americanexpress.com/fraudinfo](http://www.americanexpress.com/fraudinfo).

**4. Cardholder Disputes:** Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

**The following scenarios could cause a Cardholder Dispute Chargeback to occur:**

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective, damaged, or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.
- The Cardholder claims to have been sold counterfeit goods.
- The Cardholder claims the terms of sale were misrepresented by the merchant.

**To reduce your risk of receiving a Cardholder Dispute Related Chargeback:**

- Provide Services or Merchandise as agreed upon and described to the Cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- Contact the Cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the Cardholder the option to cancel if your internal policies allow.
- In the event that the Cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the Cardholder at first contact.
- If the merchandise is being picked up by the Cardholder, have them sign for the merchandise after inspection that it was received in good condition.
- Do not Charge the Cardholder until the merchandise has been shipped, ship according to the agreed upon terms and obtain signed Proof of Delivery from the Cardholder.
- If unable to provide services or merchandise, issue a Credit to Cardholder in a timely manner.
- Accept only one form of payment per transaction and ensure the Cardholder is only billed once per transaction.
- Do not bill Cardholder for loss, theft or damages unless authorized by the Cardholder.
- Ensure that a description of the service or merchandise provided is clearly defined.

**5. Processing Errors:** Error was made when transaction was processed or it was billed incorrectly.

**The following scenarios could cause a Processing Error Chargeback to occur:**

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issue a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholder’s account.
- Cardholder initially presented Card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre-determined limit.

**To reduce your risk of receiving a Processing Error Related Chargeback:**

- Process all transactions within the Card Organization specified timeframes.
- Ensure all transactions are processed accurately and only one time.

**NOTE:** In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.

- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
- Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.
- Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.
- Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.

**6. Non Receipt of Information:** Failure to respond to a Retrieval Request or Cardholder does not recognize.

**The following scenarios could cause Non Receipt of Information Chargeback to occur:**



- The transaction documentation was not provided to fulfill the retrieval request.
- The retrieval request was fulfilled with an illegible Sales Draft or was an invalid fulfillment (incorrect sales draft or sales draft did not contain required information which may include signature).
- The Cardholder does not recognize or is unfamiliar with the transaction due to the merchant name and/or location not matching the name and/or location where the transaction took place.

#### **To reduce your risk of receiving a Non Receipt of Information Related Chargeback:**

- Provide a clear and legible copy of the Sales Draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or customer service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

**10.2. Summary (Deposit) Adjustments/Electronic Rejects.** Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect/incomplete.
- Summary indicated credits, but no credits were submitted.

**10.3. Disputing Other Debits and Summary Adjustments.** In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

## **11. Account Maintenance**

**11.1. Change of Settlement Account Number.** If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover Network (such as the American Express Card), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

**11.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager and request a new Agreement.

**11.3. Change in Company DBA Name, Address or Telephone/Facsimile Number.** To change your company or location DBA name, address (or e-mail address), or telephone/facsimile number, you must send the request in writing to the address on your statement.

**11.4. Other Change(s) in Merchant Profile.** You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) the opening, closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a Person that seeks to affect this Agreement; and/or (vii)

change from a business that exclusively conducts Card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

**11.5. Charges for Changes to Account Maintenance.** You may be charged for any changes referenced in this section or any other changes requested by you or otherwise necessary related to account maintenance.

## **12. Card Organization Monitoring**

MasterCard, Visa, Discover Network and American Express have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credit, reported fraud and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or engage in practices that could circumvent such monitoring programs or submit suspicious transactions as identified by a Card Organization or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

## **13. Supplies**

### **Placing Orders.**

- To order additional supplies, call Customer Service when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three- to six-month supply.
- In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.
- You are responsible for unauthorized use of sales/Credit and summary Media. We recommend that you store all supplies in a safe location.
- You may be charged for supplies and applicable shipping and handling charges.

## **14. Special Provisions For American Express**

The provisions in this Section 14 apply to American Express Card acceptance and Transactions. Also refer to [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide)

**14.1 Card Acceptance.** If you elect to accept American Express Cards under the Agreement, You must accept the American Express Card as payment for goods and services sold (other than those goods or services identified under "Prohibited Uses of the American Express Card" below), or (if applicable) for charitable contributions made, at all of your establishments, except as expressly permitted by applicable law. You are jointly and severally liable for the obligations of your establishments under the Agreement.

**14.2 Arbitration Agreement for Claims Involving American Express.** In the event that you or we are not able to resolve a Claim this Section 14.2 explains how Claims may be resolved through arbitration. You or we or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither you nor we nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, we, and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, we, or American Express would have in court may also not be available in arbitration.

**i. Initiation of Arbitration.** Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Section 14.2 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if [American Express or we, on one hand, selects the organization and you, on the other hand,] select the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

**ii. Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between you, us, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by you, us or American Express and cannot be used in any other case except to enforce the award as between you, us and American Express. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Section 14.2, if any portion of these Limitations on Arbitration set forth in this Section 14.2 (ii) is found invalid or unenforceable, then the entire Section 14.2 (other than this sentence) will not apply, except that you, we, and American Express do not waive the right to appeal that decision.

**iii. Previously Filed Claims/No Waiver.** You, we, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. You, we, or American Express may choose to delay enforcing or to not exercise rights under this Section 14.2, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 14.2 applies to any class-action lawsuit relating to the “Honor All Cards,” “non-discrimination,” or “no steering” provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

**iv. Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 14.2.

**v. Split Proceedings for Equitable Relief.** You, we, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 14.2 shall be enforced by any court of competent jurisdiction.

**vi. Small Claims.** American Express will not elect arbitration for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

**vii. Governing Law/Arbitration Procedures/Entry of Judgment.** This Section 14.2 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

**viii. Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

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

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

**xi. Definitions.** For purposes of this Section 14.2 only, (i) “American Express” includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) “You” includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) “Claim” means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or us) that American Express has the right to join, including any allegation involving a transaction using an American Express product or network or regarding an American Express policy or procedure.

**14.3 Treatment of the American Express Brand** Except as expressly permitted by applicable law, you must not:

- indicate or imply that you prefer, directly or indirectly, any other payment products over the Card,
- try to dissuade Cardholders from using the Card,

- criticize or mischaracterize the Card or any of American Express' services or programs,
- try to persuade or prompt Cardholders to use any other payment products or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all other payment products, except for electronic funds transfer, or cash and check,
- suggest or require Cardholders to waive their right to dispute any transaction,
- engage in activities that harm the American Express business or the American Express Brand (or both),
- promote any other payment products (except your own private label card that you issues for use solely at your establishments) more actively than you promote the Card, or
- convert the currency of the original sale transaction to another currency when requesting Authorization or submitting transactions (or both).

You may offer discounts or in-kind incentives from your regular prices for payments in cash, ACH funds transfer, check, Debit Card or Credit Card, provided that (to the extent required by applicable law): (i) you clearly and conspicuously disclose the terms of the discount or in-kind incentive to your customers, (ii) the discount or in-kind incentive is offered to all of your prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable law and Card Organization (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this section will not constitute a violation of the provisions set forth in the above section “Treatment of the American Express Brand.”

**14.4 Prohibited Uses of the American Express Card.** You must not accept the Card for any of the following:

- adult digital content sold via internet electronic delivery,
- amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at your establishments. For example, purchases at your establishments by your owners (or their family members) or employees contrived for cash flow purposes, or payments that you have accepted in order to advance cash to Cardholders in connection with the transaction,
- amounts that do not represent bona fide, direct sales by your establishment to Cardholders made in the ordinary course of your business,
- cash or cash equivalent (e.g., gold, silver, platinum, and palladium bullion and/or bars). Collectible coins and jewelry are not prohibited,
- charges that the Cardholder has not specifically approved,
- costs or fees over the normal price of the goods or services (plus applicable taxes) that the Cardholder has not specifically approved,
- damages, losses, penalties, or fines of any kind,
- gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets,
- unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a rights-holder under laws applicable to us, you, or the Cardholder; online child pornography),
- overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where the Card is used as a payment of last resort),
- sales made by third parties or entities conducting business in industries other than yours.
- You must not use the Card to verify a customer's age.

**14.5 American Express Transaction Data.** The transaction data you collect to facilitate the Charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any third parties other than your covered parties. If you fail to comply with this requirement, in addition to other rights and remedies regarding “monitoring,” you may be charged a fee as indicated on the Merchant Processing Application, we may suspend Card acceptance privileges at your establishments, or terminate the Agreement. Where Cardholders pay you using payment or “e-wallet” accounts (which Cardholders may have created by providing Card-member information when the account was established), the transaction data collected to facilitate the Card Not Present Charge has already been provided directly by the Cardholder. You are not required to have the Cardholder re-enter the transaction data. All information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during Authorization and Submission, and any Chargeback.

**14.6 Treatment of American Express Cardholder Information.** You acknowledge that any and all American Express Cardholder information is confidential and the sole property of the Issuer, American Express or any of its Affiliates. Except as otherwise specified in the Agreement, you must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at your establishments in accordance with the Agreement.

**14.7 Disclosure and Use of Data Collected Under Agreement.** We may disclose to American Express data and information that you provide on your Application and that we



collect as part of performing American Express payment processing services or transaction related services including information about you. American Express may use the information that you provide in the Application at the time of setup to screen and/or monitor you in connection with Card marketing and administrative purposes. American Express also may use such information to perform its responsibilities in connection with American Express Card acceptance, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes. American Express may otherwise use and share your information for business purposes and as permitted by Applicable Law. American Express uses reasonable administrative, technical and physical security measures to protect Program Merchant information consistent with the sensitivity of the information.

**14.7.1 Consent for American Express to Contact You by Phone, eMail, Text or Facsimile.** American Express may use the information you provide in the Application (as such information may be updated) to call you or send you communications or materials via email, SMS, text or facsimile regarding American Express products, services and resources available to you. You consent and agree to receive autodialed, automated and/or prerecorded calls and communications (which may include SMS or text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent and agree to receiving fax communications from American Express. In connection with the foregoing, you understand that the calls made or communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service provider that are your responsibility to pay. You understand that your consent under this Section 14.7.1 is not a condition of purchasing or receiving any product or service or entering into this Agreement.

**Opt-Out:** You may opt-out of receiving marketing related communications and materials from American Express by calling Processor at the Customer Service Number stated in Part III, Section A.5 of the Program Guide. If you have opted-out, you may still receive messages or communications from American Express related to important information about your account.

**14.8 Conversion to a Direct Relationship with American Express.** You acknowledge and agree that upon written notice from us, you will be converted to a direct American Express Card acceptance relationship with American Express if and when the annual American Express Card charges that you submit under this Agreement are greater than \$1,000,000. You agree that, upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement with respect to American Express Transactions; (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance; and (iii) you will no longer be able to submit American Express Card transactions under this Agreement, but this Agreement will continue in full force and effect with respect to other payments and services you elected to receive on your Application.

**14.9 No Assignment of Payments.** You acknowledge and agree that you shall not assign to any third party any payments due to you under this Agreement as the result of American Express Card transactions, and all indebtedness arising from American Express Card charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that you may sell and assign future transaction receivables to us, our Affiliates and/or any other funding source that partners with us or our Affiliates.

**14.10 Third Party Beneficiary Rights.** American Express is a direct and intended third-party beneficiary of this Agreement, and may enforce any terms of this Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

**14.11 Your Right to Opt Out of American Express Card Acceptance.** You may opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept any other payment products.

**14.12 Collections from American Express Cardholder.** You may not bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless a Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.

**14.13 Completing a Transaction at the Point of Sale.** All valid transactions begin with a Cardholder's purchase at the point of sale. Whether the physical Card is used to facilitate a Card present Charge, or the Cardholder provides his or her Cardholder Information over the phone, via mail order, or the internet, the transaction must not be completed without the Card and/or information provided by the Cardholder. To accept the Card for charges at your establishments, at the point of sale, you must:

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

The transaction data you collect to facilitate the Charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any third parties other than your covered parties (as defined in the Data Security Operating Policy (DSOP)). If

you fail to comply with this requirement, you may be charged non-compliance or other fees as indicated on the Merchant Processing Application and/or have your Card acceptance privileges at required your establishments suspended or disentitled.

**14.14 In Person Charges.** In-person charges refer to charges in which the Card and Cardholder are present at the point of sale. An example of this is when a Cardholder presents a Card to the merchant at a retail store. For all in-person charges, the Card must be presented. There are several ways in which you can conduct the in-person Charge. The steps you take vary according to how you go about conducting both types of in-person charges:

**14.15 Electronic charges or key-entered charges.** When providing proof of delivery, a signature from the Cardholder or an authorized signer of the Card is not required.

#### **14.16 Magnetic Stripe Card Charges**

When presented with a Card at the point of sale you must:

- Verify that the customer is the Cardholder (Cards are not transferable).
- Capture Magnetic Stripe data by swiping the Card (unless the Charge was already initiated by waving the contactless chip Card in close proximity to the point of sale system).
- Match the Card number and the expiration date on the Card to the same information on the Sales Draft.
- Ensure the name that prints on the Sales Draft matches the name on the front of the Card except when the Cardholder name is not captured on the Sales Draft or for prepaid Cards that do not show a name on their face.
- Validate the Card's presence by taking an imprint of the Card (the imprint is for your records). Failure to validate the Card's presence by taking an imprint of the Card can render merchant liable for Chargebacks if the Cardholder disputes the Charge, except when the Cardholder name is not captured on the Sales Draft or for prepaid Cards that do not show a name on their face.

#### **14.17 American Express Mobile Contactless Charges.**

When presented with a contactless-enabled mobile phone, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture Magnetic Stripe or chip Card data by waving the contactless-enabled mobile phone in close proximity to the contactless reader.
- Compare the signature (when obtained) on the Sales Draft with the signature on the companion physical Card or a valid form of formal identification (e.g. driver's license). You must not record or store the information from such formal identification in any way.

If a mobile contactless transaction cannot be processed for any reason, you should require that the Cardholder provide the companion physical Card to complete the transaction.

#### **14.18 American Express Contact Chip Charges.**

When presented with a chip Card to be inserted into a chip Card reader, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture chip Card data by inserting the Card into the chip Card reader. The point of sale system will advise Cardholders to enter their PIN (a chip and PIN Charge) or sign for the Charge (a chip and signature Charge).
- Chip and PIN Charges. Cardholders will enter their PIN into the point of sale system using the keypad. If the chip and PIN Charge are unable to be completed due to a technical problem, the point of sale system will show an error message.
- Chip and signature Charge. Failure to obtain a signature, when required, can render you liable for Chargebacks if the Cardholder disputes the Charge. Obtaining a signature may not be required if merchant's establishment and the Charge qualify for the No Signature Program.

#### **14.19 American Express Contactless Chip Charges.**

When presented with a chip Card to be read via a contactless reader and the Charge qualifies for the No Signature Program, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture Magnetic Stripe or chip Card data using the contactless reader.

For charges that do not qualify under the No Signature Program, follow the relevant Card acceptance procedures outlined in either:

- "Magnetic Stripe Card Charges," or
- "Contact Chip Card Charges."

#### **14.20 American Express Key-Entered Charges.**

If a Card cannot be read electronically, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Key enter the data.
- Validate the Card's presence by taking an imprint of the Card (the imprint is for your records). Failure to validate the Card's presence by taking an imprint of the Card can render you liable for Chargebacks if the Cardholder disputes the Charge.

#### **14.21 Keyed No Imprint for American Express Transactions.**

- Your establishments may be eligible to participate in the American Express "Keyed No Imprint Program." The "Keyed No Imprint Program" allows you to submit in-person charges without taking an imprint of the Card if you meet the following Charge criteria:

- All Cards qualify for the “Keyed No Imprint Program.”
- The Charge must be key-entered.
- The Charge Submission must include the appropriate indicator to reflect that the Card and the Cardholder were present at the point of sale.
- The Charge Submission must include a valid approval, and;
- The CID Number must be confirmed as a positive match. Under the “Keyed No Imprint Program,” Chargebacks will not be exercised for such charges based solely on the establishment’s failure to obtain an imprint of the Card. If a disproportionate amount or number of disputed charges under the “Keyed No Imprint Program” occurs, you must cooperate to reduce the number of disputed charges. If such efforts fail, you may be placed in any of American Express’ Chargeback programs or your participation in the “Keyed No Imprint Program” may be modified or terminated.

#### **4.22 Merchant Website Information Display Guidelines.**

- An accurate description of the goods/services offered, including the currency type for the transaction (e.g., U.S. Dollars). Transaction currency must be in U.S. Dollars.
- Your physical address in the U.S.
- An email address and a telephone number for customer service disputes.
- Return/refund policy.
- A description of your delivery policy (e.g., No COD, No overnight).
- A description of your security practices (e.g., information highlighting security practices you use to secure transactions conducted on the internet).
- A statement of known export restrictions, tariffs, and any other regulations.

#### **14.23 Aggregated Charges.**

If you are classified as an internet industry, you may process aggregated charges, provided the following criteria are met:

- Clearly disclose your intent and obtain written consent from the Card- member that their purchases or refunds (or both) on the Card may be aggregated and combined with other purchases or refunds (or both) before you request an Authorization.
- Each individual purchase or refund (or both) that comprises the aggregated Charge must be incurred under the same merchant number and on the same Card.
- Obtain a pre-Authorization of no more than \$15. 00
- Create a Sales Draft for the full amount of the aggregated Charge.
- The amount of the aggregated Charge must not exceed \$15 or the amount for which you obtained pre-Authorization.
- Submit each Sales Draft within our submission timeframe.
- Provide the Cardholder with an email containing the date, amount, and description of each individual purchase or refund (or both) that comprises the aggregated Charge, and the date and the amount of the aggregated Charge.

#### **14.24 American Express Prepaid Card Security Features.**

Although there are a number of unique prepaid Cards, all prepaid Cards share similar features, except that Prepaid Cards may or may not be embossed, and the following features may appear on the front or back of the Card (or a combination of both):

- The American Express logo generally appears in the bottom right corner.
- The words PREPAID or INCENTIVE will generally be shown above the American Express logo.
- Cards pre-loaded with funds may show the dollar amount or the total points (reloadable Cards generally will not show a number).
- The CID Number will appear usually above the Card number or above the logo.
- The Card number appears on the Card.
- The valid date or expiration date appears on the Card.
- The recipient’s name or company name may appear on the Card.

#### **14.25 American Express Processing Prepaid Cards**

Prepaid Cards are available for a variety of uses: gifting, travel, incentive, etc. All American Express prepaid Cards show the American Express “Blue Box” logo either on the face or back of the prepaid Card. Prepaid Cards may or may not be embossed. Most prepaid Cards can be used for both in-store and online purchases. Prepaid Cards are valid through the date on the Card. Simply swipe the Card at the point of sale just like any other Card. A prepaid Card must be tendered for an amount that is no greater than the funds available on the Card.

- Instruct Cardholders that, before making a purchase, they must check their remaining funds by calling the twenty-four (24) hour, toll-free number on the back of the Card.
- Because prepaid Cards are pre-funded, if you receive a decline when seeking Authorization, ask the customer to call the toll-free number on the back of the Card to confirm that the purchase price does not exceed the available funds on the prepaid Card.
- If the prepaid Card does not have enough funds to cover the purchase price, process a split tender transaction or request an alternative form of payment.
- You must create a Sales Draft for a prepaid Card as you would any other Card.
- Be on the lookout for Suspect Transactions.

#### **14.26 American Express Policies and Procedures for Specific Industries.**

This Section 14.26 states additional American Express policies and procedures applicable to merchants classified in specific industries. All other provisions and requirements of this Agreement apply to these merchants as well. To the extent possible, the provisions of this Section 14.26 and the other provisions of the Agreement applicable to American Express transactions shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then the provisions of this Section 14.26 shall govern.

##### **14.26.1 Auto dealers:**

This section applies to merchants classified in an auto dealer industry.

The following requirements will apply to charges for the down payment or the entire purchase price of new and used motor vehicles. You may accept the Card for down payment of a motor vehicle, subject to the following provisions:

- You must not submit a Charge for the down payment price of a used motor vehicle unless and until you have a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including down payment price, and your cancellation policy.
- In addition to its other Chargeback rights, American Express also has Chargeback rights for any portion of the Charge for the down payment price of a used motor vehicle which is disputed by the Cardholder, if such disputed charge cannot be resolved in your favor based upon unambiguous language contained in the written agreement/bill of sale.
- Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder’s agreement with you or at law, you shall submit a Credit to us promptly.
- If American Express has classified you as an auto dealer of used motor vehicles exclusively, the down payment must not exceed 50% of the full purchase price of the motor vehicle.
- If the Cardholder denies making or authorizing the Charge, American Express will have Chargeback rights for such Charge in addition to our other Chargeback rights.
- You may also accept the Card for the entire purchase price of a new or used motor vehicle, subject to the following provisions:
  - You are classified as an auto dealer of new or new and used motor vehicles (i.e. Your dealership sells new motor vehicles exclusively or both new and used motor vehicles).
  - The amount of the Charge does not exceed the total price of the motor vehicle after deduction of applicable discounts, taxes, rebates, cash down payments, and trade-in values.
  - You must not submit a Charge for the entire purchase price of a new or used motor vehicle unless and until you have a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including purchase price, delivery date and your cancellation policy.
  - In addition to other Chargeback rights, American Express also has Chargeback rights for any portion of the Charge for the entire purchase price of a new or used motor vehicle which is disputed by the Cardholder, if such disputed Charge cannot be resolved in your favor based upon unambiguous language contained in the written agreement/bill of sale.
  - Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder’s agreement with you or at law, you shall submit a Credit to us promptly.
  - If the Cardholder denies making or authorizing the Charge and you have not transferred title or physical possession of the motor vehicle to the Cardholder, American Express will have Chargeback rights for such Charge in addition to its other Chargeback rights.

##### **14.26.2 Business-to-Business (B2B)/Wholesale Distribution**

If you are classified in the business-to-business (B2B) or wholesale distribution industries, and American Express determines that you are not in the telecommunications industry, then notwithstanding the prohibition in Section 14.4, “Prohibited Uses of the Card”, you may accept the Card for overdue amounts to the extent that acceptance of overdue amounts is a common practice in your industry and does not constitute an attempt to obtain payment from the Cardholder whose prior methods of payment have, in American Express’ reasonable judgment, been difficult to collect or uncollectible. An indicator of such difficulty, for example, may be the fact that you have sent a customer account to collections.

To minimize your risk of a Chargeback with B2B Charges, always:

- Obtain a signature for all in-person charges. For Card Not Present Charges, obtain Proof of Delivery, and
- Maintain clear and accurate records of orders and returns.

Notwithstanding the restriction in Section 6, you must not submit any Charge until the goods have been shipped or services have been provided to the Cardholder. To the extent that you have clearly disclosed your intentions to the Card -member and the Cardholder agrees, then you may submit the following types of Charges to us before you ship the goods to the Card- member:

- Charges representing deposits on custom and special orders (so long as you comply with applicable law) or goods not in inventory at the time the order is placed.
- Charges representing advance, partial, or full payment for goods that the Cardholder requests you to ship at a later date.

##### **14.26.3 Insurance**

This section contains provisions specific to establishments that are classified in the insurance industry. If any of your goods or services are sold or billed by independent

agencies, then you must provide to American Express a list of such independent agencies and notify us of any subsequent changes in the list. American Express may use this list to conduct mailings that encourage such independent agencies to accept the Card.

American Express may mention your name in such mailings, and you must provide us with a letter of endorsement or assistance as American Express may require.

You must use your best efforts to encourage independent agencies to accept the Card. American Express acknowledges that you have no control over such independent agencies. From time to time, and subject to prohibited uses of the Card, American Express may establish joint marketing campaigns that promote Card acceptance specifically at your establishments or, generally, at insurance companies. A necessary purpose for which you submit Cardholder Information that is responsive to such joint marketing campaigns includes American Express' use of that information to perform back-end analyses to determine the success of such joint marketing campaigns.

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

If the Card is accepted as payment for fixed rate cash value life insurance policies or fixed rate annuities under the Agreement, you represent and warrant to Processor that the fixed rate cash value life insurance policies and fixed rate annuities for which the Card will be accepted for premium payments are not securities requiring registration under the Securities Act of 1933.

#### **14.26.4 Oil/Petroleum**

If you are classified in the oil and petroleum industry, American Express may place you in the Fraud Full Recourse Program if you accept charges originating at a Customer Activated Terminal (CAT) gas pump. American Express will not exercise Chargeback up to a certain dollar amount for charges that qualify under the Oil Fraud Protection Program described below.

##### **Oil/Petroleum Requirements**

If you are classified in the oil and petroleum industry, you must:

- Obtain a unique Merchant Account Number for your CAT gas pump sales. If you conduct any other business at your establishment (e.g., convenience store sales, car washing services), you must obtain a unique Merchant Account Number for those lines of business.
- Submit dealer location data along with each Authorization request and each Submission file. Dealer location data consists of your business':
- dealer number (store number)
- name
- street address
- city
- postal code.

##### **Oil/Petroleum Recommendations**

American Express has implemented several policies and fraud prevention tools to assist in combating fraud at the gasoline pump.

##### **American Express recommends that you:**

- Set a pre-Authorization request of \$100 at your CAT gas pumps.
- For higher charges such as diesel, adjust the pre-Authorization amount to accommodate the higher charges.
- Set your CAT gas pumps to shut off when they reach the pre-Authorization amount.
- Request a separate Authorization for purchases that exceed the original pre-Authorization amount.

##### **Oil Fraud Protection Program**

The Oil Fraud Protection Program addresses counterfeit fraud Chargebacks at fuel pump CATs. Under this program, American Express will not exercise Chargeback for the amount of the Charge up to \$100 provided that both the establishment and each Charge meet the following criteria:

- The Authorization request meets the data requirements listed under CATs.
- The Authorization request must include the correct merchant category code (MCC) for "automated fuel dispensers" (5542),
- The Issuer determines that the Card used to initiate the Charge was counterfeit, and,
- The establishment qualified for Chargeback protection under the program at the time of the Charge, as follows:

For an establishment to qualify under the Oil Fraud Protection Program, it (i) must authorize and submit Transactions under the unique Merchant Account Number (Seller ID) assigned to the establishment, and (ii) must have, in a given month, a counterfeit fraud to Charge volume ratio below 1%. An establishment whose counterfeit fraud to Charge volume ratio rises to or exceeds 1% in a given month will not qualify under the Oil Fraud Protection Program until the ratio falls below 1% for three (3) consecutive months. Notwithstanding the foregoing, the Oil Fraud Protection Program does not apply to merchants that submit one

Merchant Account Number (Seller ID) consolidated charges from multiple establishments (i.e., central submitters) or to the establishments that those merchants submit on behalf of. American Express offers a variety of fraud prevention tools which may enable merchants to reduce fraud in order to qualify and retain eligibility for the program.

#### **14.26.5 Restaurants**

If you are classified in the restaurant or bar industry, then the following Authorization procedures apply. If the final restaurant or bar Charge is no greater than the amount for which you obtained Authorization plus 20% of that amount, no further Authorization is necessary. If the final restaurant or bar Charge is greater than the amount for which you obtained Authorization by more than 20%, you must obtain Authorization for any additional amount of the Charge that is greater than the original Authorization. When submitting the Charge, only include the initial approval.

#### **14.26.6 Telecommunications**

If American Express classifies you in the Telecommunications industry, notwithstanding anything to the contrary in the Agreement, American Express may place you in one or more of the following Chargeback programs:

Partial Immediate Chargeback Program for an amount of \$50 or less; or Fraud Full Recourse Program.

- American Express may establish audit procedures determined in American Express' discretion to ensure that no charges except for recurring billing charges are submitted under the Merchant Account Number designated for recurring billing charges.
- We may request that you provide us with a list of Affiliates and the list you provide must include any agency in the geographic area where you offer any telecommunications services.

#### **14.26.7 Government/Utilities/Education**

This section applies to merchants classified in the government, utilities, or certain education industries (i.e. higher education, private school - kindergarten to grade 12).

Customers should feel free to use all forms of payment that you accept without being penalized for choosing a particular form of payment. To promote consumer choice, you are generally prohibited from imposing any restrictions, conditions, or disadvantages when the Card is accepted that are not imposed equally on all other payment products. See "Treatment of the American Express Brand".

Merchants in these specific industries may assess convenience fees on charges, provided that they comply with the other requirements of this section, as follows:

- Merchants must not impose a higher convenience fee on charges than it imposes on other payment products, except for Automated Clearing House funds transfers, cash, and checks.
- Merchants classified as government Entities, including government utilities, and privately owned utilities may assess convenience fees on all Charges.
- Merchants classified as educational institutions may assess convenience fees only on charges for tuition, room and board, school lunch payments or other mandatory fees.
- You must clearly disclose the amount of convenience fees to the customer and give the customer the opportunity to cancel the Charge if the customer does not want to pay the convenience fee.

Any explanation, verbal or written, describing why the convenience fee is being assessed, or how it is calculated, must characterize the convenience fee as an assessment to cover your administrative costs and not as an assessment to cover your cost of accepting the Card.

You must obtain separate Authorizations and Approval codes for each of the principal charges and the convenience fee. Furthermore, the descriptor on the convenience fee must clearly state that it is a convenience fee (e.g., Official Payments – City of X (principal payment) and Official Payments Convenience Fee (convenience fee)).

Your third-party service provider can only assess a convenience fee when it accepts the Card for the foregoing charges in compliance with the requirements of this section.

#### **14.26.8 Internet/Online Pharmacies**

If it is determined that you are an internet/online pharmacy merchant that accepts the Card for sales of prescription medications (as defined by applicable law) in the Card Not Present environment:

- You must be certified by the Verified Internet Pharmacy Practice Sites program of the National Association of Boards of Pharmacy ([www.nabp.net](http://www.nabp.net)), or,
- You or your authorized representative must attest that you comply with the licensing and inspection requirements of (i) U.S. federal law and the state in which you are located and (ii) each state to which you dispense pharmaceuticals.

Upon request, you must promptly provide documentation that you fulfill the foregoing requirements. Failure to provide this documentation promptly may result in suspension or disentanglement of Card acceptance privileges. Specific procedures exist for transaction processing by internet/online merchants.

##### **Online/mail order tobacco retail**

If you are classified or it is otherwise determined that you are an online or mail order (or both) tobacco or e-cigarette merchant, then you must provide the website address of the



online store from which you sell your tobacco products. If your website facilitates tobacco sales, you will be required on request to provide an executed and notarized Affidavit of Compliance with Laws - Online/Mail Order Tobacco. If you fail to complete the Affidavit, Card acceptance privileges may be suspended. American Express may monitor your website.

#### **14.27 American Express-Excessive Disputes**

You may be subject to various fees and assessments as set forth on the Application, including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance of American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing such non-compliance.

#### **14.28 American Express Right to Modify or Terminate Agreement.**

American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate your acceptance of American Express Card transactions and to require Processor to investigate your activities with respect to American Express Card transactions.

## **B. CARD GENERAL TERMS**

In addition to the preceding Operating Procedures, our Agreement with you includes the following General Terms. If you fail to follow any of the provisions of the Operating Procedures or General Terms, you may incur certain liabilities and we may terminate our Agreement.

### **15. Services**

Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate from time to time in connection with this Agreement.

### **16. Operating Procedures; Card Organization Rules and Compliance**

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including without limitation, the data security requirements described in Section 4. From time to time, we may amend the Operating Procedures, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as

<http://usa.visa.com/merchants/operations/op-regulations.html> and

<http://www.mastercard.com/us/merchant/support/rules.html>. These links may change from time to time.

### **17. Settlement of Card Transactions**

**17.1.** We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentment of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.

**17.2.** Unless otherwise agreed to in writing to the contrary, all discount fees are deducted daily. All settlements for Visa, MasterCard, Discover Network and American Express Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

**17.3.** All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct our fees, our final audit, Chargebacks (including our related losses), and fees, fines and any other charge imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. You further agree we can offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in the name of or guaranteed by you, any of your principals, guarantors or authorized signors. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**17.4.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any Person.

**17.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 24.4) occur, we may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

**17.6.** You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.

**17.7.** This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

### **18. Exclusivity**

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

### **19. Fees; Adjustments; Collection of Amounts Due**

**19.1.** In consideration of the Services provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for the purposes of clarity, this includes the Application and any additional pricing supplements or subsequent

communications), all of which shall be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications.

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than the type anticipated for your account (including a different Card type), then, as applicable to your pricing method, you will be charged a higher interchange, Discount Rate or Non-Qualified Interchange Fee, as well as any applicable surcharge for that transaction, all as further described in Section A.3 of Part III of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved.

For more information on Visa's and MasterCard's interchange rates, please go to [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

**19.2.** All authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are being billed a combined fee for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the combined billing.

**19.3.** The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your discount fee and transaction fees without prior notice.

**19.4.** The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by other Persons related to the Services. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person as specified in our notice to you.

**19.5.** Subject to Section 24.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you thirty (30) days' prior to the effective date of any such change or addition.

**19.6.** If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

**19.7.** To the extent the Automated Clearing House ("ACH") settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our respective Affiliates for any products or services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our respective Affiliates for any products or services have been paid in full. You are solely responsible to inform us in writing if you want any fees or other adjustments to be debited from an account other than your Settlement Account.

**19.8.** You agree to pay any fines imposed on us by any Card Organization resulting from Chargebacks and all fees, fines and other charges imposed on us by a Card Organization with respect to your acts or omissions. You are also responsible for all fees, fines, and other charges imposed on us as a result of acts or omissions by your agents or third parties.

**19.9.** If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentages reported by Visa, MasterCard, American Express or Discover Network. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express and Discover Network Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express and Discover Network transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American Express and Discover Network Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard, American Express and Discover Network transactions in that line of business submitted in that month.

**19.10.** You agree to promptly and carefully review your merchants statements or other documents provided or made available to you (physically, electronically or otherwise

provided by Us or others) reflecting Card transaction activity, including, activity in your Settlement Account. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after sixty (60) days, we shall have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

**19.11.** If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) 12% APR, or (ii) the maximum rate permitted by applicable law.

**19.12. Other Debits.** We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 16:

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.
- Currency conversion was incorrectly calculated. **NOTE:** For Discover Network transactions, you are not permitted to convert from your local Discover Network approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.
- Discount Rate not previously charged.
- Reversal of deposit posted to your account in error.
- Debit for Summary Adjustment not previously posted.
- Reversal of Credit for deposit previously posted.
- Debit for Chargeback never posted to your account.
- Debit for EDC Batch error fee.
- Card Organization Merchant Chargeback/fraud monitoring fees – excessive Chargeback handling fees.
- Failure of transaction to meet Member Controller Authorization Service ("MCAS") – Cardholder account number on exception file.
- Original transaction currency (foreign) not provided.
- Travel Voucher exceeds maximum value.
- Debit and/or fee for investigation and/or Chargeback costs related to this Agreement, or for costs related to our collection activities in an amount no less than \$100.00.
- Costs arising from replacement or damage to equipment rented.
- Payment of current or past due amounts for any equipment purchase, rental or lease.
- Incorrect merchant descriptor (name and/or city, state) submitted.
- Incorrect transaction date submitted.
- Shipping and handling fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account in an amount no less than \$150.00.

## 20. Chargebacks

**20.1.** You shall be responsible for reimbursing us for all transactions you submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

**20.2.** You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.

## 21. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages

**21.1.** Without limiting any other warranties hereunder, you represent, warrant to and covenant with us, and with the submission of each Sales Draft reaffirm, the following representations, warranties and/or covenants:

**21.1.1.** each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorized order, or Credit Draft, and does not involve the use of a Card for any other purpose;

**21.1.2.** each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;

**21.1.3.** the amount charged for each Card transaction is not subject to any dispute, setoff or counterclaim;

**21.1.4.** each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented by you pursuant to your

business as indicated on the application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon your accepting and submitting that Card transaction for processing;

**21.1.5.** with respect to each Card transaction, you have no knowledge or notice of any fact, circumstance or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;

**21.1.6.** each Card transaction is made in accordance with these General Terms, Card Organization Rules and the Operating Procedures;

**21.1.7.** each Sales Draft is free of any alternation not authorized by the related Cardholder;

**21.1.8.** you have completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;

**21.1.9.** you are validly existing, in good standing and free to enter into this Agreement;

**21.1.10.** each statement made on the Application or other information provided to us in support of this Agreement is true and correct;

**21.1.11.** you are not doing business under a name or style not previously disclosed to us;

**21.1.12.** you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different MCC under Card Organization Rules, in a way not previously disclosed to us;

**21.1.13.** you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person; (**NOTE:** Factoring is prohibited.)

**21.1.14.** you have not filed a bankruptcy petition not previously disclosed to us;

**21.1.15.** you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

**21.1.16.** you will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without our consent;

**21.2.** THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

**21.3.** IN NO EVENT SHALL WE OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

**21.4.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 27 or 22.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

**21.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 24), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 17.4 AND 17.6, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).

**21.6.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO NON-BANK SERVICES.

## 22. Confidentiality

**22.1.** Unless you obtain written consents from us and each applicable Card Organization, Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

**22.2.** You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Client's business. Upon a bankruptcy, insolvency or failure of Client's business, all Card transaction information must be returned to Servicers or acceptable proof of the destruction of all Card transaction information must be provided to Servicers.

**22.3.** You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.

**22.3.1.** Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client shall receive our confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by us or upon termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

**22.3.2.** The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from us; (iv) is required to be disclosed by law, regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Client's employees, consultants or agents without use of or reference to our confidential information.

**22.3.3.** Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

**22.3.4.** Client acknowledges that breach of the restrictions on use or disclosure of any our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

**22.4.** We may use data collected as part of performing payment processing or other transaction-related services for you for the purpose of providing additional products and services to you, other merchants, or third parties. As permitted by law this includes collecting, using, and anonymizing cardholder information, dates, amounts, and other data from your transactions ("Transaction Data") to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

**22.5.** You shall not assign to any Person, the rights to use the Marks of Servicers, our agents or the Card Organizations.

**22.6.** All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing



techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property.

**22.7.** Client agrees that we may obtain relevant information from any applicable telecommunications provider utilized by Client, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Client in connection with the Services.

### **23. Assignments**

**23.1.** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 23, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

**23.2.** The payment Services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any Person. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an Authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

**23.3.** Another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights, duties and obligations hereunder and/or may delegate or subcontract our rights, duties and obligations hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

**23.4.** Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

### **24. Term; Events of Default**

**24.1.** This Agreement shall become effective upon the date this Agreement is approved by our Credit Department. You acknowledge that our Credit Department maintains a list of business types that are unqualified for our Services. We reserve the right to immediately terminate your account if it has been inadvertently boarded notwithstanding such Credit policies.

**24.2.** The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until we or you terminate this Agreement upon written notice to the other, or as otherwise authorized by this Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement notwithstanding non-use of your account. If you have an equipment lease, termination of this Agreement does not terminate that equipment lease.

**24.3.** Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon an Event of Default as provided under Section 24.4 of this Agreement. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 19.5, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account, or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

**24.4.** If any of the following events shall occur (each an "Event of Default"):

**24.4.1.** a material adverse change in your business, financial condition, or business prospects; or

**24.4.2.** any assignment or transfer of voting control of you or your parent; or

**24.4.3.** a sale of all or a substantial portion of your assets; or

**24.4.4.** irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or

**24.4.5.** any of your representations, warranties or covenants in this Agreement are breached in any respect; or

**24.4.6.** you default in any material respect in the performance or observance of any term, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 25; or

**24.4.7.** you default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our respective Affiliates; or

**24.4.8.** you default in the payment when due, of any material indebtedness for borrowed money; or

**24.4.9.** you file a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of you or of a substantial part of your property; or make a general assignment for the benefit of creditors; or take any action for the purpose of authorizing any of the foregoing; or

**24.4.10.** your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

**24.4.11.** a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 35.2 ("Compliance with Laws"), then, upon the occurrence of (1) an Event of Default specified in subsections 24.4.4, 24.4.9 or 24.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

**24.5.** Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us will survive termination of this Agreement until finally and irrevocably paid in full and settled.

**24.6.** If any Event of Default occurs, regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 25.

**24.7.** In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

**24.8.** The Card Organizations often maintain merchant lists such as the Member Alert To Control High-risk (Merchants) ("MATCH") who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard, Discover Network or American Express. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

**24.9.** After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

### **25. Reserve Account; Security Interest**

**25.1.** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 25. The amount of such Reserve Account shall be set by

us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

**25.2.** The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 25 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

**25.3.** If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

**25.4.1.** To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of equipment, products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us our respective Affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**25.4.2.** For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement (collectively "Set Off Funds"), you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers.

**25.4.3.** If in replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be uncertificated and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

## 26. Financial and Other Information

**26.1.** Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your providers' facilities and records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate. In such event, you shall pay

the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

**26.2.** You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

## 27. Indemnification

**27.1.** You agree to indemnify and hold us and the Card Organizations harmless from and against all losses, liabilities, damages and expenses: (a) resulting from the inaccuracy or untruthfulness of any representation or warranty, breach of any covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your use of the Services; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

**27.2.** Subject to the limitations set forth in Section 21.4, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

## 28. Special Provisions Regarding Non-Bank Cards

**28.1.** Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover Network, American Express, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 28 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 28 directly conflict with another provision of this Agreement, in which case the terms of this Section 28 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the Application for any non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. You authorize us to share information from your Application with American Express, Discover Network and any other Non-Bank Card Organization.

**28.2.** You understand that if, based upon your anticipated Card transaction volume you do not qualify for our full service program but have otherwise been approved for accepting American Express transactions, your authorizations will be obtained from and funded by American Express. American Express will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

**28.3. If you accept JCB, Diners Club International, UnionPay, BCCard, and Dinacard,** you agree to be bound by the Discover Network provisions of this Agreement. You also acknowledge and agree that JCB, Diners Club International, UnionPay, BCCard, and Dinacard transactions will be processed under and subject to Discover Network Card Organization Rules.

**28.4. If you accept Voyager and/or WEX Cards,** you agree to be bound by the WEX and/or Voyager rules. You also agree to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

**28.5. If you execute a separate WEX Merchant Agreement** (WEX Non Full Service Program), you understand that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to you with respect to processing WEX Cards unless and until WEX executes your WEX Merchant Agreement. If WEX executes your WEX Merchant Agreement and you accept WEX Cards, you understand that WEX transactions are processed, authorized and funded by WEX. You understand that WEX is solely responsible for all agreements that govern WEX transactions and that we are not responsible and assume absolutely no liability with regard to any such agreements or WEX transactions, including but not limited to the funding and settlement of WEX transactions. You understand that WEX will charge additional fees for the services that it provides.

**28.6. If you elect to participate in the WEX Full Service Program, the following terms and conditions shall apply:**

- You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;
- All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit



price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (i.e., Product qty x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.);

- c) You shall not submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;
- d) You shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an expired Card/decline message is received;
- e) You shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;
- f) You shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;
- g) You shall provide a copy of the receipt for a WEX Card sale, upon the request of the Cardholder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;
- h) You shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;
- i) You shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;
- j) You shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;
- k) Client acknowledges that fuel tax removal at the point of sale is not permitted. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes.
- l) You shall securely maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;
- m) You shall notify Processor of any errors contained within a settlement report within forty-five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;
- n) You shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and
- o) You shall retransmit WEX Card sales data when reasonably requested to do so.
- p) Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Processor for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

#### **28.7. If you accept Voyager Cards:**

- In addition to the information stated in Section 1 (MasterCard, Visa, Discover Network, and American Express Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 1.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit credits to us for any returns that are to be credited to a Voyager Cardholder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.
- In addition to the information required under Section 3.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:  
All authorization request data for Voyager Card sales must include Voyager Cardholder account number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual Voyager Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from Voyager along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (i.e., Product qty x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.)
- Client acknowledges that fuel tax removal at the point of sale is not permitted. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to

exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.

- In addition to the information provided under Section 7 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, credits, and the fees set forth in the Application. Notify processor of any errors contained with the Settlement Reports within thirty (30) calendar days of receipt of such report. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) calendar days from the date of purchase.
- For daily transmission of sales data, you shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenarios identified in Section 10.1.4 of this Program Guide that could cause an authorization related Chargeback to occur, with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.
- In addition to the information provided under Section 21 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if a Card Organization discontinues its Card.

### **29. Special Provisions for Debit Card**

The special provisions outlined in this Section 29 apply only to those Debit Card transactions that are processed by a Cardholder entering a PIN unless the transaction is a network supported PINless transaction. A PINless transaction is a Debit card transaction that a merchant submits to us for settlement/funding transactions with neither a PIN nor Signature. The Services provided, transactions processed and other matters contemplated under this Section 29 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 29 directly conflict with another provision of this Agreement, in which case the terms of this Section 29 will control.

**29.1. Debit Card Acceptance.** Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the Debit Card to determine if the Card participates in a PIN Debit network that you are authorized to accept. PIN Debit network Mark(s) are usually printed on the back of the Card. If the Debit Card is valid and issued by a financial institution Issuer participating in a PIN Debit network, you must comply with the following general requirements for all participating PIN Debit networks, in addition to the specific requirements of that PIN Debit network:

- You must honor all valid Debit Cards when presented that bear authorized PIN Debit network Marks.
- You must treat transactions by Cardholders from all Issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for Debit Card acceptance.
- You may not require additional information, besides the PIN, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a PIN Debit network, or Issuer and then only for the purpose of settlement or error resolution.
- You may not process a Credit Card transaction in order to provide a refund on a Debit Card transaction.

**29.2. Transaction Processing.** The following general requirements apply to all Debit Card transactions:

- All Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for Debit Card transactions.
- You may not complete a Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.

- Unless the transaction is a network supported PINless transaction, you may not complete a Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit network used to process your transaction will depend upon, among other things, our own business considerations, the availability of the PIN Debit network at the time of the transaction and whether a particular Debit Card is enabled for a particular PIN Debit network. The PIN Debit network utilized to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) utilize any PIN Debit network available to us for a given transaction (including a PIN Debit network affiliated with Processor) and (ii) add and/or remove PIN Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the Cardholder.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**29.3. Cash Back From Purchase.** You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back as long as it is supported by the PIN Debit Network.

**29.4. Settlement.** Within one Business Day of the original transaction, you must balance each location to our system for each Business Day that each location is open.

**29.5. Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some PIN Debit networks may have established minimum amounts for adjustments.

**There are several reasons for adjustments being initiated:**

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.

All parties involved in processing adjustments are regulated by time frames that are specified in the operating rules of the applicable PIN Debit network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

### 30. Special Provisions Regarding EBT Transactions

If you elect to accept EBT Cards and engage in EBT transactions, the terms and conditions of this Section 30 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case the terms of this Section 30 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card (“EBT Card”) at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service (“FNS”), Supplemental Nutrition Assistance Program (“SNAP”) and Women, Infants and Children Benefits (“WIC Benefits”) and/or government delivered Cash Benefits (Cash Benefits, together with FNS, SNAP and WIC Benefits, collectively are referred to as the “EBT benefits”) to EBT benefit recipients (“EBT customers”), subject to the terms below.

**30.1. Acceptance of EBT Benefits.** You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of a POS Terminals, PIN pad and printer or other equipment that meet standards set forth in the EBT Rules (“Authorized Terminal”) applicable to such EBT benefits during your normal business hours, in a manner consistent with your normal business practices and in accordance with the EBT Rules.

The “EBT Rules” means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial Management

Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 30, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The “Food Stamp Program” is the government benefits program operated under the authority of the Food Stamp Act of 1964.

You will provide EBT benefits to EBT customers, in accordance with the procedures set forth in the EBT Rules, in the amount authorized through your Authorized Terminal upon presentation by an EBT customer of an EBT Card and such EBT customer's entry of a valid PIN. If the Authorized Terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction, you will comply with the procedures set forth in the EBT Rules for authorization of EBT benefits in such instance. You are solely responsible for your provision of EBT benefits other than in accordance with authorizations timely received from EBT service provider. You will not resubmit any EBT Card transaction except as specifically permitted by the EBT Rules and procedures applicable to such EBT Card transaction. You must provide a receipt for each EBT transaction to the applicable EBT customer.

You will not accept any EBT Card for any purpose other than providing EBT Benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT customer to the extent permitted by law. Cash should never be dispensed for FNS, SNAP and WIC Benefits.

**30.2. Manual EBT Vouchers.** In accordance with the procedures set forth in this Section 30 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by merchant:

- An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits, or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.
- Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- All manual voucher authorizations must be cleared on your Authorized Terminal before payment of voucher will be made to you. Vouchers must be cleared within 10 Business Days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 30 or otherwise fail to process the manual transaction in accordance with the EBT Rules.
- If you have not received an authorization number in accordance with paragraph 30.1 above, you may not “re-submit” a manual sales draft for payment for the same transaction.

**30.3. Acceptance of Cash Benefits.** If you agree to accept EBT Cards and to provide Cash Benefits, you agree to maintain adequate cash on hand to issue EBT service provider authorized Cash Benefits and will issue such Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require, and may not in your advertising suggest, that any EBT customers must purchase goods or services from you as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate and direct EBT customers to

special checkout lanes restricted to use by EBT customers unless you also designate and direct other customers to special checkout lanes for Debit Cards or Credit Cards and/or other payment methods such as checks other than cash.

**30.4. Interoperability.** If you accept EBT Cards and provide EBT benefits (FNS, SNAP and WIC Benefits and/or Cash Benefits), you must do so for EBT customers from all states. If you provide FNS, SNAP and WIC Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

**30.5. Required Licenses.** If you provide FNS, SNAP and WIC Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

**30.6. Term and Termination.** If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification, we have the right to immediately terminate the provision of service under this Section 30 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days' prior written notice, to cure any breach by you of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT benefit issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 30 or the Agreement, as applicable.

The provision of services under this Section 30 shall terminate automatically if our agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 30.

**30.7. Confidentiality of EBT System Information.** All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information.

Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of all non-public personal information or materials regarding customers ("NPPI"); (2) protect against any anticipated threats or hazards to the security or integrity of NPPI; (3) protect against unauthorized access to or use of NPPI that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of NPPI; and (b) take appropriate actions to address incidents of unauthorized access to NPPI, including notification to us as soon as possible.

The use of information obtained by you in the performance of your duties under this Section 30 will be limited to purposes directly connected with such duties.

**30.8. EBT Service Marks.** You will adequately display any applicable state's service Marks or other licensed marks, including the Quest Marks, and other materials supplied by us (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will

continue only so long as this Section 30 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

### **30.9. Miscellaneous.**

**30.9.1. Errors.** You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 30. You will promptly notify us of any such errors or disputes.

### **30.9.2. Issuance Records.**

- i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.
- ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g., microfilm, etc.) related to this Section 30 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.
- iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.
- iv. To assure compliance with this Agreement, including without limitation this Section 30, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

**30.9.3. Training.** You will train and permit your employees to receive training regarding the issuance of EBT benefits.

**30.9.4. Amendments.** Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state policy, these terms and conditions are subject to reasonable amendment by us, a state or its EBT service provider to address such conflict upon written notice to you and such amendment shall become effective upon such notice.

**30.9.5. State Action.** Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

**30.9.6. Reference to State.** Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 30. If you accept EBT benefit in more than one state pursuant this Section 30, then the reference will mean each such state severally, not jointly.

**30.9.7. Third Party Beneficiaries.** These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 30.

## **31. Special Provisions Regarding Wireless Service**

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 31, referred to as the "**Wireless Services Terms**," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 31 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 31 directly conflict with another section of this Agreement, in which case the terms of this Section 31 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

Through one or more third party vendors ("Wireless Vendor(s)") selected by us in our sole discretion, we have acquired the right to resell certain wireless data communication services that use radio base stations and switching offered by certain cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to Processor and Bank certain wireless Card Authorization transactions or to transmit other communications to our system ("Wireless Services").

If you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree



that this Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Servicers are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

**31.1. Purchase of Wireless Services.** The prices that you will pay for the Wireless Services are set forth on the Application. In connection with your purchase of Wireless Services, you will receive access to a certain Wireless Network(s).

- **Licenses.** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- **Wireless Equipment.** You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the "Wireless Equipment"). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement apply to your use of such Wireless Equipment.
- **Improvements/General Administration.** We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.
- **Suspension of Wireless Services.** We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

**31.2. Software Licenses.** Processor hereby grants to you a non-exclusive, non-transferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 31. Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 31.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

**31.3. Limitation on Liability.** We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 31.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless Software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special, consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies with respect to the Wireless Services.

**31.4. Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase,

delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 31; or (d) any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**31.5. Confidentiality.** All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

**31.6. Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 31 may terminate:

- a) Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or
- b) Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

**31.7. Effect of Termination.** Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services terms terminate due to a termination of the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

**31.8. Third Party Beneficiaries.** Wireless Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

**31.9. Other Applicable Provisions.** You also agree to be bound by all other terms and conditions of this Agreement.

**31.10. Disclaimer.** Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions we don't control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

## 32. Special Provisions Regarding TransArmor<sup>SM</sup> Services

If you elect to utilize the TransArmor Service, the following additional terms and conditions of this Section 32 shall apply.

The TransArmor Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the TransArmor Service, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The TransArmor Service provided, transactions processed and other matters contemplated under this Section 32 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 32 directly conflict with another provision of this Agreement, in which case the terms of this Section 32 will control.

**32.1. Definitions.** Capitalized terms used in this Section 32 shall have the meaning given as defined in this Section or as defined in the Glossary or elsewhere in this Agreement.

**Multi-PayToken** means the option to support businesses that need to submit a financial transaction in a card-not-present situation. These tokens are unique to each merchant that uses them and are stored in place of the primary account number (PAN). With these tokens, merchants can initiate new or recurring payments within their own environment instead of using the original card number.

Multi-Pay Token allows a Token Registration process – a non-financial transaction to request a token to be placed in their payment page or "e-wallet" for future or recurring payments. It is common for eCommerce merchants to ask their customers to register by providing profile information such as name, address, and phone number to the merchant website before or upon checkout.

**Registered PAN** means the processing of creating a Client specific Token for a PAN.

**Token/Tokenization** means a form of data substitution replacing sensitive payment card values with non-sensitive token, or random-number, values. Post-authorization transactions are handled via Processors SafeProxy tokenization technology, which returns a token with the transaction's authorization to the merchant. Tokens are shared universally with other merchants and cannot be used to initiate a financial transaction.

**Token Request** means your ability to obtain a Multi-Pay Token for credit card information only without an immediate authorization required which permits you to store a Multi-Pay Token for future transactions involving its customer.

**TransArmor Service** means those services described below and may be either TransArmor VeriFone Edition Service or TransArmor Base Service as described below.

**32.2. Grant of License.** Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 32 to use the TransArmor Service and the TransArmor Service Marks (as identified in the TransArmor Rules and Procedures) in the United States in accordance with this Section 32, including without limitation the TransArmor Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Processor in this Section 32 are deemed withheld.

**32.3. Services.** The TransArmor Service applies only to Card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. Processor will provide an encryption key to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated token assigned to the Card number that will be returned to you in the authorization response (the "Token"). You must select one of the two options for the TransArmor Service as indicated on the Merchant Processing Application:

- **TransArmor VeriFone("VF") Edition.** This service option is limited to those clients which have an eligible VeriFone point of sale ("POS") device and desire the software or hardware based encryption and Tokenization to be activated through the VeriFone device.

- **TransArmor Base Service.** This service option provides software based encryption and Tokenization that is available to clients to integrate into their POS or the point of sale device.

**32.4. Responsibilities of Client.** You are responsible to comply with the following regarding your use of the TransArmor Service:

- a) You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment processing are compliant with PCI DSS. Use of the TransArmor Service will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Card Organization Rule. You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.
- b) Use of the TransArmor Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility where you process and/or store transaction data (collectively, "Merchant Systems").
- c) You must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d) You must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e) Any POS device, gateway and/or VAR you use in connection with the TransArmor Service must be certified by FDMS for use with the TransArmor Service.
- f) If you send or receive batch files containing completed Card transaction information to/from Processor, you must use the service provided by Processor to enable such files to contain only Tokens or truncated information.
- g) You must use truncated report viewing and data extract creation within reporting tools provided by Processor.
- h) You are required to follow rules or procedures we may provide to you from time to time related to your use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.

- i) You have no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. You shall not take any action inconsistent with the stated title and ownership in this Section 32. You will not file any action, in any forum that challenges the ownership of the TransArmor Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate this Section 32 and your access to and use of the TransArmor Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
- j) You will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; or (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
- k) You will only use the TransArmor Service for your internal business purposes in a manner consistent with this Agreement.
- l) You will use only unaltered version(s) of the TransArmor Service and will not use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 32.
- m) You will promptly notify us of a breach of any terms of this Section 32.

**32.5. Modification and Termination.** Unless prohibited by applicable law, we may modify this Section 32 by providing written notice of such modifications to you. You may choose not to accept the requirements of any such modifications by notifying us in writing within thirty (30) days after receiving such notice that you are terminating this Section 32.

**32.6. Fees.** You shall pay Processor the fees for TransArmor Service as set forth on the Application.

**32.7. TransArmor Limited Warranty.** Processor warrants that the Token returned to you, as a result of using the TransArmor Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 32. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including this Section 32, and any other agreement relating to Cards eligible for the TransArmor Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor's breach of the Limited Warranty. The express remedy for Processor's breach of the Limited Warranty set forth in this paragraph constitutes Processor's entire liability and your sole and exclusive remedy for Processor's breach of the Limited Warranty. The Limited Warranty is void if (i) you use the TransArmor Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 32, or any other agreement relating to Cards eligible for the TransArmor Service or (ii) you are grossly negligent or engage in intentional misconduct.

**32.8. TransArmor Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 32, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR SERVICE INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE.

### 33. Special Provisions Regarding Clover Service

If you elect to use the Clover Service, the following additional terms and conditions of this Section 33 shall apply.

The Clover Service is provided to you by Processor and not Bank. The Clover Service, transactions processed, and other matters contemplated under this Section 33 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 33 directly conflict with another provision of the Agreement, in which case the terms of this Section 33 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the Clover Service, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Section, 33, the words "we," "our" and "us" refer only to the Processor and not the Bank.

**33.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 33 or as defined in the Glossary or elsewhere in this Agreement.

"Clover" means Clover Network, Inc.

“**Clover Marks**” means the trademarks or service marks of Clover, an affiliate of Processor.

“**Clover Service**” means the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by Processor from time to time. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications downloaded by you through an application marketplace). The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Customer**” means a Person who makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

“**Device**” means a tablet, smartphone, or other mobile or fixed form factor identified by Processor from time to time as compatible with and capable of supporting the Clover Service.

“**Third Party Services**” are the services, products, promotions or applications provided by someone other than Processor.

**33.2. License Grant.** During the term of the Agreement, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with the terms of this Section 33. For purposes of this Section 33, “United States” does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Section 33 does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our affiliates’, our vendors’, or our licensors’ (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by Processor in this Section 33 are deemed withheld.

**33.3. Restrictions.** You may not, nor may you permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in subsection 33.2 above.

You shall not take any action inconsistent with the stated title and ownership in subsection 33.2 above. You will not file any action, in any forum that challenges the ownership of any part of the Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Clover Service in the event of a challenge by you.

#### **33.4. Clover Service Limitations and Requirements.**

**33.4.1.** You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

**33.4.2.** You may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.

**33.4.3.** The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.

**33.4.4.** We may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

**33.4.5.** You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you (collectively, “Clover Ops Guide”).

**33.4.6.** You shall comply with the following requirements in connection with your use of the Clover Service:

- a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
- b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.
- c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- d) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.
- e) If TransArmor software is resident on your Device at the time we provide you with the Device and therefore part of the Clover Service, it will be used to perform such encryption and tokenization (“TransArmor Service”) and the additional terms set forth in Section 32 apply.
- f) You are responsible to provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your Customers.

**33.5. Fees.** You shall pay Processor the fees for Clover Service as set forth on the Application.

**33.6. Term and Termination.** The Clover Service may be terminated at any time by either party upon thirty (30) days’ written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend or terminate the Clover Service if (a) we determine that you are using Clover Service for any fraudulent, illegal, or unauthorized purpose, (b) you violate the terms of this Section 33 or an Event of Default occurs under the Agreement, (c) we terminate our agreement with any third parties that are involved in providing the Clover Service, or (d) Processor otherwise decides to discontinue providing the Clover Service. You acknowledge and agree that an occurrence of (a) or (b) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement without notice.

**33.7. Third Party Services.** The Clover Service may contain links to Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Section 33 or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR



IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

**33.8. Account Registration.** We may require you to register and create a “Member” or “Merchant” account to use the Clover Service. If and when prompted by our registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your Clover Service account (“Account”) and refuse any and all current or future use of the Clover Service.

**33.9. Privacy and Data Use.** All data collected from you at [www.clover.com](http://www.clover.com) or in connection with your use of the Clover Service, including Customer Information and information about your business and employees used with or stored in or by the Clover Services (collectively, “Account Data”), is collected by Clover and not Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Privacy Policy (available at [https://www.clover.com/privacy\\_policy](https://www.clover.com/privacy_policy)). You acknowledge and agree that we may access your Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement.

**33.10. Protecting Your Information.** You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to us or to any third party (including Clover) containing Account Data. When we receive communications containing Account Data, we assume you sent it to us. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data. We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

**33.11. Accuracy of Information.** You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, you are solely responsible for verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

**33.12. Clover Service Disclaimer.** USE OF THE CLOVER SERVICE OR ANY EQUIPMENT PROVIDED WITH THE CLOVER SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED “AS IS” AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

**33.13. Indemnity.** Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys’ fees) arising out of or relating to:

- a) Your failure to comply with all terms and conditions in this Section 33, including but not limited to the Clover Ops Guide;
- b) Your use of any Customer Information obtained in connection with your use of the Clover Service;
- c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- d) Any other party’s access and/or use of the Clover Service with your unique username, password, or other appropriate security code.

**33.14. Notices.** We may provide notices and other information regarding the Clover Service to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below.

**33.15. Amendment.** We have the right to change or add to the terms of this Section 33 at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in subsection 33.14 above. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

**33.16. Ideas.** You may choose or we may invite you to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service (“Ideas”). By submitting any Idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) we are free to use and disclose any Idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any Idea.

**33.17. Third Party Beneficiaries.** Processor’s Affiliates and any Persons Processor uses in providing the Clover Service are intended third party beneficiaries of this Section 33, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this subsection 33.17, nothing in this Section 33 is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Section 33.

## E-SIGN CONSENT AGREEMENT

### 1. Consent

By signing the Confirmation Page, you consent and agree that:

- a. Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- b. Where required or requested, your electronic signature (via “click-through” or other method) on agreements and documents relating to the Clover Service has the same effect as if you signed them in ink.
- c. Processor can send all communications, billing statements, amendments to the Clover Service, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or the Services as defined in the Agreement (collectively defined as “Disclosures”) to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- e. This consent applies to all future Disclosures sent to you in connection with the Clover Service, the Agreement, or your use of the Clover Service or the Services as defined in the Agreement.

### 2. Legal Effect

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Processor provided paper Disclosures to you. When Processor sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Processor provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

## 34. Choice of Law; Venue; Waiver of Jury Trial

**34.1. Choice of Law.** Our Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of law provisions).

**34.2. Venue.** We have substantial facilities in the State of California and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in California.

**34.3. Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

## 35. Other Terms

**35.1. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees’ demands are reasonable or within the party’s power to satisfy); or (v) the nonperformance by a Person for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a Person shall not excuse the performance of your obligations to us under this Agreement.

**35.2. Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq. as may be amended from time to time, those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)) or the U.S. Department of State’s Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or for the processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws

enforced by the Office of Foreign Assets Control (“OFAC”) or in connection with illegal activity of any kind.

**35.3. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, if to you at your address appearing in the Application or by any electronic means, including but not limited to the e-mail address you have provided on the Application. If to us at our address appearing in Section A.5 of Part III of this Agreement, with a copy to Attention: General Counsel’s Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. If you change your address (including your e-mail address), you must notify us at least 30 days prior of the effective date of any such change. Failure to provide us with a valid address (including e-mail address) may result in the termination of the Agreement. Notwithstanding the above, all bankruptcy or collection related notices must be sent to the following address Merchant Services Department, 5251 Westheimer Road, Fourth Floor, Houston, Texas 77056, Attn: Bankruptcy and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

**35.4. Headings.** The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**35.5. Severability.** The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

**35.6. Entire Agreement; Waiver.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party’s waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**35.7. Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or “click-wrap” notice intended to modify or amend this Agreement and which you check “I Accept” or “I Agree” or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 35.7 does not apply to fee changes, which are governed by Sections 19.4 and 19.5.

**35.8. Third Party Beneficiaries.** Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

**35.9. Card Organization Rules.** The parties acknowledge that the Visa, MasterCard, American Express and Discover Organization Rules give Visa, MasterCard, American Express and Discover certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard, American Express and Discover and the Visa, MasterCard, American Express and Discover systems to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to this Agreement’s applicability to transactions involving such other Cards.

**35.10. Publicity.** Client may not use the logo, name, trademark, or service mark of Processor and/or Bank in any manner, including without limitation, in any advertisements, displays, or press releases, without the prior written consent of Processor and Bank.

## 36. Glossary

As used in this Agreement, the following terms mean as follows:

**Acquirer:** Bank in the case of MasterCard, Visa and certain debit transactions or Processor in the case of Discover Network transactions that acquire Card sale transactions from merchants such as yourself.

**Address Verification Service (“AVS”):** A service provided through which the merchant verifies the Cardholder’s address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants, Address verification is intended to deter fraudulent transactions however, an AVS Match does not guarantee that a transaction is valid. An AVS request should generally be submitted with an authorization request. The AVS response, if available,

however will not impact whether any associated authorization request is approved or denied. You may be charged an AVS fee for any AVS request you submit even if we are not able to provide a response to the request.

**Affiliate:** “Affiliate” of a Person means another Person that, directly or indirectly, (i) owns or controls such Person or (ii) is under common ownership or control with such Person.

**Agreement:** The Agreements among Client, Processor, and Bank, contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

**Application:** See Merchant Processing Application

**Authorization:** Approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only the availability of the Cardholder’s Credit Limit or funds at the time the Authorization is requested. An Authorization Fee (see Fee Schedule) can be charged for each Authorization, whether approved or declined.

**Authorization Approval Code:** A number issued to a participating merchant by the Authorization Center which confirms the Authorization for a sale or service.

**Authorization and Capture:** Refers to the communication of instructions from your POS device or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information. If your Service fee Schedule reflects and authorization and capture fee it may be applied to each communication you transmit to us.

**Authorization Center:** A department that electronically communicates a merchant’s request for Authorization on Credit Card transactions to the Cardholder’s bank and transmits such Authorization to the merchant via electronic equipment or by voice Authorization.

**Bank:** The bank identified on the Application signed by you.

**Bankruptcy Code:** Title 11 of the United States Code, as amended from time to time.

**Batch:** A single Submission to us of a group of transactions (sales and Credits) for settlement. A Batch usually represents a day’s worth of transactions.

**Business Day:** Monday through Friday, excluding Bank holidays.

**Card:** See either Credit Card or Debit Card.

**Cardholder:** Means the Person whose name is embossed on a Card and any authorized user of such Card, including the Person that has entered into an agreement establishing a Card account with an Issuer.

**Card Not Present Sale/Transaction:** A transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

**Card Organization:** Any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide (“MasterCard”), Visa U.S.A., Inc. (“Visa”), DFS Services LLC (“Discover Network”), American Express Company, Inc. (“American Express”) and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

**Card Validation Codes:** A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa’s Card Validation Code is known as CVV2; MasterCard’s Card Validation Code is known as CVC2; the Card Validation Codes for Discover Network and American Express are known as a Card Identification Numbers (CID). Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

**Card Verification Value (CVV)/Card Validation Code (CVC)/Card Identification Data (CID):** A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

**Cardholder Verification Method (CVM):** A method used to confirm the identity of a Cardholder and to signify Cardholder acceptance of a transaction, such as signature, Offline PIN, and Online PIN.

**Cash Benefits:** An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

**Cash Over Transaction:** Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

**Charge or Charges:** The total price, including all applicable taxes and gratuities, for the purchase of goods or services at a merchant for which a Cardholder has signed a Sales Draft or otherwise indicated intent to pay with a Card.

**Chargeback:** A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

**Claim:** Means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the



Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

**Client:** The party identified as “Client” on the Application. The words “Subscriber,” “you” and “your” refer to Client. Also, sometimes referred to as “Merchant.”

**Credit:** A refund or price adjustment given for a previous purchase transaction.

**Credit Card:** A device bearing a valid Organization Mark of Visa, MasterCard, Discover Network or American Express and authorizing the Cardholder to buy goods or services on credit and, to the extent the Schedules so provide, a valid device authorizing the Cardholder to buy goods or services on credit and issued by any other Card Organization specified on such Schedules.

**Credit Draft:** A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

**Credit Limit:** The credit line set by the Issuer for the Cardholder's Credit Card account.

**Customer Activated Terminal (CAT):** A magnetic stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service Terminal) that is not an ATM.

**Data Usage Charge:** Charged to you for our processing of Sales Data sent to us.

**Debit Card:** See either PIN Debit Card or Non-PIN Debit Card.

**Dial-Up Terminal:** An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

**Discount Rate:** A percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 19.1.

**Electronic Benefit Transfer (EBT):** An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and FNS, SNAP and WIC Benefits, to EBT customers.

**Electronic Draft Capture (EDC):** A process which allows a merchant's Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

**EMV:** Developed by Europay, MasterCard, and Visa. It is the global standard for chip based payments.

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

**Factoring:** The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business. Factoring is prohibited.

**Fixed Acquirer Network Fee (FANF):** Fee that applies to the acceptance of all Visa branded products and is based on both the size and the number of merchant locations. The fee will be assessed per merchant Taxpayer ID, based on the number of merchant locations, Merchant Category Code (MCC), and monthly Total Gross merchant Sales Volume associated with each Taxpayer ID.

**General Terms:** Section of the Program Guide, including any amendments or modifications.

**Gross:** When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

**Imprinter:** A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

**Issuer:** The financial institution or Card Organization (or other Entity authorized by a Card Organization) which has issued a Card to a Person.

**Limited Amount Terminal:** A Customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic-stripe telephones.

**Magnetic Stripe:** A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

**Marks:** Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

**MasterCard Processing Integrity Fee:** The MasterCard Processing Integrity Fee is assessed in the event MasterCard cannot match an approved authorization to a settled transaction (within 120 days from the date the authorization was granted) or a reversal request (within a specific time frame). The Processing Integrity Fee can be avoided by settling transactions only with an approved authorization. If an authorization approval is no longer needed, it must be electronically reversed within 24 hours for a card-present transaction or within 72 hours for card not present transaction.

**MC Cross Border Fee (USD):** Assessed on any MasterCard<sup>1</sup> settled sale processed in USD Currency in which the country code of the merchant differs from the country code of the Cardholder (i.e., U.S. Merchant, Non U.S. Issued Card).

**Media:** The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

**Merchant Account Number:** A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

**Merchant Identification Card:** A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each Batch of paper Sales Drafts. Embossed data includes Merchant Account Number, name and sometimes merchant ID code and terminal number.

**Merchant Processing Application:** The Merchant Processing Application and Agreement executed by Client, which is one of the documents comprising the Agreement.

**Merchant Provider:** Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

**Non-Bank Services:** Products and/or Services for which Bank is not responsible or a party to including American Express, PIN Debit Card, and Electronic Benefits Transfer Transactions, and Transactions Involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation, Discover, TransArmor, Wireless, and other items as may be indicated in this Program Guide.

**Non-PIN Debit Card:** A device with a Visa, MasterCard or Discover Network Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

**Non-Qualified Interchange Fee:** The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually processed.

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above, Section 19.1)

**Operating Procedures:** The information prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in Part A of the Program Guide.

**PAN Truncation:** A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft you retain, will only reflect the last four digits of the Card account number.

**Person:** A third party individual or Entity, other than the Client, Processor or Bank.

**PIN:** A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

**PIN Debit Card:** A device bearing the Marks of ATM networks (such as NYCE or Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad.

**PIN Debit Sponsor Bank:** The PIN Debit Sponsor Bank(s) identified on the Application signed by you that is/are the sponsoring or acquiring bank(s) for certain PIN Debit networks.

**Point of Sale (POS) Terminal:** A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

**Processor:** The entity identified on the Application (other than the Bank) which provides certain services under the Agreement.

**Program Guide (also known as the Merchant Services Program Terms and Conditions):** The booklet which contains Operating Procedures, General Terms, Third Party Agreements and Confirmation Page, which together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

**Recurring Payment Indicator:** A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

**Referral:** A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

**Reserve Account:** An account established and funded at our request or on your behalf, pursuant to Section 25 of the Agreement.

**Resubmission:** A transaction that the Client originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Card Organization. The resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case Client assumes the risk that the transaction fails.

**Retrieval Request/Transaction Documentation Request:** A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

**Sales/Credit Summary:** The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

**Sales Draft:** Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

**Schedules:** The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

**Self-Service Terminal:** A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PINs.

**Servicers:** Bank and Processor collectively. The words “we,” “us” and “our” refer to Servicers, unless otherwise indicated in this Program Guide.

**Services:** The activities undertaken by Processor and/or Bank, as applicable, to authorize, process and settle all United States Dollar denominated Visa, MasterCard, Discover Network and American Express transactions undertaken by Cardholders at Client’s location(s) in the United States, and all other activities necessary for Processor to perform the functions required by this Agreement for all other Cards covered by this Agreement.

**Settlement Account:** An account or account(s) at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**Split Dial:** A process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

**Split Dial/Capture:** Process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization and Electronic Draft Capture.

**Store and Forward:** A transaction that has been authorized by a merchant when the merchant cannot obtain an Authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

**Submission:** The process of sending Batch deposits to Processor for processing. This may be done electronically or by mail.

**Summary Adjustment:** An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 10.3 and 10.4).

**Telecommunication Card Sale:** Individual local or long-distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

**Transaction Fees:** Service costs charged to a merchant on a per transaction basis.

**Transaction Integrity Fee:** Fee assessed on Visa Debit Card and prepaid Card purchase transactions that either fail or do not request CPS qualification.

**Us,We and Our:** See Servicers.

**Visa International Service Fee:** Assessed on any Visa settled sale where the merchant is located in the U.S. and the Card is issued outside of the U.S. (i.e., U.S. Merchant, Non U.S. Issued Card).

**Visa Misuse of Auth:** Charged to Visa authorized transactions that are not followed by a matching Visa settled transaction (or in the case of a canceled transaction, not properly reversed). The fee can be avoided by settling your transactions within 10 days for Non Travel and Entertainment (T&E) Merchants Segments and 20 days for T&E merchants. If an authorization is not needed, the authorization must be electronically reversed within 24 hours for face to face authorizations and reversed within 72 hours for Card Absent authorizations.

**Visa Zero \$ Verification:** Charged for Visa Card verification requests (without an actual dollar authorization). This fee can be avoided by obtaining an authorization request for the amount of the sale. If the authorization is not needed, the authorization request must be electronically reversed within 24 hours for face to face authorizations and reversed within 72 hours for Card Absent authorizations (to avoid the Visa Misuse of Authorization System fee).

**Visa Zero Floor Limit:** Charged when a Visa sale is settled without the required authorization (transaction ID is used to match the authorization to settled sale). All transactions above zero dollars require an authorization approval. This fee can be avoided by only settling transactions that have been approved. If an authorization is declined, the merchant must request another form of payment.

**You,Your:** See Client

## PART III: ADDITIONAL IMPORTANT INFORMATION FOR CARDS

### A.1. Electronic Funding Authorization

All payments to Client shall be through the Automated Clearing House (“ACH”) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of Client’s Card sales pursuant to the Agreement. Client agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither *Westamerica Bank* nor BankCard USA Merchant Services can guarantee the time frame in which payment may be credited by Client’s financial institution where the Settlement Account is maintained.

Client hereby authorizes *Westamerica Bank* and its authorized representative, including BankCard USA Merchant Services, to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees, fines and assessments and Chargeback amounts of whatever kind or nature due to BankCard USA Merchant Services or *Westamerica Bank* under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until BankCard USA Merchant Services and *Westamerica Bank* have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged twenty-five dollars (\$25.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies BankCard USA Merchant Services that ACH’s can be processed or (ii) a new electronic funding agreement is signed by Client. Client’s Settlement Account must be able to process or accept electronic transfers via ACH.

### A.2. Funding Acknowledgement

**Automated Clearing House (ACH).** Your funds for MasterCard, Visa, Discover Network and American Express transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa, Discover Network and American Express transactions will ordinarily be processed via the Federal Reserve within two (2) Business Days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

### A.3. Additional Fees and Early Termination

If Client’s MasterCard, Visa and Discover Network transaction(s) fail to qualify for the discount level contemplated in the rates set forth in the Application, Client will be billed the fee indicated in the Mid-Qualified Discount field or Non-Qualified Discount field. If you are utilizing the Enhanced Recovery Reduced Discount option, the Client will be charged the Enhanced Recovery Reduced Rate on the volume of said transaction that failed to qualify, in addition to the difference between the MasterCard/ Visa/Discover Network Qualified Rate agreed to on the Service Fee Schedule and the actual interchange rate assessed to the downgraded transaction.

- a. Any increases or decreases in the interchange and/or assessment portion of the fees;
- b. The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client;
- c. Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by BankCard USA Merchant Services when such costs are included in the Service or other fixed fees.

The discount fees shown on the Service Fee Schedule shall be calculated based on the gross sales volume of all Visa, MasterCard and Discover volume.

A Monthly Minimum Processing Fee will be assessed immediately after the date Client’s Application is approved. (Refer to Service Fee Schedule, if applicable.)

In addition to the PIN Debit Card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) Client breaches this Agreement by improperly terminating it prior to the expiration of the initial term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the initial term of the Agreement due to an Event of Default, then Servicers will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, the parties have agreed that the amount described below is a reasonable pre-estimate of Servicers’ probable loss.

In the event that Client terminates this Agreement within three (3) years from the date of approval by BankCard USA Merchant Services and *Westamerica Bank* or this Agreement is terminated by Servicers within 3 years from the date of approval due to an Event of Default, Client will be charged a fee for such early termination, if so indicated on the Application on the Service Fee Schedule.

Client’s obligation with respect to the Monthly Minimum Processing Fee will end simultaneously with BankCard USA Merchant Services’ receipt of Termination Fee.

### A.4. 6050W of the Internal Revenue Code

Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099-K reporting your gross transaction amounts for each calendar year. Your gross transaction amount refers to the gross dollar amount of the card transactions processed through your merchant account with us. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee’s taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

### A.5. Addresses For Notices

**PROCESSOR:**  
**BankCard USA Merchant Services:**  
28720 Roadside Drive, #299  
Agoura Hills, CA 91301  
Attn: Merchant Services

**BANK:**  
**Westamerica Bank**  
3750 Westwind Blvd., Suite 210  
Santa Rosa, CA 95403  
Attn: Merchant Services  
(800) 939-9942

**Important Phone Numbers:**  
(see also Sections 3.3 and 5.4)

Customer Service  
1-800-589-8200

**ADDENDUM TO**  
**BANKCARD USA MERCHANT SERVICES**  
**PROGRAM TERMS AND CONDITIONS**

This Addendum to Bankcard USA Merchant Services Program Terms and Conditions (hereinafter Addendum) modifies and supplements the Program Terms and Conditions (the Program Guide) between BankCard USA Merchant Services and the City of Cody, Wyoming, and this Addendum is incorporated with and a part of that Program Guide.

The parties agree that the following sections of the Program Guide shall be modified and amended as follows:

**Section 4.9 “Costs” shall read as follows:**

If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information, or caused Cardholder data to be put at risk (together, Compromised Data Events”) and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, “Data compromise Losses”). Your obligations in this paragraph shall not apply if you are able to provide evidence from a forensic analysis or report that demonstrates that you were likely not the source of the Compromised Data Event.

**Section 14.2 shall read as follows:**

In the event that you are we are not able to resolve a Claim this section 14.2 explains how Claims may be resolved through arbitration. You or we or American Express may mutually agree to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

If the parties mutually agree to arbitration to resolve a Claim, the parties understand and agree that neither you nor we nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, we and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, we, or American Express would have in court may also not be available in arbitration.

- i. Initiation of Arbitration Claims may be referred to either JAMS or AAA, as selected by the parties. Claims will be resolved pursuant to this Section 14.2 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to being an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if [American Express or we, on one hand, selects the organization and you., on the other hand,] select the other within 30 days thereafter or

if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. 1-16 (FAA). Any arbitration hearing will take place in Park County, Wyoming.

ii. If the parties mutually agree to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. [The rest of subsection ii shall remain as it appears in the original Program Guide].

iii. You, we, or American Express may mutually elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. [The rest of subsection iii shall remain as it appears in the original Program Guide].

vii. Governing Law / Arbitration Procedures / Entry of Judgment: This Section 14.2 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply Wyoming law and applicable statutes of limitations and honor claims of privilege recognized by law. [The rest of subsection vii shall remain as it appears in the original Program Guide].

**Section 19.8 shall read as follows:**



You agree to pay any fines imposed on us by any Card Organization resulting from Chargebacks and all fees, fines and other charges imposed on us by a Card Organization with respect to your acts or omissions.

**Sections 21.3, 21.4 shall not apply, and shall be deleted and omitted.**

**Section 22.3 shall be modified by adding the following language:**

The parties understand that you are a municipal corporation in Wyoming, and you are therefore subject to the Wyoming Public Records Act. This Agreement and other information provided by us or our agents will be treated as public information pursuant to the Wyoming Public Records Act.

**Article 25 (including sections 25.1 through 25.4.3) shall not apply, and shall be deleted and omitted, as the City of Cody is a municipal corporation.**

**Section 27.1 shall not apply, and shall be deleted and omitted.**

**Article 34 shall be modified to read as follows:**

34.1 Choice of Law. Our Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming (without regard to its choice of law provisions).

34.2 Venue. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Wyoming.

**The following section 35.11 shall be added:**

Nothing in this Agreement shall be construed to abrogate, modify or limit the City of Cody's governmental immunity, and the City does not waive its governmental immunity. Nothing in this Agreement shall be construed to abrogate, modify or limit the defenses, limitations or protections for the City of Cody and provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

Company: **BankCard USA**

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

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

Signature: \_\_\_\_\_

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

Company: **City of Cody**

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

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

Signature: \_\_\_\_\_

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



## **AGENDA ITEM SUMMARY REPORT**

### **Bid 2021-12 for (1) New 2022 or Newer Forklift w/ 5,000lb Capacity**

#### **ACTION TO BE TAKEN**

Consider approval of the award of Bid 2021-12 to Tractor and Equipment Company for one (1) 2022 CAT GP25N5 forklift in the amount of \$47,836.00.

#### **SUMMARY OF INFORMATION**

The approved FY 2022 Budget includes funding for the replacement of a 2011 forklift for use at the Recycling Center. The current forklift will be kept as a back-up, and to assist in recycling operations and processing during busy periods of the summer. Bid packets were sent to Octane Forklifts Inc, Tractor and Equipment Co, and United Rentals.

Two bidders submitted two bids. The bids were opened on 11/9/2021.

Octane Forklifts Inc submitted one bid for one 2022 Octane FY25, in the amount of \$48,621.00.

Tractor and Equipment Co. submitted one bid for one 2022 CAT GP25N5, in the amount of \$47,836.00.

The bids received were reviewed by City Staff, and both were determined to meet all minimum specifications defined in the bid packet.

#### **FISCAL IMPACT**

The purchase of this equipment is funded in the approved FY 2022 Budget in the amount of \$44,616 through the Vehicle Replacement Fund. The additional funding of \$3,330 needed for this purchase will be addressed in a future budget amendment utilizing Sanitation Enterprise Fund reserves.

#### **ATTACHMENTS**

1. Bid Packet 2021-12 completed by Tractor and Equipment Company (submitted bid)

#### **AGENDA & SUMMARY REPORT TO:**

1. Brad Waldhauser, Tractor and Equipment Co, [bwaldhauser@tractorandequipment.com](mailto:bwaldhauser@tractorandequipment.com)
2. J.R. Antczak, Octane Forklifts Inc, [JR@OCTANeforklifts.com](mailto:JR@OCTANeforklifts.com)

**AGENDA ITEM NO. \_\_\_\_\_**



## TABLE OF CONTENTS BID NO. 2021-12

### DOCUMENTS INCLUDED IN PACKET FOR BID NO 2021-12

	<u>Pages</u>
1. ADVERTISEMENT FOR BID (ON THIS PAGE, BELOW) ↓	1
2. INSTRUCTION SHEET	2
3. BID PROPOSAL	3
4. SPECIFICATIONS	4-5

**For more information: City of Cody 307-527-3492**

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### **Bid No. 2021-12**

#### **(1) New 2022 or Newer Forklift w/5,000lb Capacity**

The City of Cody will receive sealed bids until 2:00 p.m., 11/9/2021 at Cody City Hall, 1338 Rumsey Avenue, P.O. Box 2200, Cody, Wyoming 82414, for **(1) New 2022 or Newer Forklift w/5,000lb capacity**. All bids will be opened and read aloud at this time. Full bid details and specifications are included in the bid packet available by emailing [kylieh@cityofcody.com](mailto:kylieh@cityofcody.com). Direct any questions to Rob Kramer at 587-2958, option 2.

The City reserves the right to reject any and/or all bids and further reserves the right to waive any informalities if deemed in the best interest of the City. No bid may be considered unless accompanied by the required bid guarantee of 5% of the total bid amount.

Dated this 19<sup>th</sup> day of October, 2021.

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Cynthia Baker  
Administrative Services Officer

PUBLISH:   October 26<sup>th</sup>, 2021  
              November 2<sup>nd</sup>, 2021



**INSTRUCTIONS: (1) New 2022 or Newer Forklift  
BID REQUEST NUMBER 2021-12**

The Bidder agrees to provide **(1) New 2022 or Newer Forklift** free and clear of all liens of any kind, pursuant to the specifications and invitation to bid. The bidder shall complete every space in the Bid 2021-12 City of Cody Specifications Form on page 4-5 to indicate that the item being bid is exactly as specified. All **(no)** responses shall be explained in detail on an attached sheet. Bids will be accepted for consideration on any make or model that is equal or superior to the specifications.

The bidder warrants that he has read and understands the requirements of the City of Cody, that he encloses a bid bond in the amount of not less than **five percent (5%)** of the "TOTAL BID" amount, and that the bid price represents all costs to the City of Cody including delivery, setup, dealer preparation, and all other costs of providing the unit in accordance with the specifications therefore. All bid guarantees must be received in the form of a bid bond, cashier's check or money order. No personal or business checks will be accepted as a bid guarantee. If a bid is received without the necessary 5% bid guarantee it will be rejected. The undersigned further understands that the Governing Body of the City of Cody shall determine in its sole discretion the most responsible bidder, and may reject any and all bids or make substitution, waive defects it deems unsubstantial in any bid, and that if an award is made, they will award the bid in the best interest of the City. Award of bid is subject to budget appropriation for this purchase.

In accordance with the provisions of Sections 16-6-101, 16-6-102 and 16-6-106 Volume 3, Title 9 of the Wyoming Compiled Statutes, 1977, preference is hereby given to resident Wyoming Contractors and to materials, supplies, equipment, machinery and provisions produced, manufactured, supplied or grown in Wyoming, quality being equal to articles offered by competitors outside the state. Bidders claiming preference must submit evidence of WY residency as defined in WY Statute Section 16-6-101.

The offer made herein shall be binding for 60 days after the date of bid opening.

Award of bid shall be made by Notice of Award, which shall be accompanied by a binding agreement to supply the unit pursuant to the bid documents. Bidder warrants that Bidder has read the proposed agreement and agrees to the terms and conditions contained therein. The unit shall be delivered and tested within the time frame specified by the Bidder upon receipt of order.

Payment shall be made within 60 days after the delivery and acceptance of the unit.

All material provided under this bid shall be new and unused. Bid documents may be obtained from:

City of Cody  
P.O. Box 2200  
1338 Rumsey Avenue  
Cody, Wyoming 82414  
(307) 527-7511

Bids are to be sealed and addressed to the City of Cody, 1338 Rumsey Avenue, P.O. Box 2200, Cody, Wyoming 82414 and shall be marked "**Bid No. 2021-12, (1) New 2022 or Newer Forklift**" on the outside of the envelope.

The sealed bids must be returned to the City of Cody no later than 2:00 p.m. 11/9/2021. The bid opening will be held at that time at City Hall. The City reserves the right to reject any and/or all bids and further reserves the right to waive any informalities if deemed in the best interest of the City.



Bid Proposal Form  
Bid No. 2021-12 (1) New 2022 or Newer Forklift

City of Cody, Wyoming

Governing Body  
City of Cody  
PO Box 2200  
1338 Rumsey Avenue  
Cody, WY 82414



The undersigned Bidder agrees to provide **(1) New 2022 or Newer Forklift**, free and clear of all liens of any kind, pursuant to the specifications and invitation to bid. The bid will include a trade-in value for N/A. The bid price shall be F.O.B. City of Cody Vehicle Maintenance Shop 119 19<sup>th</sup> Street, Cody, WY 82414.

Bid Schedule	Quantity	Unit	Total Price
Bid for:			\$ <u>47,836.00</u>
Less trade if any:			\$ ( <u>N/A</u> )
Net Total Bid			\$ <u>47,836.00</u>

The undersigned warrants that he/she has read and understands the requirements of the City of Cody, that he/she encloses a bid bond in the amount of not less than **five percent (5%)** of the "TOTAL BID" amount, and that the bid price represents all costs to the City of Cody including delivery, setup, installation and testing of providing the unit in accordance with the specifications therefore. All bid guarantees must be received in the form of a bid bond, cashier's check or money order. No personal or business checks will be accepted as a bid guarantee. If a bid is received without the necessary 5% bid guarantee it will be rejected. The undersigned further understands that the Governing Body of the City of Cody shall determine in its sole discretion the most responsible bidder, and the Governing Body may reject any and all bids or make substitutions, waive defects deemed unsubstantial in any bid, and that if an award is made, the Governing Body will award the bid in the best interest of the City. Award of bid is subject to budget appropriation for this purchase.

The offer made herein shall be binding for 60 days after the date of bid opening.

Award of bid shall be made by Notice of Award, which shall be accompanied by a binding agreement to supply the unit pursuant to the bid documents. Bidder warrants that Bidder has read the proposed agreement and agrees to the terms and conditions contained therein. The unit shall be delivered and tested within the time frame specified by the Bidder upon receipt of order.

Payment shall be made within 30 days after the delivery and acceptance of the unit.

Date 11-5-2021

Brad Waldhauser  
Signature

Brad Waldhauser  
Typed or Printed Name

Tractor and Equipment Co  
Company

1835 Harnish Blvd  
Mailing Address

Billings MT 59101  
City, State and Zip

bwaldhauser@tractorandequipment.com  
E-mail Address



## City of Cody Minimum specifications for

### (1) NEW 2022 OR NEWER FORKLIFT W/5,000LB CAPACITY

THE BIDDER SHALL COMPLETE EVERY SPACE BY PLACING A CHECK MARK UNDER THE **YES** OR **NO** COLUMN TO INDICATE THAT THE ITEM BEING BID IS EXACTLY AS SPECIFIED.  
ALL **NO** RESPONSES SHALL BE EXPLAINED IN DETAIL ON AN ATTACHED SHEET.

#### GENERAL

	<u>YES</u>	<u>NO</u>
1. New 2022 or Newer pneumatic forklift with 2.5L 4-cylinder gas and LP engine.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. 5,000 lb capacity @24" center.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Triple stage mast with a maximum fork height of no less than 185".	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Side shift.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Four spool hydraulic valve.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Internal hosing on the mast.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Back-up alarm, LED beacon, seat belt.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Complete light package with turn, stop and back-up lights along with over head guard mounted headlights.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Two rearview mirrors. External OHG mounted.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Full suspension seat.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Automatic transmission.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Power steering.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Minimum 43.5# LP tank, mounted horizontal.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Solid pneumatic tires, 7.00x12-12PR drive and 6.00x9-10PR steer.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. New Cascade 40G-RRB-24A rotator with 48" forks with a maximum OTO fork width of 37.0"	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Forklift must comply with all current OSHA, EPA and DOT regulations pertaining to safety and emissions requirements in effect at time of delivery.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### MISCELLANEOUS

1. The successful bidder shall supply <u>two</u> Operators, one Service and one Repair Manual for the forklift and attachments.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Standard factory warranty to cover parts and labor.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Dealer order form showing all equipment being bid.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**MISCELLANEOUS continued**

YES   NO

- |  |  |  |
|--|--|--|
| 4. The successful bidder shall also agree to provide all transportation and travel expenses from the City of Cody to the bidder's place of business, or have provisions for a "field" mechanic to perform any warranty work that may be required on the forklift at the City of Cody Shop located at 119 19 <sup>th</sup> St. Cody, WY.            | <input checked="checked" type="checkbox"/> | <input type="checkbox"/>                   |
| 5. Upon delivery to the City, the vehicle will be fully equipped as specified, serviced, cleaned and ready to enter into service for the City of Cody.   | <input checked="checked" type="checkbox"/> | <input type="checkbox"/>                   |
| 6. This forklift shall be to the manufacturer's standard. It shall be equipped with the manufacturer's equipment and accessories which are included as standard in the advertised and published literature for the unit. No such item of equipment or accessories shall be removed or omitted for the reason that it was not specified in the bid. | <input checked="checked" type="checkbox"/> | <input type="checkbox"/>                   |
| 7. Current Wyoming Residency Certificate   | <input type="checkbox"/>                   | <input checked="checked" type="checkbox"/> |

misc #7

I am a resident of Montana



## QUOTATION



### PREPARED FOR

Customer: Cash Sales  
Address: 5200 Southgate Dr  
Billings, MT 59101

### REFERENCE

Effective From: Monday, September 27, 2021  
Effective To: Wednesday, October 27, 2021  
Quote #: 562204  
Account Manager: Anne Ernst  
Direct Phone:  
E-mail: aernst@tractorandequipment.com



## GP25N5 - 5,000 lb. Capacity LP Pneumatic Tire Lift Truck

### HIGHLIGHTS

#### Uncompromising Performance

- Powerful GK25 4 Cylinder Engine
  - Maximum Torque 129 ft-lb @ 1600 rpm
  - Maximum Horsepower 61 Hp @ 2700 rpm
  - Throttle by Wire Accelerator (no cable)
  - High Efficiency Aluminum Cylinder Heads
  - Individual High Energy Ignition Coils (no distributor)
  - Low vibration Dynamically Balanced
- Engine Protection System (EPS)
- Fuel saver mode reducing fuel consumption up to 14%
- Cyclone Air Filter
- High efficiency Aluminum Core Radiator
- Robust Powershift Automatic Transmission 1F/1R
- Transmission Oil Cooler
- Hydrostatic Power Steering
- Elevated Air Intake
- Maintenance Free Battery
- Premium long lasting Trelleborg Tires
- 500 Hour Service Intervals

#### Superior Operator Comfort

- Premium Full Suspension Grammer Seat
- Tilt Steering Column with Memory function
- Isolated (Rubber mounted) Key Components to reduce vibration
- Rubber floor mat
- Insulated Engine cover
- Convenience tray with clipboard holder
- Separate Brake and Inching Pedals
- Elongated Grab handle Bar
- Open Step with Anti Slip Plate
- Electronic Direction Control
- Premium tires with 3 layers construction for an extra comfortable ride

#### Added Operator Protection and Awareness

- LED work lights
- Premium LCD/LED Display
- Presence Detection System (PDS)
- Dual Action Parking Brake Handle







## GP25N5 - 5,000 lb. Capacity LP Pneumatic Tire Lift Truck

- Ground speed control
- Password lock
- Anti-Restart Ignition Key Switch
- Transmission Return to Neutral for Start

### KEY FEATURES & BENEFITS

<b>EXCEPTIONAL PERFORMANCE</b>	After years of expertise and leadership in material handling solutions, Cat® lift trucks engineered a game changing powertrain for exceptional performance in the toughest material handling conditions. The GK engine family is the industry's most powerful and respected industrial engine family in its class. The engines delivers outstanding performance while maintaining the highest standards of durability and reliability. With a proven track record for quality and dependability, the rugged PowerShift transmission delivers a remarkable performance optimizing engine power and response.
<b>OPERATOR COMFORT</b>	A forklift's productivity is not only measured by a strong powertrain, but also by its operator comfort and efficiency. This is why Cat® lift trucks designed an ergonomic operator compartment optimizing comfort, visibility and productivity for long and demanding shifts.
<b>PRESENCE DETECTION SYSTEM</b>	The Patented PDS system, standard on all Cat® lift trucks helps ensure that the operator is following the correct operating procedures. Once the operator leaves the seat and does not engage the park brake, the PDS will disengage the transmission and all hydraulic functions to the mast while activating an audible alarm and a flashing visual warning.
<b>ENGINE PROTECTION SYSTEM</b>	The EPS monitors the Engine Coolant Temperature, Transmission Oil Temperature and Engine Oil Pressure. The system issues a warning and cuts back on engine rpm when parameters go out of range. It also monitors the brake fluid level and warns when the level is too low. The EPS also issues periodic maintenance alerts by displaying them on the screen.
<b>PREMIUM LED/LCD DISPLAY</b>	The standard premium LED/LCD display is connected to the monitoring system alerting the operator if one of the systems is not in check. It includes a Speedometer, Hour Meter, Clock, Travel Direction, Low Fuel Indicator or Fuel Gage, Coolant Temperature, Battery Charging Status, Operator Passcode capability and other systems-related indicators & warnings.

### CONFIGURATION

<b>CHASSIS</b>	1	5,000 lb. Capacity LP Pneumatic Tire Lift Truck
<b>MAST</b>	1	188.0" MFH / 84.5" OAL / 36.0" FFH Triplex
<b>RATINGS &amp; STANDARDS</b>	1	UL Approved
<b>RATINGS &amp; STANDARDS</b>	1	EPA Compliant
<b>FORKS</b>	1	1.6" X 3.9" X 48" Hook Type - Pallet
<b>POWERTRAIN</b>	1	GK25 2.5L 4 Cylinder Gas and LPG Engine
<b>POWERTRAIN</b>	1	Single Speed Powershift Transmission
<b>CARRIAGE</b>	1	39.5" Wide ITA Class II Hook Type Carriage
<b>SIDESHIFTER</b>	1	39.5" Wide ITA Class II Hang-On Sideshifter
<b>DRIVE &amp; STEER TIRES</b>	1	Solid Pneumatic Single Drive And Steer Tires
<b>LOAD BACKREST</b>	1	48" High Load Backrest
<b>HYDRAULIC ACTIVATION</b>	1	4-Section Valve With Cowl Mounted Levers
<b>HYDRAULIC HOSEING OPTIONS</b>	1	Dual Function Internal Hoseing - Triplex Mast
<b>TILT CYLINDERS</b>	1	Standard Tilt Cylinders
<b>OVERHEAD GUARD</b>	1	Standard Overhead Guard
<b>PRODUCTIVITY OPTIONS</b>	1	Horizontal Tank Bracket
<b>PRODUCTIVITY OPTIONS</b>	1	Premium LCD/LED Display
<b>PRODUCTIVITY OPTIONS</b>	1	Engine Protection System
<b>PRODUCTIVITY OPTIONS</b>	1	Separate Brake & Inching Pedals
<b>PRODUCTIVITY OPTIONS</b>	1	Ground Speed Control
<b>PRODUCTIVITY OPTIONS</b>	1	Fuel Saver Mode
<b>SPECIAL APPLICATIONS OPTIONS</b>	1	Aluminum Core Corrugated Fin Radiator
<b>SPECIAL APPLICATIONS OPTIONS</b>	1	Presence Detection System
<b>SPECIAL APPLICATIONS OPTIONS</b>	1	Heavy Duty Counterweight Grill
<b>WARNING / LIGHT OPTIONS</b>	1	Two Forward LED Working Lights On OHG

WARNING / LIGHT OPTIONS	1	Electronic Back-up Alarm
WARNING / LIGHT OPTIONS	1	Rear LED Stop/Tail/Back-up Combination Lights
SEAT	1	Full Suspension Vinyl Seat
ACCESSORIES	1	Orange Seat Belt
ACCESSORIES	1	Rubber Floor Mat
ACCESSORIES	1	Operator Convenience Tray With Clipboard Holder
ACCESSORIES	1	Fire Extinguisher - Mounted To OHG Leg
LP TANK	1	Steel LP Tank, Horizontal Fill - 43.5#
LANGUAGE MARKINGS	1	English Language Markings North/South America

**GP25N5 WARRANTY**

GP25N5      Standard Warranty - 12 Months, 2000 Hours Full Coverage; 24 Months, 4000 Hours Powertrain

**ACCEPTANCE AS CONTRACT OF SALE**

Authorized agent understands and agrees to the Terms and Conditions as included with this Quote

Cash Sales

Tractor & Equipment

Authorized Agent Signature

Authorized Agent Signature

Date Signed

Date Signed

Printed name

Anne Ernst  
Printed name

Title/Position

Inventory Control Analyst  
Title/Position

Customer Purchase Order Number

*Please consult with your accountant, tax professional, or equivalent to confirm characterization of equipment and tax implications. Other financing options and terms may be available (including financing sales tax). Please consult with your product specialist representative for additional financing options.*

All prime sales are due net 10 days. A one and one half (1 1/2%) service charge or the highest amount permitted by law is added on all delinquent accounts. Credit terms are subject to periodic review and may be modified at T&E's discretion.



## City of Cody Agenda Request Form



In order to fully prepare the Council for their meetings, individuals wishing to appear before the Council are asked to complete the following information prior to placement on the agenda. You will be notified of the date you have been scheduled to appear. You may also be contacted by City staff prior to the meeting to address concerns or provide additional information. Some requests may not require appearing before the Council for approval.

Please provide the following detailed information relating to your concern or request. **This form (and any relevant attachments) should be submitted in a timely manner, preferably at least 14 days prior to allow sufficient time for internal review. Untimely submission may result in the inability to be considered for approval.** Council packets are prepared in advance prior to Tuesday meetings. Meetings are held the first and third Tuesday of each month. Please complete the following information in full and return to City of Cody PO Box 2200 Cody, WY 82414 (Fax 307-527-6532),

\*\*\*\*\*

Name of person to appear before the Council Andy Quick

Organization Represented Wild West Paddle Club

Date you wish to appear before the Council November 30, 2021 (Next City Council Meeting)

Email Address wildwestpaddleclub@gmail.com Telephone 307-751-4348

Names of all individuals who will speak on this topic Andy Quick

Event Title (if applicable) Wild West River Fest

Date(s) of Event (if applicable) August 13, 2022

Location of Event (if applicable) Cody City Park

**Full description** of topic to be discussed (include all relevant information including any street closures, times of event, any special requirements or request etc., attach additional sheet if necessary and map showing location of event where applicable)

Wild West Paddle Club is a non-profit, local group that teaches youth to whitewater kayak. We also put on a River Festival to raise money for our club through registration fees, merchandise sales, and beer sales. We would like to use the City Park at approximately 3pm to set up for a free concert for the community. The concert would run from 6-9pm. We would like to have either an open container permit or malt beverage permit to sell beer provided Tanager beverages. We have asked 307 Pizza as a food truck for the event too.

Which City employee(s) have you spoken to about this issue? \_\_\_\_\_

Signature  Date 11/22/2021

## **AGENDA ITEM SUMMARY REPORT**

### **Acceptance of the June 30, 2021 Audit Report & Financial Statements**

#### **ACTION TO BE TAKEN:**

Accept the auditor's report and related financial statements for the fiscal year ending June 30, 2021.

#### **SUMMARY OF INFORMATION:**

Seckman & Thomas, Certified Public Accountants, P.C. completed the audit of the City's financial statements for the fiscal year ended June 30, 2021 and issued their independent auditor's reports as of November 19, 2021. Due to the amount of federal funds expended, a single audit was also completed to ensure compliance with federal regulations.

The City received a clean opinion including:

- The City of Cody's financial statements were prepared in compliance with accounting principles generally accepted in the United States.
- There were no deficiencies in internal controls identified that were considered material weaknesses.
- The results of audit tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.
- The City of Cody complied with all requirements for its major federal programs.

#### **FISCAL IMPACT**

None

#### **ATTACHMENTS**

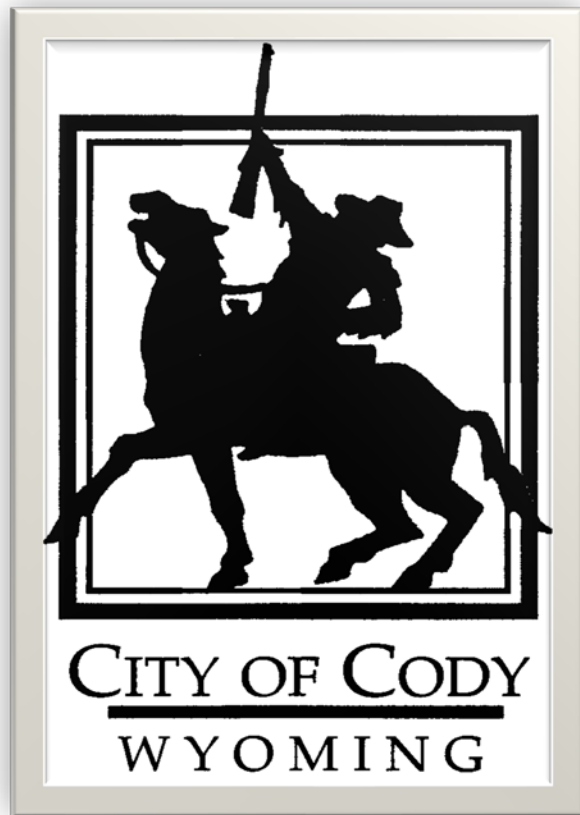
1. Basic Financial Statements for the fiscal year ended June 30, 2021

#### **AGENDA & SUMMARY REPORT TO:**

James Seckman 307-754-2141 jbseckmancpa@gmail.com

**AGENDA ITEM NO. \_\_\_\_\_**





# BASIC FINANCIAL STATEMENTS JUNE 30, 2021





City of Cody, Wyoming  
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For the fiscal year ended June 30, 2021

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CITY OF CODY  

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WYOMING

## INDEPENDENT AUDITOR'S REPORT

To the Honorable Mayor and Members of the City Council  
City of Cody, Wyoming

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Cody, Wyoming, as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### **Opinions**

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Cody, Wyoming, as of June 30, 2021, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.



**Other Matters***Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information on pages 3-12 and 57-59 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.


*Other Information*

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City of Cody, Wyoming's basic financial statements. The combining and individual nonmajor fund financial statements, and schedule of changes in net pension liability and related ratios are presented for purposes of additional analysis and are not a required part of the basic financial statements. The schedule of expenditures of federal awards is presented for purposes of additional analysis as required by Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and is not a required part of the financial statements.

The supplementary financial information and the schedule of expenditures of federal awards are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary financial information and the schedule of expenditures of federal awards are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

**Other Reporting Required by Government Auditing Standards**

In accordance with Government Auditing Standards, we have also issued our report dated November 19, 2021, on our consideration of the City of Cody, Wyoming's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the City of Cody, Wyoming's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the City of Cody, Wyoming's internal control over financial reporting and compliance.

  
Seckman & Thomas, Certified Public Accountants, PC

Powell, Wyoming  
November 19, 2021



City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

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The management of the City of Cody, Wyoming offers the readers of the City's financial statements this narrative overview and analysis for the year ended June 30, 2021. When read in conjunction with the financial statements, this section's financial highlights, overview and analysis should assist the reader in gaining a more complete knowledge of the City's financial performance.

**Financial Highlights**

- The City of Cody's net position at the close of the current fiscal year was \$96,277,801, an increase of \$4,449,987 over the prior fiscal year. Total net position is comprised of the following:
  - (1) Net investment in capital assets of \$72,695,454 (76%) include property and equipment, net of accumulated depreciation, and reduced for outstanding debt related to the purchase or construction of capital assets.
  - (2) Restricted net position of \$3,824,738 (4%) is restricted by constraints imposed from outside the City such as voters, grantors, laws or regulations, or by policy of the City Council.
  - (3) Unrestricted net position of \$19,757,609 (20%) represents the portion available to maintain the City's continuing obligations to citizens and creditors.
- Total expenses during the year were \$27,126,272 compared to total revenues of \$31,576,259.
- The unassigned fund balance for the General Fund was \$11,023,050 or approximately 106% of total General Fund expenditures for the fiscal year.
- Net capital assets in the governmental-type funds decreased by \$357,083 and increased by \$4,029,123 in the business-type funds
- Assessed Valuation: the assessed valuation for the City of Cody for 2021 was \$156,641,970, an increase of \$13,371,377 or approximately 9% over 2020.

**Overview of the Financial Statements**

The annual report consists of three parts: 1) Management's Discussion and Analysis, 2) the basic financial statements, and 3) required supplementary information. The basic financial statements include two kinds of statements that present different views of the City.

The first two statements are government-wide financial statements that provide both long-term and short-term information about the City's overall financial status similar to a private-sector company.

The remaining statements are fund financial statements that focus on individual parts of the City government, reporting City operations in more detail than what is presented in the government-wide statements.

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

	Government-wide Statements	Fund Statements	
		Governmental Funds	Proprietary Funds
Scope	Entire City government	The activities of the City that are not proprietary such as administration, police, streets, and parks & recreation	Activities the City operates similar to private businesses such as the solid waste, water, wastewater, and electric utilities
Required financial statements	Statement of Net Position, Statement of Activities	Balance Sheet, Statement of Revenues, Expenditures, and Changes in Fund Balance	Statement of Net Position, Statement of Revenues, Expenses, and Changes in Net Position, Statement of Cash Flows
Accounting basis and measurement focus	Accrual accounting and economic resources focus	Modified accrual accounting and current financial resources focus	Accrual accounting and economic resources focus
Type of asset/liability information	All assets and liabilities, both financial and capital, and short-term and long-term	Only assets expected to be used up and liabilities that become due during the year or soon thereafter, no capital assets are included	All assets and liabilities both financial and capital, and short-term and long-term
Type of inflow/outflow information	All revenues and expenses during the year, regardless of when cash is received or paid	Revenues for which cash is received during or soon after the end of the fiscal year, expenditures when goods or services have been received and payment is due	All revenues and expenses during the year, regardless of when cash is received or paid

### **Government-Wide Financial Statements**

The *government-wide financial statements* are designed to provide readers with a broad overview of the City of Cody's finances, in a manner similar to a private-sector business. The *statement of activities* presents information reflecting how Cody's net position has changed during the fiscal year just ended.

The government-wide financial statements distinguish the functions of Cody that are principally supported by taxes and intergovernmental revenues (*governmental activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (*business-type activities*). The governmental activities include general government, administrative services, public safety, parks, public facilities, recreation, and public works. The business-type activities include solid waste collection, water, wastewater and electric.

### **Fund Financial Statements**

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The City of Cody, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the City of Cody can be divided into three categories: governmental funds, proprietary funds, and fiduciary funds.

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

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- **Governmental Funds** - Governmental funds are used to account for essentially the same functions reported in governmental activities in the government-wide financial statements. These funds focus on (1) how cash and other financial assets that can readily be converted to cash flow in and out and (2) the balances left at year-end that are available for spending. Consequently, the governmental funds statements provide a detailed short-term view that helps you determine whether there are more or fewer financial resources that can be spent in the near future to finance the City's programs. Because this information does not encompass the additional long-term focus of the government-wide statements, we provide additional information at the bottom of the governmental funds statement, or on the subsequent page, that explains the relationship (or differences) between them.
- **Proprietary funds** - Services for which the City charges customers a fee are generally reported in proprietary funds. Proprietary funds, like the government-wide statements, provide both long- and short-term financial information.
- **Fiduciary Funds** - The fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statement because the resources of those funds are not available to support the City of Cody's own programs. The accounting used for fiduciary funds is much like that used for proprietary funds.

#### **Notes to the Financial Statements**

The notes to the financial statements are considered an integral part of the basic financial statements since they provide additional information needed to gain a full understanding of the data provided in both the government-wide and fund financial statements. The notes are found on pages of this document.

#### **Supplemental Information**

In addition to the basic financial statements, which include the accompanying notes, this report also presents *required supplemental information*. Included is a budgetary comparison for the General Fund, the Specific Purpose Tax Fund, and Lodging Tax Fund comparing actual results (using the basis of budgeting) with the original budget and the final amended budget.

Other supplemental information included with the basic financial statements are the combining balance sheet and combining statement of revenues, expenditures and changes in fund balance schedules for the non-major governmental funds (special revenue and capital projects), and schedule of net changes in pension liability and pension contributions.

#### **Government-Wide Financial Analysis**

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. The largest portion of Cody's net position reflects its investment in capital assets (e.g. land, buildings, machinery & equipment, and infrastructure), less any debt used to acquire those assets that is still outstanding. These assets are used to provide services to citizens; consequently, they are not available for future spending.

The following summary of net position and changes in net position are presented for the current fiscal year, with comparison totals for the prior fiscal year.

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

Condensed Statement of Net Position as of June 30 each year

	Governmental Activities		Business-type Activities		Total Primary Government	
	2021	2020	2021	2020	2021	2020
Current and other assets	\$ 17,807,812	\$ 15,434,959	\$ 21,660,449	\$ 20,838,355	\$ 39,468,261	\$ 36,273,314
Capital assets	30,227,822	30,584,905	42,467,632	38,438,509	72,695,454	69,023,414
Deferred outflows - pensions	<u>1,043,272</u>	<u>1,264,418</u>	<u>149,103</u>	<u>198,854</u>	<u>1,192,375</u>	<u>1,463,272</u>
Total assets & deferred outflows	\$ 49,078,906	\$ 47,284,282	\$ 64,277,184	\$ 59,475,718	\$ 113,356,090	\$ 106,760,000
Long-term debt outstanding	\$ 221,329	\$ 194,763	\$ 3,234,655	\$ 2,708,387	\$ 3,455,984	\$ 2,903,150
Other current liabilities	2,109,811	750,279	2,384,646	1,910,269	4,494,457	2,660,548
Deferred inflows	2,665,947	2,418,845	343,301	328,442	3,009,248	2,747,287
Net pension liability	<u>4,612,467</u>	<u>4,676,944</u>	<u>1,506,133</u>	<u>1,944,257</u>	<u>6,118,600</u>	<u>6,621,201</u>
Total liabilities	\$ 9,609,554	\$ 8,040,831	\$ 7,468,735	\$ 6,891,355	\$ 17,078,289	\$ 14,932,186
Net position						
Net investment in capital assets	\$ 30,227,822	\$ 30,584,905	\$ 42,467,632	\$ 38,438,509	\$ 72,695,454	\$ 69,023,414
Restricted	3,714,327	5,355,543	110,411	110,411	3,824,738	5,465,954
Unrestricted	<u>5,527,203</u>	<u>3,303,003</u>	<u>14,230,406</u>	<u>14,035,443</u>	<u>19,757,609</u>	<u>17,338,446</u>
Total net position	\$ 39,469,352	\$ 39,243,451	\$ 56,808,449	\$ 52,584,363	\$ 96,277,801	\$ 91,827,814

Changes in Net Position as of June 30 each year

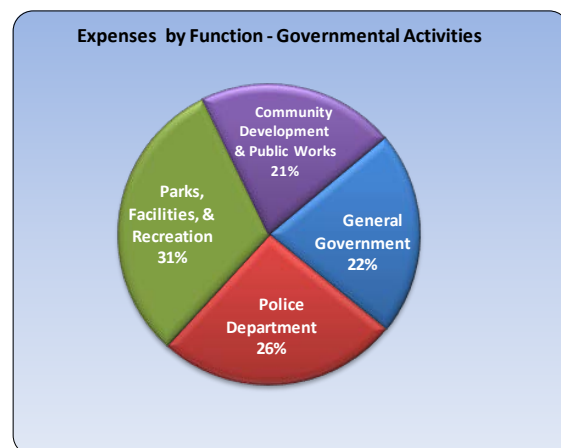
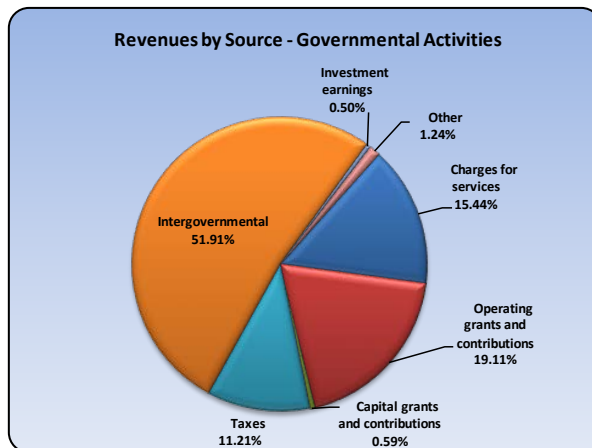
	Governmental Activities		Business-type Activities		Total Primary Government	
	2021	2020	2021	2020	2021	2020
Revenues:						
Program revenues						
Charges for services	\$ 1,692,282	\$ 1,569,952	\$ 19,330,553	\$ 18,836,969	\$ 21,022,835	\$ 20,406,921
Operating grants and contributions	2,094,228	289,208	2,500	4,377	2,096,728	293,585
Capital grants and contributions	64,777	631,407	1,143,879	834,556	1,208,656	1,465,963
General revenues						
Taxes	1,228,895	1,161,061	0	0	1,228,895	1,161,061
Intergovernmental	5,690,418	5,577,818	0	0	5,690,418	5,577,818
Investment earnings	54,824	192,590	39,739	191,257	94,563	383,847
Other	<u>135,606</u>	<u>102,577</u>	<u>98,558</u>	<u>201,321</u>	<u>234,164</u>	<u>303,898</u>
Total Revenues	10,961,030	9,524,613	20,615,229	20,068,480	31,576,259	29,593,093
Expenses:						
General Government	2,265,359	1,037,807	0	0	2,265,359	1,037,807
Police Department	2,687,192	3,278,179	0	0	2,687,192	3,278,179
Parks, Facilities, & Recreation	3,203,036	3,530,488	0	0	3,203,036	3,530,488
Community Development & Public Works	2,181,167	2,317,243	0	0	2,181,167	2,317,243
Proprietary	<u>0</u>	<u>0</u>	<u>16,789,518</u>	<u>17,201,864</u>	<u>16,789,518</u>	<u>17,201,864</u>
Total Expenses	10,336,754	10,163,717	16,789,518	17,201,864	27,126,272	27,365,581
Other Sources:						
Transfers-internal activity	<u>(398,376)</u>	<u>(722,212)</u>	<u>398,376</u>	<u>722,212</u>	<u>-</u>	<u>-</u>
Total Transfers	<u>(398,376)</u>	<u>(722,212)</u>	<u>398,376</u>	<u>722,212</u>	<u>-</u>	<u>-</u>
Change in net position	225,900	-1,361,316	4,224,087	3,588,828	4,449,987	2,227,512
						0
Net position - July 1	39,243,451	40,604,767	52,584,362	48,995,535	91,827,814	89,600,302
Net position - June 30	\$ 39,469,352	\$ 39,243,451	\$ 56,808,449	\$ 52,584,363	\$ 96,277,801	\$ 91,827,814

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

### Governmental Activities

The focus of the City's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. In particular, unreserved fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

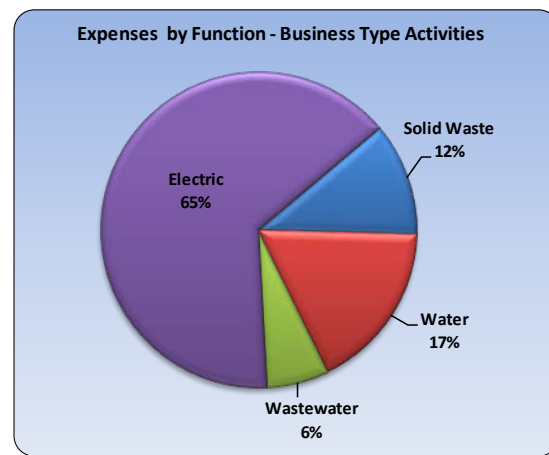
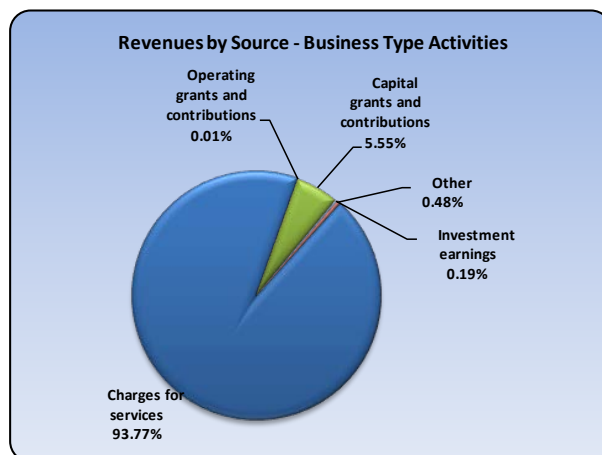
During the current fiscal year, the net position for governmental activities was \$39,469,352, an increase of \$225,901 over the previous fiscal year. The following charts illustrate governmental revenues by source and the governmental expenses by function as reported on the statement of changes in net position.



### Business-type Activities

In the City's business-type funds the "economic resources" measurement focus is applied. The accounting objectives of this measurement focus are the determination of operating income, changes in net assets (or cost recovery), financial position and cash flows.

During the current fiscal year, the net position for business-type activities was \$56,808,449, an increase of \$4,224,087 over the previous fiscal year. The following charts illustrate business-type revenues by source and the business-type expenses by function as reported on the statement of changes in net position.





City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

**Summary of Changes Affecting Net Position**

	<u>Governmental</u>	<u>Business-Type</u>
	Funds	Funds
Assets and Deferred Outflows of Resources		
Change in current assets	\$ 2,372,853	\$ 822,094
Change in capital assets	(357,083)	4,029,123
Change in deferred outflows	(221,146)	(49,751)
	<u>\$ 1,794,624</u>	<u>\$ 4,801,466</u>
Liabilities and Deferred Inflows of Resources		
Change in current liabilities	\$ 1,359,532	\$ 474,377
Change in long term debt	26,566	526,268
Change in deferred inflows	247,102	14,859
Changes in net pension liability	(64,477)	(438,124)
	<u>\$ 1,568,723</u>	<u>\$ 577,380</u>
Revenues		
Change in charges for services	\$ 122,330	\$ 493,584
Change in operating grants & contributions	1,805,020	(1,877)
Change in capital grants & contributions	(566,630)	323,423
Change in taxes	67,834	-
Change in intergovernmental revenues	112,600	-
Change in Investment earnings	(137,766)	(151,518)
Change in other revenue	33,029	(116,863)
	<u>\$ 1,436,417</u>	<u>\$ 546,749</u>
Expenses		
Change in General Government	\$ 1,227,552	\$ -
Change in Police	(590,987)	-
Change in Parks, Facilities, & Recreation	(327,452)	-
Change in Community Development & Public Works	(136,076)	-
Change in Solid Waste	-	(303,694)
Change in Water	-	(72,572)
Change in Wastewater	-	(50,554)
Change in Electric	-	3,077
	<u>\$ 173,037</u>	<u>\$ (423,743)</u>
Interfund Activity		
Change in Interfund Transfers	<u>\$ 323,836</u>	<u>\$ 323,836</u>

**General Fund Budgetary Changes**

The City adopts an annual budget for all funds. The City Council may adopt budget amendments during the year for supplemental appropriations which are generally contingent upon new or additional revenue sources or the spending of reserves. There was an increase of budgeted revenue of \$136,086 and an increase in expense appropriations in the amount of \$318,819 between the original and final amended budget in the General Fund. This was mainly due to grant award changes after the original budget was approved and the carry-over of incomplete projects from the prior fiscal year.

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

	Original	Final	Changes
Revenue			
General Fund Budget	\$ 8,043,237	\$ 8,179,323	\$ 136,086
	\$ 8,043,237	\$ 8,179,323	\$ 136,086
Expenses			
General Fund Budget	\$ 9,288,350	\$ 9,607,169	\$ 318,819
	\$ 9,288,350	\$ 9,607,169	\$ 318,819

### **Capital Assets**

The City of Cody's net investment in capital assets for its governmental and business-type activities as of June 30th amounted to \$72,695,454, an increase of \$3,672,037 over the previous fiscal year. This investment in capital assets includes land, easements, buildings & improvements, machinery, equipment, infrastructure associated with the water, wastewater and electric distribution systems, as well as streets, trails and park facilities. The following summary of capital assets is presented for the current fiscal year with comparison totals for the prior fiscal year. Additional information pertaining to capital assets activity is available in the notes to the financial statements.

City of Cody's Capital Assets Net of Depreciation						
As of June 30 each year						
	Governmental Activities		Business-type Activities		Total	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Land	\$2,418,607	\$2,418,607	\$614,332	\$614,332	\$3,032,939	\$3,032,939
Intangibles	52,481	76,400	12,855	24,900	65,336	101,300
Buildings	14,078,495	14,078,495	1,623,979	1,623,979	15,702,474	15,702,474
Improvements	5,965,966	6,388,145	23,166	139,788	5,989,132	6,527,934
Furniture & Fixtures	943,179	916,179	-	-	943,179	916,179
Machinery & Equipment	6,656,390	6,390,711	5,846,367	4,781,624	12,502,757	11,172,336
Infrastructure	19,867,585	19,883,643	53,595,327	53,334,587	73,462,911	73,218,230
Construction in Progress	406,907	2,260	8,099,362	4,229,449	8,506,268	4,231,710
Total Capital Assets	\$50,389,609	\$50,154,440	\$69,815,387	\$64,748,660	\$120,204,996	\$114,903,100
Less Accumulated Depreciation	\$ (20,161,788)	\$ (19,569,533)	\$ (27,347,754)	\$ (26,310,149)	\$ (47,509,542)	\$ (45,879,682)
Total Net Capital Assets	\$30,227,822	\$30,584,907	\$42,467,632	\$38,438,511	\$72,695,454	\$69,023,417

Major capital asset acquisitions during the current fiscal year include:

- Construction in Progress \$4,280,548
  - Sidewalks and ADA ramps
  - Chip sealing
  - Electric lines
  - Wastewater treatment facility
  - Beacon Hill water tank
  - Waterline replacements
- Infrastructure \$333,295
  - ADA ramps
  - YRA parking lot lighting
  - Electric lines
  - Sewer line extension

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

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- Machinery & Equipment \$1,802,979
  - Replacement vehicles & equipment
  - Replacement sanitation trucks
  - Audio/Video system
  - Steel dumpsters and rollout containers
  - Trailers
  - Excavator
  - Street sweeper

### **Outstanding Debt and Long-Term Liabilities**

As of June 30, 2021, the City of Cody's outstanding debt and long-term liabilities totaled \$10,035,187, a decrease of \$30,699 over the prior fiscal year. The City's debt consisted of loans payable for the Wastewater Treatment Facility project and the City's long-term liabilities consisted of compensated absences payable, customer deposits, and net pension liability. As of June 30, 2021, the City of Cody's long-term liabilities totaled \$6,908,292, a decrease of \$556,967 over the prior fiscal year. The City's long-term liabilities consisted of the following:

City of Cody -Outstanding Debt As of June 30 each year						
	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Loans Payable	0	0	3,126,895	2,600,627	3,126,895	2,600,627
Total Outstanding Debt	\$0	\$0	\$3,126,895	\$2,600,627	\$3,126,895	\$2,600,627

City of Cody -Long Term Liabilities As of June 30 each year						
	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Accrued Compensated Absence Payable	\$443,692	\$435,233	\$184,075	\$216,450	\$627,767	\$651,683
Customer Deposit Liability	2,349	15,900	159,576	176,475	\$161,925	\$192,375
Net Pension Liability	4,612,467	4,676,944	1,506,133	1,944,257	\$6,118,600	\$6,621,201
Total Long Term Liabilities	\$5,058,508	\$5,128,077	\$1,849,784	\$2,337,182	\$6,908,292	\$7,465,259

### **Significant Variations and Currently Known Facts**

The State of Wyoming, by constitution, does not have a state personal income tax; therefore, it operates primarily using taxes and other sources received through the State. As a result, the City of Cody relies heavily on sales and use tax and a limited array of other revenues passed through from the State and well as locally generated revenues such as franchise fees, business licenses, and charges for services to provide services to the community. There are also a limited number of recurring and non-recurring federal, state and local grants that benefit the City of Cody. For business-type services such as solid waste collection, water distribution, wastewater treatment and electric distribution the users of the services pay a related fee or charge associated with the activity.

The FY 2020-2021 adopted budget represents a continuation of adjusting costs to available resources and an estimated 20% decrease in intergovernmental revenue and charges for services. As a result, City-wide expense budgets for FY2020-2021 were also adjusted in anticipation of ongoing revenue losses. Some vacant positions were not filled, maintenance and capital improvement projects were delayed, and merit and COLA increases for employees were suspended.

City of Cody, Wyoming  
Management Discussion and Analysis  
June 30, 2021

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During the year however, the City of Cody did not experience the significant revenue decline that was expected when the budget was adopted. During the first six months of the fiscal year (July through December), sales and use tax revenues were down about 7%. The last six months of the fiscal year showed consistent increases resulting in sales and use tax revenues coming in within 1% of the previous fiscal year. This trend is continuing into the 2021-2022 fiscal year, with receipts through November 2021 exceeding receipts for the same period in the 2020-2021 fiscal year by 23%. Overall General Fund actual revenues exceeded budgeted revenues by \$950,557. Due to the better-than-expected revenue picture, merit pay was reinstated at mid-year in January 2021.

Property values were not affected by the pandemic and continue to increase. Surprisingly the 2021 assessed valuation increased by 9% which the assessor's office has speculated to be due to relocations from out of state workers who are no longer restricted to working in offices.

Due to COVID-19 the City incurred unanticipated expenses in dealing with the public health crisis and complying with health orders. The State of Wyoming received a large funding allocation from the Federal Coronavirus Aid, Relief, and Economic Security program (CARES). The State made some of these funds available to local governments to provide funding to address unforeseen financial needs and risks created by the COVID-19 crisis. The City of Cody was awarded \$1,662,780 under this program for COVID response supplies and equipment, personnel costs, and tele-work technology purchases.

In addition to the CARES act funding, the City also received the first tranche of funds in June 2021 from the U.S. Department of the Treasury under the American Rescue Plan Act (ARPA). This act provides an infusion of funds to state and local government entities to address the economic fallout of the pandemic. The second tranche of funds will be received in June 2022. Under the Act, governmental entities have until December 2024 to obligate funds and through December 2026 to spend the funds. Current plans for this funding include upgrades at the auditorium, replacing the HVAC system at City Hall, procuring Mobile Data Terminals for the Police Department, replacing positions not filled due to the pandemic, and completing a salary study of the City's pay scale.

Hiring and retaining employees has been a concern during the last fiscal year and the City of Cody has not been immune to the "Great Resignation" phenomenon. Several positions have turned over since last fiscal year and the number of applicants for open positions have decreased. The salary study that will be paid for through the ARPA funds will hopefully provide the City with options for a more attractive compensation plan for recruiting and retaining employees.

The challenge is that local governments have few options to raise revenues on their own and decreases in service levels substantial enough to preclude the use of reserves to balance the budget would have a significant impact on citizens and visitors. The volatility of a tourist-based economy and the devastating economic impact of the current health crisis highlights the necessity to focus on long-term, recurring changes that will increase revenues and decrease expenses.

### **Requests for Information**

The City of Cody's financial statements are designed to provide its users (citizens, taxpayers, customers, investors and creditors) with a general overview of Cody's finances and to demonstrate Cody's accountability. Questions concerning any of the information presented in this report or requests for additional information should be sent to:

Attn: Finance Officer City of Cody PO Box 2200 Cody, WY 82414 [finance@cityofcody.com](mailto:finance@cityofcody.com)

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CITY OF CODY  

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WYOMING



City of Cody, Wyoming  
Statement of Net Position  
June 30, 2021

	Governmental Activities	Business-Type Activities	Total
<b>ASSETS:</b>			
Cash and cash equivalents	\$ 12,905,759	\$ 15,797,448	\$ 28,703,207
Investments	2,574,026	1,851,136	4,425,162
Accounts receivable, net of allowance	222,252	2,661,327	2,883,579
Franchise tax receivable	-	-	-
Court fine receivable, net of allowance	28,004	-	28,004
Property Taxes, net of allowance	799,984	-	799,984
Due from other governments	994,725	507,838	1,502,563
Inventory	98,176	683,124	781,300
Prepaid expenses	182,537	-	182,537
Restricted assets:			
Cash and cash equivalents	2,349	159,576	161,925
Capital assets:			
Land and construction in progress	2,825,512	8,713,691	11,539,203
Other capital assets, net of depreciation	27,402,310	33,753,941	61,156,251
Total Assets	<u>48,035,634</u>	<u>64,128,081</u>	<u>112,163,715</u>
<b>DEFERRED OUTFLOWS OF RESOURCES:</b>			
Deferred outflows related to pensions	1,043,272	149,103	1,192,375
Total Assets and Deferred Outflows of Resources	<u>49,078,906</u>	<u>64,277,184</u>	<u>113,356,090</u>
<b>LIABILITIES:</b>			
Accounts payable	811,881	1,042,874	1,854,755
Related party payables	-	989,604	989,604
Accrued liabilities	185,120	54,069	239,189
Accrued interest expense	-	34,353	34,353
Compensated Absences	222,363	76,315	298,678
Customer deposits	2,349	159,576	161,925
Other payables	30,803	27,855	58,658
Due to other governments	857,295	-	857,295
Long-term liabilities:			
Compensated Absences	221,329	107,760	329,089
Capital Construction Loans	-	3,126,895	3,126,895
Net Pension Liability	4,612,467	1,506,133	6,118,600
Total Liabilities	<u>6,943,607</u>	<u>7,125,434</u>	<u>14,069,041</u>
<b>DEFERRED INFLOWS OF RESOURCES:</b>			
Deferred inflows related to property taxes	771,618	-	771,618
Deferred inflows related to pensions	1,894,329	343,301	2,237,630
Total Deferred Inflows of Resources	<u>2,665,947</u>	<u>343,301</u>	<u>3,009,248</u>
Total Liabilities and Deferred Inflows of Resources	<u>9,609,554</u>	<u>7,468,735</u>	<u>17,078,289</u>
<b>NET POSITION</b>			
Net investment in capital assets	30,227,822	42,467,632	72,695,454
Restricted for:			
Capital projects	3,591,642	-	3,591,642
Debt service	-	110,411	110,411
Public Safety	122,685	-	122,685
Unrestricted	5,527,203	14,230,406	19,757,609
Total Net Position	<u>\$ 39,469,352</u>	<u>\$ 56,808,449</u>	<u>\$ 96,277,801</u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Activities  
For the fiscal year ended June 30, 2021

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position		
		Charges for Services & Fines	Operating Grants & Contributions	Capital Grants & Contributions	Governmental Activities	Business-Type Activites	Total
<b>PRIMARY GOVERNMENT</b>							
Governmental activities:							
General Government	\$ 2,265,359	\$ 239,065	\$ 1,662,780	\$ 27,000	\$ (336,514)	\$ -	\$ (336,514)
Police Department	2,687,192	4,629	125,692	-	(2,556,871)	-	(2,556,871)
Parks & City Facilities	1,109,044	119,377	887	-	(988,780)	-	(988,780)
Community Development & Public Works	2,181,167	360,614	-	37,777	(1,782,776)	-	(1,782,776)
Recreation Center	2,093,992	968,597	304,869	-	(820,526)	-	(820,526)
Total Governmental Activities	<u>\$ 10,336,754</u>	<u>\$ 1,692,282</u>	<u>\$ 2,094,228</u>	<u>\$ 64,777</u>	<u>\$ (6,485,467)</u>	<u>\$ -</u>	<u>\$ (6,485,467)</u>
Business-Type Activities:							
Solid Waste	\$ 1,935,691	\$ 2,320,508	\$ 2,500	\$ 941,668	\$ -	\$ 1,328,985	\$ 1,328,985
Water	2,923,670	3,439,970	-	934,843	-	1,451,143	1,451,143
Wastewater	1,061,461	1,428,809	-	(718,532)	-	(351,184)	(351,184)
Electric	10,868,696	12,141,266	-	-	-	1,272,570	1,272,570
Total Business-Type Activities	<u>\$ 16,789,518</u>	<u>\$ 19,330,553</u>	<u>\$ 2,500</u>	<u>\$ 1,157,979</u>	<u>\$ -</u>	<u>\$ 3,701,514</u>	<u>\$ 3,701,514</u>
<b>TOTAL PRIMARY GOVERNMENT</b>	<u><u>\$ 27,126,272</u></u>	<u><u>\$ 21,022,835</u></u>	<u><u>\$ 2,096,728</u></u>	<u><u>\$ 1,222,756</u></u>	<u><u>\$ (6,485,467)</u></u>	<u><u>\$ 3,701,514</u></u>	<u><u>\$ (2,783,953)</u></u>
General Revenues:							
Taxes					\$ 1,228,895	\$ -	1,228,895
Intergovernmental					5,690,418	-	5,690,418
Investment Income					54,824	39,739	94,563
Gain(Loss) on Disposal of Assets					3,556	-	3,556
Miscellaneous					132,050	84,458	216,508
Transfers					(398,376)	398,376	-
Total General Revenues					<u>\$ 6,711,367</u>	<u>\$ 522,573</u>	<u>7,233,940</u>
Change in Net Position					225,900	4,224,087	4,449,987
Net Position - beginning					39,243,452	52,584,362	91,827,814
Net Position - ending					<u>\$ 39,469,352</u>	<u>\$ 56,808,449</u>	<u>\$ 96,277,801</u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Balance Sheet  
Governmental Funds  
June 30, 2021

	MAJOR FUNDS						Non-Major Governmental Funds	Total Governmental Funds
	General	COVID-19 Fund	Vehicle Replacement Fund	ARPA Fund	Lodging Tax Fund	Specific Purpose Tax Fund		
<b>ASSETS:</b>								
Cash and cash equivalents	\$ 9,084,547	\$ -	\$ 2,028,035	\$ 848,807	\$ -	\$ 941,145	\$ 3,225	\$ 12,905,759
Investments	1,465,609	-	1,108,417	-	-	-	-	2,574,026
Restricted cash and cash equivalents	2,349	-	-	-	-	-	-	2,349
Accounts receivable, net of allowance								
Court fine receivable, net of allowance	28,004	-	-	-	-	-	-	28,004
Other receivables, net of allowance	219,756	-	2,496	-	-	-	-	222,252
Property tax, net of allowance	799,984	-	-	-	-	-	-	799,984
Due from other governments	994,476	-	-	-	-	249	-	994,725
Inventory	98,176	-	-	-	-	-	-	98,176
Prepaid expenses	182,537	-	-	-	-	-	-	182,537
Total Assets	12,875,438	-	3,138,948	848,807	-	941,394	3,225	17,807,812
<b>LIABILITIES</b>								
Accounts payable	322,881	-	452,788	-	-	67,012	-	842,681
Accrued other liabilities	185,120	-	-	-	-	-	-	185,120
Customer deposits	2,349	-	-	-	-	-	-	2,349
Due to other governments	8,488	-	-	848,807	-	-	-	857,295
Total Liabilities	518,838	-	452,788	848,807	-	67,012	-	1,887,445
<b>DEFERRED INFLOWS OF RESOURCES:</b>								
Deferred Revenue	61,391	-	-	-	-	-	-	61,391
Deferred Property Tax	771,618	-	-	-	-	-	-	771,618
Total Deferred Inflows of Resources	833,009	-	-	-	-	-	-	833,009
Total Liabilities & Deferred Inflows of Resources	1,351,847	-	452,788	848,807	-	67,012	-	2,720,454
<b>Fund Balances:</b>								
Nonspendable:								
Inventory/prepaid expenses	280,713	-	-	-	-	-	-	280,713
Restricted for:								
Police forfeitures	122,685	-	-	-	-	-	-	122,685
Public Improvements	-	-	-	-	-	874,382	-	874,382
Convention Center	21,100	-	-	-	-	-	-	21,100
PEG Grant	10,000	-	-	-	-	-	-	10,000
Public Art	-	-	-	-	-	-	3,225	3,225
Committed:								
Assigned:								
Capital Assets	-	-	2,686,160	-	-	-	-	2,686,160
Open space contributions	66,043	-	-	-	-	-	-	66,043
Unassigned	11,023,050	-	-	-	-	-	-	11,023,050
Total Fund Balances	11,523,591	-	2,686,160	-	-	874,382	3,225	15,087,358
Total Liabilities, Deferred Inflows of Resources & Fund Balances	\$ 12,875,438	\$ -	\$ 3,138,948	\$ 848,807	\$ -	\$ 941,394	\$ 3,225	\$ 17,807,812

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Balance Sheet  
Governmental Funds  
June 30, 2021

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**Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position:**

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<b>Total Fund Balances - Governmental Funds</b>	\$ 15,087,358
Amounts reported for governmental activities in the Statement of Net Position are different because:	
Capital assets used in governmental activities are not financial resources and therefore are not reported in the funds, net of accumulated depreciation of: \$ 30,227,819	30,227,822
Certain long-term assets are not available to pay for current fund liabilities and therefore are deferred in the funds:	
Court fine receivable	2,606
Severance taxes	58,783
	<u>61,389</u>
Certain long-term liabilities are not due and payable from current financial resources and therefore are not reported in the funds:	
Accrued compensated absences	(443,692)
	<u>(443,692)</u>
Change in accounting principle related to net pension liability	(5,463,525)
Net Position of Governmental Activities:	<u><u>\$ 39,469,352</u></u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Revenues, Expenditures Changes in Fund Balances  
Governmental Funds  
for the fiscal year ended June 30, 2021

	MAJOR FUNDS						Non-Major Governmental Funds	Total Governmental Funds
	General	COVID-19 Fund	Vehicle Replacement Fund	ARPA Fund	Lodging Tax Fund	Specific Purpose Tax Fund		
<b>REVENUES</b>								
Taxes (intergovernmental & service generated)	\$ 5,737,758	\$ -	\$ -	\$ -	\$ -	\$ 11,904	\$ -	\$ 5,749,662
Royalties	450,317	-	-	-	-	-	-	450,317
Other State Funding	719,428	-	-	-	-	-	-	719,428
Grants, Contributions, and Donations	431,448	1,662,780	-	-	-	37,777	-	2,132,005
Fines & Forfeitures	109,959	-	-	-	-	-	-	109,959
Charges for Services:								
General Government Fees	140,325	-	-	-	-	-	-	140,325
Police Fees	4,629	-	-	-	-	-	-	4,629
Parks & City Facilities Fees	119,377	-	-	-	-	-	-	119,377
Community Development & Public Works Fees	360,614	-	-	-	-	-	-	360,614
Recreation Center Fees	968,597	-	-	-	-	-	-	968,597
Investment Income	31,237	-	23,484	-	-	103	-	54,824
Miscellaneous	132,050	-	-	-	-	-	-	132,050
Total Revenues	9,205,739	1,662,780	23,484	-	-	49,784	-	10,941,787
<b>EXPENDITURES</b>								
General Government	\$ 643,108	\$ 1,429,062	\$ -	\$ -	\$ -	\$ 18	\$ 42	2,072,230
Police	2,405,654	-	-	-	-	-	-	2,405,654
Parks & City Facilities	822,526	-	-	-	-	-	-	822,526
Community Development & Public Works	1,417,337	-	39	-	-	-	-	1,417,376
Recreation Center	1,816,341	-	-	-	-	-	-	1,816,341
Capital Outlay	72,118	77,740	1,430,809	-	-	1,167,027	-	2,747,694
Total Expenditures	7,177,084	1,506,802	1,430,848	-	-	1,167,045	42	11,281,821
<b>Excess(deficiency) of revenues over expenditures</b>	2,028,655	155,978	(1,407,364)	-	-	(1,117,261)	(42)	(340,034)
<b>OTHER FINANCING SOURCES(USES)</b>								
Transfers In(Out)	736,385	(155,978)	856,318	-	(61,421)	-	-	1,375,304
Outside Agency Funding	(108,553)	-	-	-	-	-	-	(108,553)
Sale of Governmental Assets	10,218	-	-	-	-	-	-	10,218
Total Other Financing Sources(Uses)	638,050	(155,978)	856,318	-	(61,421)	-	-	1,276,969
<b>Net Change in Fund Balance</b>	2,666,705	-	(551,046)	-	(61,421)	(1,117,261)	(42)	936,935
<b>FUND BALANCES - BEGINNING</b>	8,856,886	-	3,237,206	-	61,421	1,991,643	3,267	14,150,423
<b>FUND BALANCES - ENDING</b>	\$ 11,523,591	\$ -	\$ 2,686,160	\$ -	\$ -	\$ 874,382	\$ 3,225	\$ 15,087,358

See accompanying notes to the basic financial statements



City of Cody, Wyoming  
Statement of Revenues, Expenditures Changes in Fund Balances  
Governmental Funds  
for the fiscal year ended June 30, 2021

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**Reconciliation of the Statement of Revenues, Expenditures & Changes in Fund Balances of Governmental Funds  
to the Statement of Activities**

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<b>Net changes in fund balances - total governmental funds</b>	\$ 936,935
Amounts reported for governmental activities in the Statement of Activities are different because:	
Governmental funds report capital outlays and issue costs as expenditures while governmental activities report depreciation and amortization expense to allocate those expenditures over the life of the assets:	
Capital asset purchases capitalized	974,013
Capital assets transferred from business-type funds	-
Capital asset disposal	(6,662)
Depreciation expense	(1,351,435)
	<u>(384,084)</u>
 Revenues in the Statement of Activities that do not provide current financial resources are not reported as revenues in the funds:	
Contributed assets	27,000
Deferred revenue	(11,313)
	<u>15,687</u>
 Some expenses reported in the Statement of Activities do not require the use of current financial resources and therefore are not reported as expenditures in governmental funds:	
Pension expense	(334,179)
Accrued compensated absences	(8,459)
	<u>(342,638)</u>
 <b>Change in Net Position of Governmental Activities</b>	 <u><u>\$ 225,900</u></u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Net Position  
Proprietary Funds  
June 30, 2021

	Business-Type Activities - Enterprise Funds				Total Proprietary Funds
	Solid Waste Fund	Water Fund	Wastewater Fund	Electric Fund	
<b>ASSETS:</b>					
Current Assets:					
Cash and cash equivalents	\$ 2,314,149	\$ 4,335,111	\$ 3,665,179	\$ 5,483,009	\$ 15,797,448
Investments	549,583	400,645	131,655	769,253	1,851,136
Restricted cash and cash equivalents	-	3,000	-	156,576	159,576
Accounts receivable, net of allowance	314,622	488,553	208,022	1,650,130	2,661,327
Due from other governments	-	445,017	62,821	-	507,838
Inventory	-	131,901	-	551,223	683,124
Total Current Assets	<u>3,178,354</u>	<u>5,804,227</u>	<u>4,067,677</u>	<u>8,610,191</u>	<u>21,660,449</u>
Non-current Assets:					
Capital Assets:					
Land and other non-depreciable assets	232,916	2,749,418	5,494,216	237,141	8,713,691
Other capital assets, net of depreciation	2,065,604	9,002,204	12,431,041	10,255,092	33,753,941
Total Non-current Assets	<u>2,298,520</u>	<u>11,751,622</u>	<u>17,925,257</u>	<u>10,492,233</u>	<u>42,467,632</u>
Total Assets	<u>\$ 5,476,874</u>	<u>\$ 17,555,849</u>	<u>\$ 21,992,934</u>	<u>\$ 19,102,424</u>	<u>\$ 64,128,081</u>
<b>DEFERRED OUTFLOWS OF RESOURCES:</b>					
Deferred Outflows Related to Pensions	<u>41,539</u>	<u>29,923</u>	<u>10,324</u>	<u>67,317</u>	<u>149,103</u>
Total Deferred Outflows of Resources	<u>41,539</u>	<u>29,923</u>	<u>10,324</u>	<u>67,317</u>	<u>149,103</u>
<b>LIABILITIES:</b>					
Current Liabilities:					
Accounts payable	\$ 220,929	\$ 820,050	\$ 115,558	\$ 875,941	\$ 2,032,478
Sales tax payable	-	-	-	27,855	27,855
Accrued expenses	16,691	11,369	4,152	21,857	54,069
Accrued interest payable	-	-	34,353	-	34,353
Customer deposits	-	3,000	-	156,576	159,576
Loans payable, net	-	-	71,363	-	71,363
Accrued compensated absences	29,252	31,238	4,171	11,654	76,315
Total Current Liabilities	<u>266,872</u>	<u>865,657</u>	<u>229,597</u>	<u>1,093,883</u>	<u>2,456,009</u>
Non-current Liabilities:					
Net Pension Liability	419,593	302,261	104,288	679,991	1,506,133
Compensated Absences	26,459	28,658	-	52,643	107,760
Loans payable, net	-	-	3,055,532	-	3,055,532
Total Non-current Liabilities	<u>446,052</u>	<u>330,919</u>	<u>3,159,820</u>	<u>732,634</u>	<u>4,669,425</u>
Total Liabilities	<u>712,924</u>	<u>1,196,576</u>	<u>3,389,417</u>	<u>1,826,517</u>	<u>7,125,434</u>
<b>DEFERRED INFLOWS OF RESOURCES:</b>					
Deferred Inflows Related to Pensions	<u>95,640</u>	<u>68,896</u>	<u>23,771</u>	<u>154,994</u>	<u>343,301</u>
Total Deferred Inflows of Resources	<u>95,640</u>	<u>68,896</u>	<u>23,771</u>	<u>154,994</u>	<u>343,301</u>
<b>NET POSITION</b>					
Net investment in capital assets	2,298,520	11,751,622	17,925,257	10,492,233	42,467,632
Restricted for debt service	-	-	218,791	-	218,791
Unrestricted	2,411,329	4,568,678	446,022	6,695,997	14,122,026
Total Net Position	<u>\$ 4,709,849</u>	<u>\$ 16,320,300</u>	<u>\$ 18,590,070</u>	<u>\$ 17,188,230</u>	<u>\$ 56,808,449</u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Revenues, Expenses and Changes in Fund Net Position  
Proprietary Funds  
for the fiscal year ended June 30, 2021

	<b>Business-Type Activities - Enterprise Funds</b>				<b>Total Proprietary Funds</b>
	<b>Solid Waste Fund</b>	<b>Water Fund</b>	<b>Wastewater Fund</b>	<b>Electric Fund</b>	
<b>OPERATING REVENUES</b>					
Charges for Services	\$ 2,277,515	\$ 3,439,970	\$ 1,428,809	\$ 12,141,266	19,287,560
Recycling Revenue	42,993	-	-	-	42,993
Miscellaneous	1,773	281	11,362	71,059	84,475
Total Operating Revenues	2,322,281	3,440,251	1,440,171	12,212,325	19,415,028
<b>OPERATING EXPENDITURES</b>					
Personnel	810,775	643,369	245,236	1,076,039	2,775,419
Wholesale Utility Purchases	-	1,640,545	-	8,804,425	10,444,970
Purchases from Suppliers	996,018	297,810	299,741	547,471	2,141,040
Depreciation Expense	128,900	341,967	479,208	440,755	1,390,830
Total Operating Expenses	1,935,693	2,923,691	1,024,185	10,868,690	16,752,259
<b>Operating Income(Loss)</b>	386,588	516,560	415,986	1,343,635	2,662,769
<b>NON-OPERATING REVNEUES(EXPENSES)</b>					
Investment Income	11,719	8,663	2,932	16,425	39,739
Interest Expense	-	-	(37,275)	-	(37,275)
Total Non-Operating Revenues(Expenses)	11,719	8,663	(34,343)	16,425	2,464
Net Income(Loss) before contributions & transfers	398,307	525,223	381,643	1,360,060	2,665,233
Capital contributions	941,668	934,843	1,055,148	-	2,931,659
Operating contributions	2,500	-	-	-	2,500
Transfers in(out)	(513,860)	(61,755)	(108,092)	(691,598)	(1,375,305)
<b>Changes in Net Position</b>	828,615	1,398,311	1,328,699	668,462	4,224,078
<b>TOTAL NET POSITION - BEGINNING</b>	3,881,234	14,921,989	17,261,371	16,519,768	52,584,371
<b>TOTAL NET POSITION - ENDING</b>	<u>\$ 4,709,849</u>	<u>\$ 16,320,300</u>	<u>\$ 18,590,070</u>	<u>\$ 17,188,230</u>	<u>\$ 56,808,449</u>

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Cash Flows  
Proprietary Funds  
for the fiscal year ended June 30, 2021

	Business-Type Activities - Enterprise Funds				Total Proprietary Funds
	Solid Waste Fund	Water Fund	Wastewater Fund	Electric Fund	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>					
Receipts from customers	\$ 2,306,597	\$ 3,300,516	\$ 1,551,839	\$ 11,958,247	\$ 19,117,199
Payments to suppliers	(902,061)	(1,620,253)	(404,393)	(9,186,354)	(12,113,061)
Payments to employees	(898,273)	(673,321)	(332,159)	(1,284,415)	(3,188,168)
Other receipts(payments)	1,773	281	11,362	71,059	84,475
Net Cash Provided by(used in) Operating Activities	508,036	1,007,223	826,649	1,558,537	3,900,445
<b>CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES</b>					
Operating grants and contributions	2,500	-	-	-	2,500
Miscellaneous income(expense)	-	-	-	-	-
Operating transfers in(out)	(513,860)	(61,755)	(108,092)	(691,598)	(1,375,305)
Net Cash Provided by(used in) Noncapital Financing Activities	(511,360)	(61,755)	(108,092)	(691,598)	(1,372,805)
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>					
Purchase of capital assets	(116,682)	(2,016,653)	(1,060,323)	(452,610)	(3,646,268)
Purchase of Investments	-	-	-	-	-
Contributed capital revenues	-	934,843	223,136	-	1,157,979
Other Capital Financing Activities	(1)	(1)	(4)	(1)	(7)
Proceeds from loans and grants	-	-	599,029	-	599,029
Principal paid on capital debt	-	-	(72,760)	-	(72,760)
Interest and paid on capital debt	-	-	(37,275)	-	(37,275)
Net Cash Used in Capital and Related Financing Activities	(116,683)	(1,081,811)	(348,197)	(452,611)	(1,999,302)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>					
Interest and dividends	11,719	8,663	2,933	16,425	39,740
Net Cash Provided by(Used in) Investing Activities	11,719	8,663	2,933	16,425	39,740
<b>Net Increase(Decrease) in Cash and Cash Equivalents</b>	(108,288)	(127,680)	373,293	430,753	568,078
Balances - beginning of year	2,972,020	4,866,436	3,423,541	5,978,085	17,240,082
Balances - end of year	\$ 2,863,732	\$ 4,738,756	\$ 3,796,834	\$ 6,408,838	\$ 17,808,160
<b>Reconciliation of Operating Income(Loss) to Net Cash Provided by Operating Activities</b>					
Operating income(loss)	\$ 386,588	\$ 516,560	\$ 415,986	\$ 1,343,635	\$ 2,662,769
Adjustments reconcile operating income to net cash provided(used) by operating activities:					
Depreciation	128,900	341,967	479,208	440,755	1,390,830
Change in assets and liabilities:					
Receivables	(13,911)	(142,454)	123,030	(163,120)	(196,455)
Inventory	-	(62,464)	-	4,903	(57,561)
Accounts payable	93,957	380,566	(104,652)	157,535	527,406
Sales tax payable	-	-	-	3,104	3,104
Customer deposit liability	-	3,000	-	(19,899)	(16,899)
Accrued expenses	2,604	1,952	(11,186)	(229)	(6,859)
Pension Expense	(91,900)	(35,829)	(70,797)	(174,989)	(373,515)
Accrued compensated absences	1,798	3,925	(4,940)	(33,158)	(32,375)
Net Cash Provided by(Used in) Operating Activities	\$ 508,036	\$ 1,007,223	\$ 826,649	\$ 1,558,537	\$ 3,900,445
<b>Non-Cash Activities:</b>					
Loss on sale of capital assets	\$ -	\$ -	\$ -	\$ -	-
Contributed capital assets	\$ 941,668	\$ -	\$ 832,012	\$ -	\$ 1,773,680

See accompanying notes to the basic financial statements

City of Cody, Wyoming  
Statement of Net Position  
Fiduciary Funds  
June 30, 2021

	<u>AGENCY FUND</u> <b>Gunwerks</b> <b>Manufacturing</b> <b>Facility</b>
<b>ASSETS:</b>	
Cash and cash equivalents	\$ -
Restricted cash and cash equivalents	-
Due from other governments	-
Total Assets	-
<b>LIABILITIES:</b>	
Accounts Payable	\$ -
Total Liabilities	-
<b>NET POSITION</b>	
Held in trust	-
Total Net Position	\$ -

See accompanying notes to the basic financial statements

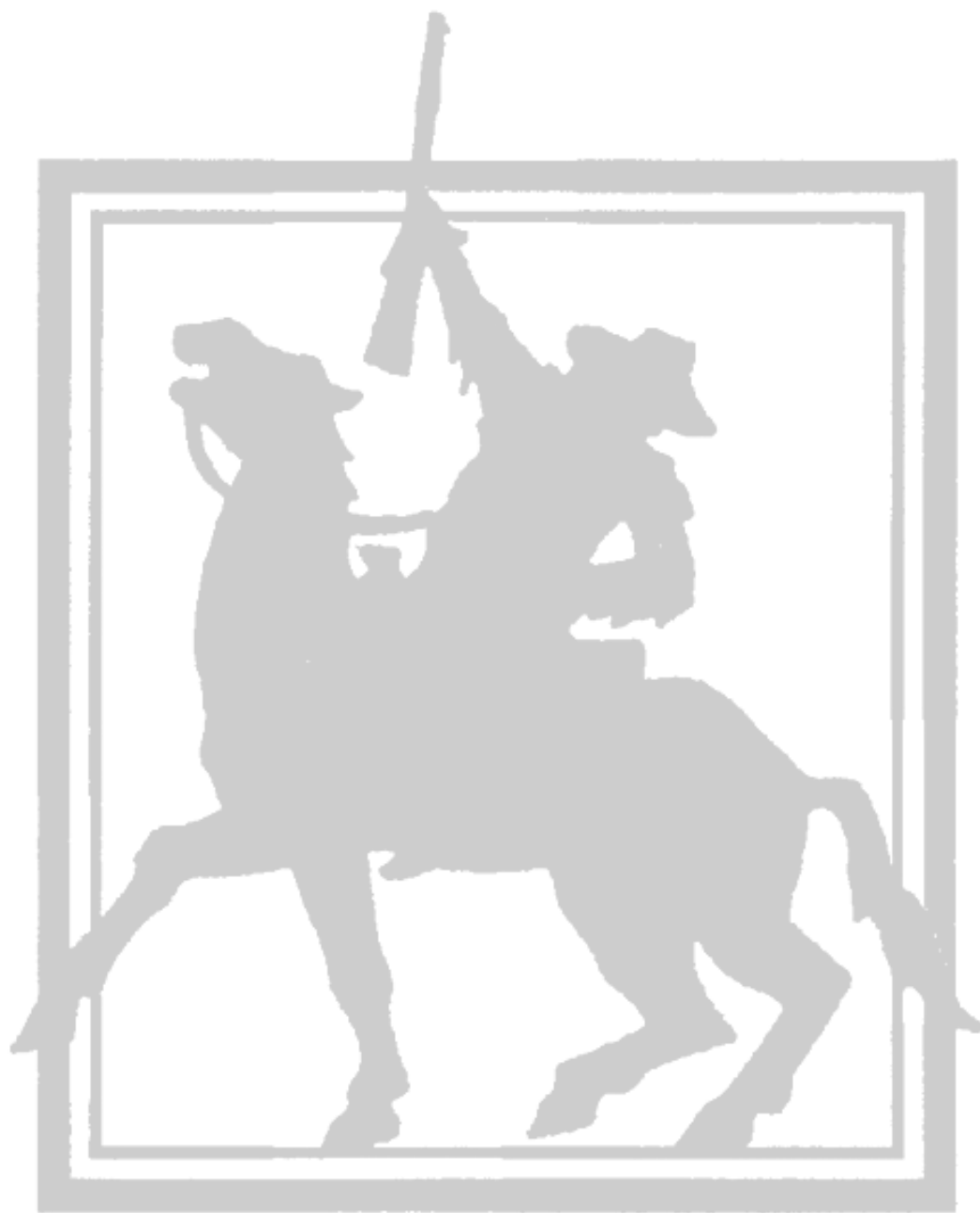


City of Cody, Wyoming  
Statement of Changes in Net Position  
Fiduciary Funds  
June 30, 2021

	<u>AGENCY FUND</u> <b>Gunwerks Manufacturing Facility</b>
<b>ADDITIONS</b>	
Grant proceeds	\$ 115,023
Total Additions	<u>115,023</u>
<b>DEDUCTIONS</b>	
Grant Disbursements	\$ 115,023
Total Deductions	<u>115,023</u>
Net Change	\$ -
<b>NET POSITION - BEGINNING</b>	<u>-</u>
<b>NET POSITION - ENDING</b>	<u><u>-</u></u>

See accompanying notes to the basic financial statements

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CITY OF CODY  

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WYOMING

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

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**NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

- A. FINANCIAL REPORTING ENTITY
- B. BASIS OF PRESENTATION
- C. MEASUREMENT FOCUS AND BASIS OF ACCOUNTING
- D. ASSETS, LIABILITIES, DEFERRED OUTFLOWS/INFLOWS OF RESOURCES AND NET POSITION
- E. INTERNAL AND INTERFUND BALANCES AND ACTIVITIES
- F. REVENUES, EXPENDITURES AND EXPENSES
- G. USE OF ESTIMATES
- H. RECENTLY ISSUED ACCOUNTING STANDARDS

**NOTE 2. STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY**

- A. DEFICIT FUND BALANCES OR NET POSITION
- B. BUDGET REQUIREMENTS
- C. DEPOSITS AND INVESTMENTS REQUIREMENTS
- D. ACCOUNTS PAYABLE AND ACCRUED EXPENSES
- E. DEBT RESTRICTIONS AND COVENANTS

**NOTE 3. DETAIL NOTES - TRANSACTION CLASSIFICATION**

- A. DEPOSITS AND INVESTMENTS
- B. RECEIVABLES
- C. RESTRICTED ASSETS
- D. DUE FROM OTHER GOVERNMENTS
- E. LONG-TERM DEBT
- F. CAPITAL ASSETS
- G. INTERFUND BALANCES AND ACTIVITIES
- H. FUND BALANCES AND NET POSITION

**NOTE 4. OTHER NOTES**

- A. EMPLOYEE PENSION PLANS
- B. RISK MANAGEMENT
- C. LEASES
- D. COMPENSATED ABSENCES
- E. RELATED PARTY TRANSACTIONS
- F. SEGMENT INFORMATION FOR ENTERPRISE FUNDS
- G. COMMITMENTS
- H. CONTINGENCIES
- I. SUBSEQUENT EVENTS/OTHER

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

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**NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The City's accounting and financial reporting policies conform to accounting principles generally accepted in the United States of America (GAAP). GAAP includes all relevant Governmental Accounting Standards Board (GASB) pronouncements. The accounting and reporting framework and the more significant accounting policies are discussed in the subsequent sections of this Note.

**1.A. FINANCIAL REPORTING ENTITY**

In determining the financial reporting entity, the City complies with the provisions of GASB Statement No. 61.

The reporting entity is comprised of the primary government only. The primary government of the City of Cody consists of all funds and departments that are not legally separate from the City.

The City of Cody (City) is a municipal corporation located in Park County, Wyoming. The elected Mayor and six-member City Council represent the governing body responsible for the activities related to City government within the jurisdiction of the City. The government receives funding from local, state and federal government sources and must comply with the accompanying requirements of these funding sources.

Component units are legally separate organizations for which the City is financially accountable. The City is financially accountable for an organization if the City appoints a voting majority of the organization's governing board and (1) the City is able to significantly influence the programs or services performed or provided by the organizations; or (2) the City is legally entitled to or can otherwise access the organization's resources; the City is legally obligated or has otherwise assumed the responsibility to finance the deficits of or provide financial support to, the organization; or the City is obligated for the debt of the organization. Component units also may include organizations that are fiscally dependent on the City in that the City approves the budget, levies their taxes or issues their debt.

The City of Cody has no component units presented in the financial statements.

**Related Organizations**

Based on the foregoing criteria, the following related organizations are not included in the financial reporting entity:

Wyoming Municipal Power Agency - provides electrical generation and distribution services to its eight-member communities.

Shoshone Municipal Pipeline - operates a pipeline and water treatment facility to sell water to the six communities participating in the joint powers venture.

Yellowstone Regional Airport Joint Powers Board – created in 1980 to construct, maintain, equip, operate and conduct an airport and incidental facilities.

Northwest Improvement Projects Joint Powers Board – this board is currently inactive. The City of Cody and the City of Powell are members of the Joint Powers Board.

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

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The Lodging Tax Joint Powers Board – determines the disposition of lodging tax receipts to three communities in Park County, Wyoming.

The City appoints one or two representatives to serve on each of these joint powers boards. However, in each case there are at least 5 other board members selected by other entities. Each board hires its own management, sets its own rates and is responsible for its own expenses. The City is not liable for losses of any of the boards and does not provide a significant amount of funding for any of the boards.

## **1.B. BASIS OF PRESENTATION**

### Government-Wide Financial Statements:

The statement of net position and statement of activities display information about the City as a whole. They include all financial activities of the reporting entity except for fiduciary activities. Eliminations have been made to minimize the double reporting of transactions involving internal activities. Individual funds are not displayed in these statements. Instead, the statements distinguish between governmental and business-type activities. Governmental activities generally are financed through taxes, intergovernmental revenues, and other non-exchange revenues. Business-type activities are financed in whole or in part by fees charged to external parties for goods or services.

The statement of activities presents a comparison between the expenses and program revenues directly associated with the different governmental functions and business-type activities to arrive at the net revenue or expense of the function or activity prior to the use of taxes and other general revenues. Program revenues include (1) fees, fines and service charges generated by the program or activity, (2) operating grants and contributions that are restricted to meeting the operational requirements of the program or activity, and (3) capital grants and contributions that are restricted to meeting the capital requirements of the program or activity.

### Fund Financial Statements:

Fund financial statements of the reporting entity are organized into funds, each of which is considered to be separate accounting entities. Each fund is accounted for by providing a separate set of self-balancing accounts which constitute its assets, liabilities, fund equity, revenues, and expenditures/expenses. Separate financial statements are presented for the three major fund categories: governmental, proprietary, and fiduciary. An emphasis of the fund financial statements is placed on major governmental and enterprise funds. The General Fund is always reported as a major fund. Other funds are considered major if they meet the following criteria:

- a. Total assets, liabilities, revenues or expenditures/expenses of that individual governmental or enterprise fund is at least 10% of the corresponding total for all funds of that category or type, AND
- b. Total assets, liabilities, revenues or expenditures/expenses of the individual governmental fund or enterprise fund that are at least 5% of the corresponding total for all governmental and enterprise funds combined.

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

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- c. A fund not meeting the criteria of (a) and (b), however management has elected to report the fund as a major fund due to its significance to users of the financial statements.
- d. GASB Statement No. 34 permits governments to report as a major fund any other governmental or enterprise fund that the government's officials believe is important to financial statement users.

All remaining governmental and enterprise funds not meeting the above criteria are aggregated and reported as non-major funds. The funds of the financial reporting entity are described below:

### GOVERNMENTAL FUNDS

#### General Fund

The General Fund is the primary operating fund of the City. It is used to account for all activities except those legally or administratively required to be accounted for in other funds. This fund is always a major fund.

#### Special Revenue Funds

Special Revenue funds are used to account for the proceeds of specific revenue sources that are legally or administratively restricted to expenditures for certain purposes. The reporting entity includes the following special revenue fund:

*Lodging Tax Fund* - accounts for revenues and expenditures of lodging taxes which are to be used to support community functions and activities. This fund has been a major fund by the election of management and was closed out during the fiscal year. Lodging Tax revenue and associated expense are now part of the General Fund.

*Cody Public Art Fund* – this fund was established to account for donations received for use in purchasing and leasing artworks for display in public areas.

*COVID-19 Fund* – this fund was established to account for revenues and associated expenses related to the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES). This fund is reported as a major fund.

*ARPA Fund* – this fund was established to account for revenues and associated expenses related to the American Rescue Plan Act of 2021 (ARPA). This fund is reported as a major fund.

#### Capital Projects Funds

Capital Projects funds are used to account for resources restricted for the acquisition or construction of specific capital projects or items. The reporting entity includes the following capital projects funds, of which all are non-major funds:



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*Vehicle Replacement Fund* - accounts for transfers from other funds within the primary government which is for the purchase vehicles and equipment. Transfers are based upon each department's vehicles and assigned replacement schedules to allocate appropriate funds to cover future replacements. Although projects such as construction are not being performed, the City considers this a capital project fund.

*Specific Purpose Tax Fund* – accounts for proceeds received from the additional on-cent specific purpose sales tax voted in by Park County residents in 2016. Expenditures from this fund are restricted to the specific projects identified on the ballot. This fund is reported as a major fund.

### Proprietary Funds

Proprietary funds include enterprise and internal service funds. Enterprise funds are used to account for business-like activities for services provided to the general public. Internal service funds are used to account for business-like activities provided and charged to other funds or entities within the reporting entity. Proprietary fund operating revenues, such as charges for services, result from exchange transactions associated with the principal activity of the fund. Non-operating revenues of the proprietary funds include such items as investment earnings and subsidies. The reporting entity includes the following proprietary funds, each of which are major funds:

*Solid Waste Fund* - accounts for the activities of the department responsible for maintaining a dependable system for collecting and disposing of solid waste and recyclable materials in the City.

*Water Fund* - accounts for activities of the department responsible for providing a safe, potable water supply and an irrigation water supply to the community.

*Wastewater Fund* - accounts for the activities of the department responsible for maintaining a dependable system for collecting and treating the City's wastewater.

*Electric Fund* - accounts for activities of the department responsible for providing a dependable electric supply to the community.

### Fiduciary Funds

Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statement because the resources of those funds are not available to support the City of Cody's own programs. The reporting entity includes the following fiduciary funds:

*Pass Through Grants Fund* – accounts for funds received by the City of Cody that are transferred to other entities per the award eligibility terms. The City is considered the prime recipient of the funds and the beneficiary of the funds is considered the subrecipient. The City of Cody currently has one pass through grant for the Gunwerks Manufacturing Facility which is administered by Forward Cody Wyoming, Inc.

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**1.C. MEASUREMENT FOCUS AND BASIS OF ACCOUNTING**

Measurement focus is a term used to describe **how** transactions are recorded within the financial statements. Basis of accounting refers to **when** transactions are recorded regardless of the measurement focus applied.

Measurement Focus

*Government-wide, Proprietary, and Fiduciary Fund Financial Statements*

In the government-wide Statement of Net Position and the Statement of Activities, and the proprietary and fiduciary fund statements the "economic resources" measurement focus is applied. The accounting objectives of this measurement focus are the determination of operating income, changes in net assets (or cost recovery), financial position and cash flows. All assets and liabilities (whether current or noncurrent, financial or nonfinancial) associated with their activities are reported.

Governmental Fund Financial Statements

In the governmental fund financial statements, a "current financial resources" measurement focus is applied. Under this focus, only current financial assets and liabilities are generally included on their balance sheets. Their operating statements present sources and uses of available spendable financial resources during a given period. These funds use fund balance as their measure of available spendable financial resources at the end of the period.

Basis of Accounting

Government-wide, Proprietary and Fiduciary Fund Financial Statements

In the government-wide Statement of Net Position and Statement of Activities, and the proprietary fund financial statements the accrual basis of accounting is applied. Under the accrual basis of accounting, revenues are recognized when earned and expenses are recorded when the liability is incurred or economic assets are used. Revenues, expenses, gains, losses, assets and liabilities resulting from exchange and exchange-like transactions are recognized when the exchange takes place.

Governmental Fund Financial Statements

In the governmental fund financial statements, the modified accrual basis of accounting is applied. Under the modified accrual basis of accounting revenues are recognized when "measurable and available". Measurable means knowing or being able to reasonably estimate the amount. Available means collectible within the current period or soon enough thereafter to pay current liabilities. The City has defined "available" as collected within 60 days after year end. Sales and use taxes, franchise taxes, lodging taxes, court fines and interest are considered susceptible to accrual. Expenditures, including capital outlay, are recorded when the related fund liability is incurred, except for long-term debt principal and interest, claims and judgments, and accrued compensated absences, which are recorded as expenditures to the extent they have matured. Proceeds of general long-term debt and capital leases are reported as other financial sources.

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**1.D. ASSETS, LIABILITIES, DEFERRED OUTFLOWS/INFLOWS OF RESOURCES, AND NET POSITION/FUND EQUITY****Cash and Cash Equivalents**

Cash and cash equivalents include all demand deposit accounts. Investments in open-ended mutual fund money market accounts are also considered cash equivalents and are reported at the funds current share price.

**Investments**

Investments consist of U.S. government securities and bonds, sweep account into money market mutual funds, and certificates of deposit. These investments are purchased with the intention of holding to maturity and are therefore reported at cost.

**Receivables**

Material receivables in governmental funds and governmental activities include revenue accruals such as sales tax, franchise tax, grants and other similar intergovernmental revenues since they are usually both measurable and available. Non-exchange transactions collectible but not available are deferred in accordance with GASB 33. Interest and investment earnings are recorded when earned only if paid within 60 days since they would be considered both measurable and available at the fund level.

Proprietary-type funds and business-type activities material receivables consist of all revenues earned at year -end and not yet received. Utility accounts receivable comprise the majority of proprietary fund receivables.

Allowances for uncollectible accounts receivable are based upon historical trends and the periodic aging of accounts receivable.

**Prepaid Items**

Payments made to vendors for service that will benefit periods beyond June 30, 2021, are recorded as prepaid items using the consumption method by recording an asset for the prepaid amount and reflecting the expenditure/expense in the year in which services are consumed. At the fund reporting level, an equal amount of fund balance is reported as non-spendable as this amount is not available for general appropriation.

**Inventories**

The City records consumable materials and supplies as an asset when purchased and expended as consumed. Such inventory is valued at average cost.

**Capital Assets and Depreciation**

The accounting treatment of property, plant and equipment (capital assets) depends on whether the assets are used in governmental fund type or proprietary fund type operations and whether they are reported in the government-wide or fund financial statements.

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*Government-Wide Statements*

In the government-wide financial statements, property, plant and equipment are accounted for as capital assets. The City's capitalization threshold varies by asset classification and category. The range of asset capitalization threshold by asset classification is noted below:

<b>Classification</b>	<b>Threshold</b>
Land	\$50,000
Intangibles	\$50,000
Buildings	\$50,000
Other Improvements	\$50,000
Machinery & Equipment	\$ 5,000 - \$25,000
Furniture & Fixtures	\$10,000
Infrastructure	\$50,000

All capital assets are valued at historical cost or estimated historical cost if actual cost is unavailable, except for donated capital assets which are recorded at their estimated fair value at the date of donation. General infrastructure assets (such as roads, bridges, and traffic systems) acquired prior to July 1, 2006, are reported at estimated historical cost using deflated replacement costs. The cost of normal maintenance and repairs to these assets that do not add materially to the value of the asset or significantly extend the assets' useful lives are not capitalized. Interest costs, net of interest earned on any invested capital debt proceeds, are capitalized when incurred by proprietary funds.

Depreciation of all exhaustible capital assets is recorded as an operating expense in proprietary fund financial statements and as an allocated expense in the Statement of Activities, with accumulated depreciation reflected in the Statement of Net position. Depreciation is calculated over the assets' estimated useful lives using the straight-line method of depreciation. The range of estimated useful lives by type of asset is as follows:

<b>Asset Type</b>	<b>Useful Life</b>
Buildings	30 – 50 Years
Other Improvements	10 Years
Intangibles	1-5 Years
Machinery & Equipment	5 – 10 Years
Furniture & Fixtures	5 Years
Infrastructure	5 – 50 Years

In the government funds financial statements, capital assets acquired are accounted for as capital outlay expenditures.

Restricted Assets

Restricted assets include cash and investments of enterprise funds and business-type activities that are legally restricted as to their use. The primary restricted assets are related to customer utility deposits.

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Long-Term Debt

Accounting treatment of long-term debt varies depending upon the source of repayment and the measurement focus applied, and whether the debt is reported in the government-wide or fund financial statements.

All long-term debt to be repaid from governmental activities, business-type activities, proprietary fund and component unit resources are reported as liabilities incurred. The long-term debt consists primarily of accrued compensated absences, liability for claims, notes payable, and revenue bonds payable. This long-term debt is reported net of unamortized premiums, discounts, and amounts deferred from refundings, if applicable. Long-term debt of governmental funds is not reported as liabilities in the fund financial statements. The debt proceeds are reported as other financing sources and payment of principal and interest reported as expenditures.

As of June 30th, the City of Cody is not obligated in any manner for special assessment debt.

Compensated Absences

The City's policies regarding vacation and compensatory time permit employees to accumulate varying amounts as determined by management.

The City's sick leave policy caps sick leave accruals at 720 hours and employees with balances in excess of 720 as of the adoption date are allowed to keep all of the hours accrued until such time that the employees use the hours below 720. Eligible employees may be able to convert a portion of their accrued sick leave towards the employee's 457 Deferred Compensation account or Health Savings account or a combination of both based on a longevity percentage table upon an eligible separation of employment.

Vacation time off with pay is available to regular full time and regular part time employees. The amount of paid vacation time employees receive each year increases with the length of their employment. Full time employees may carry 80 hours of accrued vacation leave and part time employees may carry 40 hours of accrued vacation leave into a new calendar year. Vacation time off is paid at the employee's base rate of pay at the time of vacation

The estimated liabilities for vested benefits also include salary-related payments such as employment taxes. Compensated absences are reported as accrued in the government-wide, proprietary and component unit financial statements. Governmental funds report only the matured compensated absences payable to currently terminating employees.

Deferred Outflows/Inflows of Resources

In addition to assets, the financial statements may report a separate section for deferred outflows of resources. This separate financial statement element represents a decrease of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the financial statements may include a separate section for deferred inflows of resources. This separate financial statement element represents an increase of net

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position that applied to a future period and so will not be recognized as an inflow of resources (revenue) until that time. The City reports deferred outflows and inflows as follows:

*Unavailable Revenues* – Certain long-term assets are not available to pay for current liabilities and are therefore deferred on the governmental funds Balance Sheet. Property taxes are reported on the government-wide Statement of Net Position and are recorded as receivables when levied or assessed; however, they are reported as deferred revenue until the “available” criterion has been met. Other unavailable deferred revenue on the government-wide Statement of Net Position include prepaid lease revenue. The City has deferred revenue that qualifies for reporting on the Balance Sheet in this category in the amount of \$61,391 which represents court fines, and severance taxes.

*Pension Plan Items* – in the government-wide and proprietary funds statements of net position, a deferred outflow or inflow of resources is reported for the unrecognized items not yet charged to pension expense related to the net pension liability. For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pension, and pension expense, information about the fiduciary net position of the Wyoming Retirement System (WRS) plans and additions to/deductions from WRS’s fiduciary net position have been determined on the same basis as they are reported by WRS.

At June 30, 2021, the City of Cody reported on the government-wide Statement of Net Position a deferred outflow in the amount of \$1,192,375 and a deferred inflow of \$2,237,630 for its proportionate share of the Wyoming Retirement System’s net pension liability. See Notes 4.A. for additional information regarding the pension liability.

#### Equity Classifications

##### *Government-Wide and Proprietary Fund Financial Statements:*

Net position represents the difference between assets and deferred outflows of resources, and liabilities and deferred inflows of resources on the government-wide financial statements. Net position is classified in the following categories:

- a. Net investment in capital assets – Consists of capital assets net of accumulated depreciation and reduced by outstanding debt that is attributed to the acquisition, construction or improvement of the assets.
- b. Restricted net position – Consists of amounts restricted by creditors, grantors, contributors or laws or regulations of other governments.
- c. Unrestricted net position – Consists of the net position that does not meet the definition of “net investment in capital assets” or “restricted net position”.

##### *Governmental Fund Financial Statements:*

In the fund financial statements, governmental fund balance is presented in five possible categories:



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- a. Nonspendable – resources which cannot be spent because they are either (a) not in spendable form or; (b) legally or contractually required to be maintained intact.
  - b. Restricted – resources with constraints placed on the use of resources are either (a) externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation.
  - c. Committed – resources which are subject to limitations the government imposes upon itself at its highest level of decision making, and that remain binding unless removed in the same manner. The commitment or use of Committed Resources is accomplished through an Ordinance or Resolution of the City Council, usually during the annual budget process or subsequent budget amendment.
  - d. Assigned – resources neither restricted nor committed for which a government has as stated intended use as established by the governing body. The assignment or use of Assigned Resources is accomplished by Council action.
  - e. Unassigned – resources which cannot be properly classified in one of the other four categories. The General Fund is the only fund that reports a positive unassigned fund
  - f. balance amount.

Application of Net Position:

It is the City of Cody's policy to first use restricted net position, prior to the use of unrestricted net position, when an expense is incurred for purposes for which both restricted and unrestricted net position is available.

Application of Fund Balance:

When both restricted and unrestricted fund balances are available for use, it is the City's policy to use externally restricted fund balances first. Furthermore, committed fund balances are reduced first, followed by assigned fund balances and then unassigned fund balances when expenditures are incurred for purposes for which amounts in any of those unrestricted fund balance classifications can be used.

**1.E. INTERNAL AND INTERFUND BALANCES AND ACTIVITIES**

In the process of aggregating the financial information for the government-wide financial statement, some amounts reported as interfund activity and balances in the fund financial statements have been eliminated or reclassified.

*Government-Wide Financial Statements:*

Interfund activity and balances, if any, are eliminated or reclassified in the government-wide financial statements as follows:

- a. Internal balances – amounts reported in the fund financial statements as interfund receivables and payables are eliminated in the governmental and business-type activities columns of the statement of net position, except for the net residual amounts

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due between governmental and business-type activities, which are reported as internal balances.

- b. Internal activities – amounts reported as interfund transfers in the fund financial statements are eliminated in the government-wide statement of activities except for the net amount of transfers between governmental and business-type activities, which are reported as Transfers – Internal Activities. The effects of interfund services between funds are not eliminated in the statement of activities.
- c. Primary government and component unit activity and balances – resource flows between the primary government and the discretely-presented component units are reported as if they were external transactions.

*Fund Financial Statements:*

Interfund activity, if any, within and among the governmental, proprietary fund and fiduciary categories is reported as follows in the fund financial statements:

- a. Interfund loans – amounts provided with a requirement for repayment are reported as interfund receivables and payables.
- b. Interfund services – sales or purchases of goods and services between funds are reported as revenues and expenditures/expenses.
- c. Interfund reimbursements – repayments from funds responsible for certain expenditures/expenses to the funds that initially paid for them are not reported as reimbursements but as adjustments to expenditures/expenses in the respective funds.
- d. Interfund transfers – flow of assets from one fund to another where repayment is not expected are reported as transfers in and out.

## **1.F. REVENUES, EXPEDITURES, AND EXPENSES**

### Sales Tax

The City presently levies a four-cent sales tax on taxable sales within the City which includes the four-cent State tax. The sales tax generated from the four-cent tax is collected by the State and remitted to the City the month following receipt by the State. The sales tax recorded is allocated to General Fund operations. The one-cent specific purpose sales tax is collected by the State and remitted to Park County monthly. Park County disburses the tax to the other three municipalities in the county based on each entity's percentage of approved tax-funded projects. Sales tax resulting from sales occurring prior to year-end and received by the City after year end have been accrued and are included under the caption, *Due from other governments* since they represent taxes on sales occurring during the reporting period.

### Property Tax

The Park County Treasurer acts as an agent to collect property taxes levied in the County for all taxing authorities. Collections are distributed after the end of each month.

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Property Tax Calendar

August 10	Taxes are levied and become an enforceable lien on the properties
September 1	First of two equal installment payments is due
November 10	First installment is delinquent
March 1	Second installment is due
May 10	Second installment is delinquent

Property taxes are considered “measurable” when levied and recorded as receivables when levied or assessed however they are reported as deferred revenue until the “available” criterion has been met. The City of Cody has recorded a receivable and a deferred inflow of resources for levied property taxes.

Grants

The City participates in various grant activities depending on the applicable projects and/or grants available. Expenditures from certain grants are subject to audit by the grantor, and the City is contingently liable to refund amounts received in excess of allowable expenditures.

Expenditures & Expenses

In the government-wide statement of activities expenses including depreciation of capital assets are reported by function or activity. In the governmental fund financial statements expenditures are reported by class (further reported by function) as current, capital outlay and debt service. In proprietary fund financial statements, expenses are reported by object or activity.

**1.G. USE OF ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures; accordingly, actual results could differ from those estimates.

**1.H. RECENTLY ISSUED ACCOUNTING STANDARDS**

New Accounting Standards

If any of the requirements of the new accounting standards are applicable, the City of Cody will implement them by the effective date(s).

***GASB Statement No. 98, The Annual Comprehensive Financial Report.*** This statement establishes the term annual comprehensive financial report and its acronym ACFR. This statement was developed in response to concerns raised by stakeholders the common pronunciation of the previous acronym sounds like a profoundly objectionable racial slur. The new term is founded on a commitment to promoting inclusiveness. The requirements of this Statement are effective for fiscal years ending after December 15, 2021.

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**NOTE 2. STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY**

By its nature as a local government unit, the City and its component units are subject to various federal, state and local laws and contractual regulations.

**2.A. DEFICIT FUND BALANCES OR NET POSITION**

Wyoming Statutes prohibit the creation of a deficit fund balance in any individual fund of the City. For the year ended June 30, 2021, the City had not incurred a fund balance deficit in any individual fund.

**2.B. BUDGET REQUIREMENTS**

The City of Cody's budget is prepared on a fiscal year basis beginning each July 1st and running through the following June 30th. The budget must present a complete financial plan for the City, setting forth all estimated revenues, expenditures, and other financing sources for the ensuing fiscal year, together with the corresponding figures for the previous fiscal year. In estimating the anticipated revenues, consideration must be given to any unexpected surpluses and the historical percentage of tax collections. Further, the budget must show a balanced relationship between the total proposed expenditures and the total anticipated revenues with the inclusion of beginning funds.

All incorporated first-class cities and towns must comply with the provisions of the Uniform Municipal Fiscal Procedures Act (W.S. 16-4-101 through W.S. 16-4-124) in preparing its budget. This act requires:

1. All departments must submit their budget requests to the budget officer by May 1st of each year. The budget officer must prepare a tentative budget for each fund and file it with the governing body no later than May 15th of each year.
2. The budget shall be in a format which best serves the needs of the municipality.
3. The budget must contain actual revenues and expenditures for the last completed fiscal year, estimated total revenues and expenditures for the current fiscal year, and estimated available revenues and expenditures for the ensuing budget year, and the year-to-year change in estimated revenues.
4. Each budget must contain the estimates developed by the budget officer together with specific work programs and other supportive data requested by the governing body, and must be accompanied by a budget message which outlines the proposed financial policies for the budget year and explains any changes from the previous year.
5. The proposed budget for the city or town must be reviewed and considered by the governing body in a regular or special meeting called for this purpose. After holding a public hearing, the governing body must adopt the budget (W.S. 16-4-109).

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6. A summary of the budget the governing body proposes to adopt must be entered into the minutes.
  7. The summary of the proposed budget must be published at least one (1) week before the date of the public hearing in a newspaper having general circulation in that locality, or if there is none, by posting the notice in three (3) conspicuous places within the municipality. Copies of publications of hearings shall be furnished to the director of the state department of audit.
  8. No appropriation in the final budget of any fund can be in excess of the estimated expendable revenue with the inclusion of beginning funds for the fund for the budget year (W.S. 16-4-110).
  9. No later than the day after the public hearing, the governing body must make the necessary appropriations and adopt the budget which, will be in effect for the next fiscal year barring further amendment.
  10. A copy of the adopted budget, certified by the budget officer, must be furnished to the County Commissioners on or before July 31st (W.S. 39-2-401) for the necessary property tax levies (W.S. 16-4-111).

## **2.C. DEPOSITS AND INVESTMENTS REQUIREMENTS (POLICIES)**

In accordance with State law, all uninsured deposits of municipal funds in financial institutions must be secured with acceptable collateral valued at the lower of market or par. Acceptable collateral includes certain U.S. Government or Government Agency securities, certain State of Wyoming or political subdivision debt obligations or surety bonds. Investments of a City are limited by State law to the following:

- a. Direct obligations of the U.S. Government, its agencies and instrumentalities to which the full faith and credit of the U.S. Government is pledged, or obligations to the payment of which the full faith and credit of the State of Wyoming is pledged.
- b. Certificates of deposit or savings accounts that are either insured or secured with acceptable collateral with in-state financial institutions and fully insured certificates of deposit or savings accounts in out-of-state financial institutions.
- c. With certain limitation, negotiable certificates of deposit, prime banker's acceptances, prime commercial paper and repurchase agreements involving securities which are authorized investments under State Statutes.
- d. County, municipal or school district tax supported debt obligations, bond or revenue anticipation notes, money judgments, or bond or revenue anticipation notes of public trusts whose beneficiary is a county municipality or school district.

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- e. Notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator and debentures issued by the Federal Housing Administrator, and in obligations of the National Mortgage Association.
  - f. Money market funds regulated by the SEC and in which investments consist of the investments mentioned in the previous paragraphs a, b, c and d.

## **2.D. ACCOUNTS PAYABLE AND ACCRUED EXPENSES**

### Related Party Payables

The City of Cody had \$989,604 payable to the following related parties at June 30th: \$179,892 in the Water Fund payable to Shoshone Municipal Pipeline and \$809,712 payable to Wyoming Municipal Power Agency. Further disclosure of related party transaction is reported in Note 4E.

### Accrued Expenses

The City of Cody reported \$239,189 in accrued expenses as of June 30th. Accrued expenses consist of wages earned by employees through June 30th which had not yet been paid and related payroll liabilities such as FICA. Due to the dates and report filing of certain payroll related expenses for items such as worker's compensation and retirement these items are also included in the accrual. These items were not paid prior to June 30th for their respective liability.

## **2.E. DEBT RESTRICTIONS AND COVENANTS**

### General Long-Term Debt

As required by State Statutes, the City may not incur any indebtedness that would require payment from resources beyond the current fiscal year revenue without first obtaining voter approval. For the year ended June 30th the City incurred no such debt or obligations.

## **NOTE 3. DETAIL NOTES ON TRANSACTION CLASSIFICATION**

The following notes present detail information to support the amounts reported in the basic financial statements for its various assets, liabilities, equity, revenues and expenditures/expenses.

## **3.A. DEPOSITS AND INVESTMENTS**

The City's investment policy is adopted pursuant to the requirements of W.S. 9-4-831(h). It is the policy of the City of Cody to invest public funds in a manner which will provide a reasonable rate of investment return while assuring the maximum holding of principal, meeting the daily cash flow demand of the City of Cody, and conforming to all federal, state, and local laws and regulations governing the investment of public funds. This policy applies to the investment of all public funds maintained by the City of Cody and except for cash held for certain restricted purposes the City of Cody consolidates cash balances from all funds to maximize investment earnings. Investment income is allocated to the various funds based on their respective participation and in accordance with Generally Accepted Accounting Principles.

### Deposits with Financial Institutions

The City of Cody maintains funds on deposit at a local bank branch in non-interest bearing checking accounts. At June 30th, the carrying amount of the City's cash and cash equivalents was \$28,865,132. The deposits with financial institutions as of the same date totaled \$28,750,163. The



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difference between the carrying amount and the bank balance are the result of transactions in transit and petty cash on hand. The deposits were collateralized as follows:

Balance at June 30th	Pledged Collateral	FDIC Insurance	Total Bank Collateral	Bank Collateral Over(under) Requirements
\$28,865,132	\$29,798,729	\$250,000	\$30,048,729	\$1,183,597

### Investments

The City of Cody maintains investments in direct obligations of the U.S. Government, its agencies and instrumentalities to which the full faith and credit of the U.S. Government is pledged. It is the City's policy to purchase investments and hold them to maturity, therefore investments are reported at cost rather than fair market value. State law does not allow governments to invest in corporate bonds, stocks or mutual funds and limits investments in commercial paper to short term maturities (not greater than 270 days) and to the top ratings issued by nationally recognized statistical rating organizations.

As of June 30th, the City of Cody held the following investments:

Issuing Agency	Original Cost	Par Value	Market Value at June 30th
U.S. Government Agency Bonds	\$4,425,162	\$4,425,162	\$4,446,850
Total	\$4,425,162	\$4,425,162	\$4,446,850

### Investment and Deposit Risk

*Custodial credit risk* is the risk that, in the event of bank failure, the City will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party.

Bank Deposits – The City of Cody maintained 100% pledging of its deposits in financial institutions. FDIC covered \$250,000 of the bank balance while the remaining balance was secured by the pledging of additional collateral. At June 30th, the collateral on the City of Cody's deposits exceeded the amount on deposit by \$1,183,597.

Third Party Payment Processors – the City of Cody utilizes third party payment processors for the collection of electronic payments from customers via credit card or automatic bank account debits. These transactions are processed through a financial institution and covered under the FDIC insurance. Funds are transferred to the City's bank accounts weekly and pending transfers do not exceed \$250,000. As of June 30th, the collateral on the City of Cody's third-party payment processor's balance exceeded the amount on deposit by \$92,863.

*Interest rate risk* is the risk that is associated with declines or rises in interest rates which cause an investment in a fixed-income holding to increase or decrease in value. The City's policy provides that to the extent practicable, investments are matched with anticipated cash flows and are diversified to minimize the risk of loss resulting from an over-concentration of assets in a specific

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maturity period or single issuer. The City's investments are laddered with varying maturities based on cash flow needs. The majority of the City's investments will mature within 5 years.

<b>Maturity</b>	<b>% of Total</b>	<b>Market Value</b>
1 to 5 Years	100%	\$4,446,850
<b>Grand Total</b>	<b>100%</b>	<b>\$4,446,850</b>

*Concentration of credit risk* is the risk of loss attributed to the magnitude of the City's investment in a single issuer. The City of Cody invests in U.S. backed securities and bonds issued by different government agencies. The City's investments are diversified as follows:

<b>Issuer</b>	<b>% of Total</b>	<b>Market Value</b>
Federal Home Loans Banks	28%	\$1,211,245
Federal Farm Credit Banks	38%	1,673,028
Federal National Mortgage Association	32%	1,414,607
Freddie Mac	2%	147,970
<b>Grand Total</b>	<b>100%</b>	<b>\$4,446,850</b>

*Call risk* is the risk that is specific to bond issues and refers to the possibility that an instrument will be called prior to maturity and usually goes hand in hand with reinvestment risk. The City of Cody's investments are split as follows:

<b>Type</b>	<b>% of Total</b>	<b>Market Value</b>
Non-Callable	77%	\$3,404,349
Callable	3%	1,042,501
<b>Grand Total</b>	<b>100%</b>	<b>\$ 4,446,850</b>

*Reinvestment risk* is the risk that in a declining- interest rate environment, investments offered do not provide the same level of income. Falling interest rates lead to a decline in cash flow from an investment when its principal is reinvested at lower rates.

*Market risk* is the risk that the value of a holding will increase or decline as a result of changes in market conditions. The City of Cody has a "buy and hold" policy meaning that bonds are held until maturity.

*Credit risk* is the risk that an insurer of investments will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by nationally recognized statistical rating organizations. Obligations of the U.S. Government are backed by the full faith and credit of the U.S. Government. The City's investments in U.S. Government issued securities were rated AAA by Moody's and AA+ by Standard and Poor's.

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### Fair Value of Investments

The City categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on valuation inputs to measure the fair value of the asset. The fair value hierarchy is made up of three levels:

Level 1 – unadjusted quoted prices in active markets for identical assets or liabilities that the entity can access at the measurement date. Examples include US Government and agency securities, foreign government debt, listed equities, and money market securities.

Level 2 – inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (i.e., as prices) or indirectly (i.e., derived from prices). Examples include corporate bonds, mortgage-backed securities, bank loans, loan commitments, less liquid listed equities, municipal bonds and certain OTC derivatives.

Level 3 – unobservable inputs for the asset or liability. Examples include distressed debt, private equity, exotic or non-standard derivatives.

Fair value measurements are categorized in their entirety based on the lowest level input that is significant to the entire measurement.

Investments at Fair Value as of June 30th				
Issuer	Level 1	Level 2	Level 3	Total
US Government Agency and Treasury Securities	\$4,444,850	\$ -	\$ -	\$4,444,850
<b>Grand Total</b>	<b>\$4,444,850</b>	<b>-</b>	<b>\$ -</b>	<b>\$4,444,850</b>

### **3.B. RECEIVABLES**

As required by GASB #33, there is a court fine receivable recorded on the books in the amount of \$157,076 with an uncollectible allowance recorded of \$129,072. Many of the outstanding fines fall into the category of over 120 days past due, however, they are typically years past due and not considered collectible. Many of these accounts have been sent to collections.

A significant portion of the charges for services receivables are due from residents of Cody, Wyoming for utility services. Other receivables in the governmental funds consist of billings through the City's accounts receivable system for items such as building permits, miscellaneous items, licenses, etc. Proprietary funds accounts receivable consists of usage and tap fees billed to customers (solid waste, water, wastewater, and electric). They are as follows:

	Governmental	Enterprise Funds	Total
Accounts Receivable – billed	\$259,095	\$1,169,608	\$1,428,703
Accounts Receivable – unbilled	4,619	1,661,821	1,666,440
Allowance for Uncollectible Accounts	(41,462)	(170,102)	(211,564)
<b>Accounts Receivable, net of allowance for uncollectible accounts</b>	<b>\$222,252</b>	<b>\$2,661,327</b>	<b>\$2,883,579</b>

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### 3.C. RESTRICTED ASSETS

The restricted assets as of June 30<sup>th</sup> totaled \$161,925 and are comprised of customer deposits and advance grant revenue (see Note 3.F.) and were as follows:

Type of Restricted Assets	Governmental Funds	Enterprise Funds
Customer Deposits	\$2,349	\$-
Meter Deposits	-	159,576
<b>Total Restricted Assets</b>	<b>\$2,349</b>	<b>\$159,576</b>

### 3.D. DUE FROM OTHER GOVERNMENTS

Due from other governments consists of those revenues due from outside governmental agencies such as the county, state and federal government. The following is a schedule of those receivables and related deferred revenues:

	Governmental		Business-Type
	<u>Receivable</u>	<u>Deferred</u>	<u>Receivable</u>
Cigarette Tax	10,925	-	-
Gas Tax	56,348	-	-
Special Fuels Tax	18,348	-	-
Lottery Proceeds	10,132	-	-
Motor Vehicle Fees	39,087	-	-
Sales Tax	655,078	-	-
Severance Tax	58,786	58,786	-
Use Tax	56,473	-	-
Lodging Tax	15,381	-	-
Specific Purpose Sales Tax	249	-	-
Court Fines	-	2,605	-
Grants	73,919	-	507,838
<b>Total</b>	<b>\$994,725</b>	<b>\$61,391</b>	<b>\$507,838</b>

### 3.E. LONG-TERM DEBT

The reporting entity's long-term debt is segregated between the amounts to be repaid from governmental funds (Government Activities Long-Term Debt) and the amounts to be repaid from proprietary funds (Business-Type Activities Debt).

As of June 30<sup>th</sup>, the City's long-term debt consisted of the following:

*Accrued Compensated Absences:* Accrued compensated absences reported in the governmental activities are comprised of accrued vacation leave, sick leave and compensatory time.

*Customer Deposit Liability:* Utility customers without acceptable credit history are required to pay a meter deposit to obtain utility services. Utility deposits are refundable after 18 consecutive months of on-time payment history. Other customer deposits include encroachment deposits, landscaping deposits and bid bonds. Other deposits are refundable upon completion of the requirements of each type of deposit, typically within 12 months.

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*Loans Payable:* The City of Cody issued debt in the Wastewater Fund in the amount of \$3,126,895 for both phases of the wastewater treatment facility upgrade and expansion project. The loan for Phase 2 of the will not become due until after substantial completion of the project has been completed.

The City has assigned and pledged to the Wyoming State Loan and Investment Board all revenues generated from the Wastewater user fees and Wastewater enterprise fund unrestricted reserves as reimbursement for the annual loan payments which the City will make to the Clean Water State Revolving Fund (CWSRF) necessary to meet the amortized annual payment of principal and interest. The City of Cody charges a wastewater plant fee based on water tap size which is assessed monthly to all users of the City's sewer system. This fee generates approximately \$220,000 annually which exceeds the annual debt service payment requirement.

The annual requirements to retire the debt outstanding as of June 30<sup>th</sup> are as follows:

Fiscal Year	Loan Phase 1		Loan Phase 2		Total
	Principal	Interest	Principal	Interest	
2021	\$71,363	\$39,048	-	-	\$110,411
2022	73,123	37,288	-	-	110,411
2023	74,926	35,485	77,363	-	187,774
2024	76,774	33,637	77,363	-	187,774
2025	78,667	31,744	77,363	-	187,774
2026-2030	423,406	128,652	386,815	-	938,873
2031-2035	478,245	73,813	386,815	-	938,873
2036-2040	303,115	15,047	386,815	-	704,974
2041-2045	-	-	154,742	-	154,742
Total	\$1,579,619	\$394,717	\$1,547,276	\$ -	\$3,521,612

*Net Pension Liability:* Under GASB 68/71 the City of Cody is required to recognize pension expense and report deferred outflows of resources and deferred inflows of resources related to pensions for its proportionate share of collective net pension liability under cost-sharing employer plans.

CHANGES IN LONG TERM DEBT					
	Balance at July 1st	Additions	Deductions	Balance at June 30th	Amounts Due within a Year
Governmental Activities:					
Accrued Compensated Absences	\$435,233	\$14,518	\$6,059	\$443,692	\$222,363
Customer Deposits	15,900	15,640	29,191	2,349	2,349
Net Pension Liability	4,676,944	-	64,477	4,612,467	-
Total Governmental Activities	\$5,128,077	30,158	99,727	5,058,508	224,712

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	Balance at July 1st	Additions	Deductions	Balance at June 30th	Amounts Due within a Year
Business-Type Activities:					
Accrued Compensated Absences	\$216,450	5,723	38,098	\$184,075	\$76,315
Customer Deposits	176,474	73,850	90,748	159,576	159,576
Loans Payable (CWSRF)	2,600,627	599,028	72,760	3,126,895	71,363
Net Pension Liability	1,944,257	-	438,124	1,506,133	-
Total Business-Type Activities	4,937,808	678,601	639,730	4,976,679	307,254
<b>Total Long-Term Debt</b>	<b>\$10,065,885</b>	<b>\$708,759</b>	<b>\$739,457</b>	<b>\$10,035,187</b>	<b>\$531,966</b>

### 3.F. CAPITAL ASSETS

Capital asset activity for the fiscal year ended June 30th was as follows:

GOVERNMENTAL CAPITAL ASSETS					
	Balance at July 1, 2020	Adjustments	Additions	Disposals	Balance at June 30, 2021
Land	\$ 2,418,607	\$ -	\$ -	\$ -	\$ 2,418,607
Construction in Progress	2,260	-	404,646	-	406,907
Buildings	14,078,495	-	-	-	14,078,495
Intangibles	76,400	-	-	(23,919)	52,481
Improvements	6,388,145	-	-	(422,179)	5,965,966
Furniture & Fixtures	916,179	-	27,000	-	943,179
Machinery & Equipment	6,390,711	-	583,748	(318,069)	6,656,390
Infrastructure	19,883,643	-	2,487	(18,545)	19,867,585
Total Assets	50,154,440	-	1,017,881	(782,712)	50,389,609
Accumulated Depreciation	(19,569,533)	-	(1,351,440)	759,184	(20,161,788)
Net Capital Assets	\$ 30,584,907	\$ -	\$ (333,558)	\$ (23,528)	\$ 30,227,821
PROPRIETARY CAPITAL ASSETS					
	Balance at July 1, 2020	Adjustments	Additions	Disposals	Balance at June 30, 2021
Land	\$ 614,332	\$ -	\$ -	\$ -	\$ 614,332
Intangibles	24,900	-	-	(12,045)	12,855
Construction in Progress	4,229,449	-	3,875,903	(5,990)	8,099,362
Buildings	1,623,979	-	-	-	1,623,979
Improvements	139,788	-	-	(116,622)	23,166
Machinery & Equipment	4,781,624	-	1,219,232	(154,489)	5,846,367
Infrastructure	53,334,587	-	330,808	(70,069)	53,595,327
Total Assets	64,748,660	-	5,425,943	(359,216)	69,815,387
Accumulated Depreciation	(26,310,149)	-	(1,390,831)	353,226	(27,347,754)
Net Capital Assets	\$ 38,438,511	\$ -	\$4,035,112	\$ (5,990)	\$ 42,467,633

### 3.G. INTERFUND BALANCES AND ACTIVITIES

The City of Cody utilizes inter-fund transfers for both operating and capital purposes such as allocations to the Vehicle Replacement Fund and franchise transfers from the Proprietary Funds to the General Fund. Inter-fund transfers for the year ended June 30<sup>th</sup> were as follows:



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Governmental Activities – Interfund Activity					
	General Fund	COVID-19 Fund	Lodging Tax Fund	Vehicle Replacement Fund	Total
Transfers In	\$885,967	-	-	\$856,318	\$1,742,285
Transfers Out	(149,580)	(155,979)	(61,421)	-	(366,980)
<b>Totals</b>	<b>\$736,387</b>	<b>(\$155,979)</b>	<b>(\$61,421)</b>	<b>\$856,318</b>	<b>\$1,375,305</b>

Business-Type Activities – Interfund Activity					
	Solid Waste Fund	Water Fund	Wastewater Fund	Electric Fund	Total
Transfers In	-	-	-	-	-
Transfers Out	(513,860)	(61,755)	(108,092)	(691,598)	(1,375,305)
<b>Totals</b>	<b>(\$513,860)</b>	<b>(\$61,755)</b>	<b>(\$108,092)</b>	<b>(\$691,598)</b>	<b>(\$1,375,305)</b>

The amounts shown in this chart differs from the transfers shown on the Statement of Activities due to the following capital contributions recorded as other financing sources due to the purchase of capital assets by the Specific Purpose Tax Fund and Vehicle Replacement Fund:

Fund	Amount
Wastewater	\$832,012
Solid Waste	941,668
<b>Total</b>	<b>\$1,773,680</b>

The amount shown on this schedule (\$1,773,680) for capital contributions differs from capital contributions total shown on the Statement of Revenues, Expenses and Changes in Fund Net Position Proprietary Funds capital contributions (\$2,931,659) due to contributed capital received from outside agencies.

At fund level, the purchase by the governmental fund is recorded as capital outlay expenditure and is a capital contribution in the proprietary fund. However, for the government-wide financial statements this activity is treated as a transfer between funds and activity is eliminated.

### 3.H. FUND BALANCES AND NET POSITION

#### Components of Fund Balances

As of June 30th, fund balances components consisted of the following:

Fund	Non-Spendable	Restricted	Committed	Assigned
General Fund	\$280,713	\$153,785	\$ -	\$66,043
Vehicle Replacement Fund	-	-	-	2,686,160
Cody Public Art Fund	-	3,225	-	-
Specific Purpose Tax Fund	-	874,382	-	-
<b>Total</b>	<b>\$280,713</b>	<b>\$1,031,392</b>	<b>\$ -</b>	<b>\$2,752,203</b>

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Net Asset Restrictions

In the governmental activities at the government-wide level there is a restriction in the amount of \$1,031,392 due to certain assets being restricted to a specific use such as the specific purpose tax fund (\$874,382), police forfeiture funds (\$122,685), PEG grant (\$10,000), convention center project (\$21,100), and donations received for the Cody Public Art project (\$3,225).

**NOTE 4. OTHER NOTES**

**4.A. EMPLOYEE PENSION PLANS**

The City and all full-time and regular part-time employees participate in the Wyoming Retirement System (WRS), a cost-sharing multi-employer public employee retirement system. WRS pays employees a defined benefit depending upon years of service and earnings using an accrued benefit cost method.

Wyoming Retirement System has two tiers of benefits for City employees:

Tier 1: For employees who have made a contribution to the Plan for service prior to September 1, 2012, benefits are calculated using a multiplier of 2.125 percent for the first 15 years of service and 2.25 percent for years of service above 15 and the employee's three-year highest average salary. Employees under this tier are eligible for full retirement at age 60 or the Rule of 85 (age plus years of service in WRS equals 85 or more).

Tier 2: For employees who made their first contribution to the Plan for service on or after September 1, 2012 or if an employee terminated employment before being vested, or took a refund and then were reemployed on or after September 1, 2012, benefits are calculated using a multiplier of 2 percent for all years of service and the employee's five-year highest average salary. Employees under this tier are eligible for full retirement benefits at age 65 or the Rule of 85.

City employees are eligible for a reduced benefit when: Under Tier 1 the employee reaches age 50 and are vested; Under Tier 2 the employee reaches age 55 and are vested or Under either Tier if the employee completes 25 years of service at any age. Law enforcement employees are eligible for full retirement after reaching age 60 and are vested or at any age with 20 years of service. Early retirement benefits are available with a reduced benefit after reaching age 50 and are vested. All eligible City employees are covered under one of the following two plans:

Public Employee Pension Plan

Beginning July 2020, public employees participate at a contribution rate of 18.12%. By State Statute, the employer-allocated portion is 9.12% and the employee-allocated portion 9.00% of which the City paid 12.94% and the employees paid 5.18% of the total contribution amount. Prior to July 2020 the employer-allocated portion was 8.87% and the employee-allocated portion was 8.75% of which the City paid 12.69% and the employees paid 4.93% for a total contribution rate of 17.62%.

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Fiscal Year Ending	Employee Contribution	Employer Contribution	Total Contribution
June 30, 2021	\$238,565	\$595,482	\$834,047
June 30, 2020	\$221,384	\$569,842	\$791,226
June 30, 2019	\$205,180	\$548,180	\$753,360
June 30, 2018	\$186,462	\$512,611	\$699,073

Law Enforcement Pension Plan

Beginning September 2020, law enforcement employees participate at a contribution rate of 17.20%. By State Statute, the employer-allocated portion is 8.60% and the employee-allocated portion is 8.60% of which the City paid 11.69% and employees paid 5.51% of the total contribution amount.

Fiscal Year Ending	Employee Contribution	Employer Contribution	Total Contribution
June 30, 2021	\$85,754	\$181,935	\$267,689
June 30, 2020	\$78,133	\$165,761	\$243,894
June 30, 2019	\$74,073	\$157,153	\$231,226
June 30, 2018	\$71,515	\$151,726	\$223,241

As of June 30th, the City did not have an outstanding balance payable for legally required contributions to the Wyoming Retirement System.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

The WRS has public employee and law enforcement employee plan net position of \$9,059,252,909 and a total pension liability of \$11,300,734,860, creating a net pension liability of \$2,241,481,951. The City of Cody's prorated share of the net pension liability is \$6,118,600, as reported on the Statement of Net Position. Of this amount \$4,612,467 is attributable to the General Fund and \$1,506,133 is attributable to the Enterprise Funds. The City's net pension liability is based on the ratio of actual contributions paid to WRS by the City to the total paid by all participants of the plan. The City's prorated share of the net pension liability is based on the ratio of actual contributions paid to WRS by the City to the total paid by all participants of the plan. The measurement date of the unfunded pension liability was December 31, 2020.

At December 31, 2020, the City's liability as well as their proportion and increase from its proportion measured at December 31, 2019 were as follows for each plan in which the City participates:

	Pension Liability at June 30, 2021	Proportion at December 31, 2020	Increase(Decrease) from December 31, 2019
Public Employee Pension Plan	\$5,495,916	.25287650%	.00225870%
Law Enforcement Pension Plan	622,684	.91406960%	.06775080%
Total	\$6,118,600		

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At June 30th, the City reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflow		Deferred Inflow	
	Public Employees	Law Enforcement	Public Employees	Law Enforcement
Net difference between projected & actual earnings	-	-	\$1,204,922	\$397,960
Difference between actual and expected experience	104,439	153,763	47,790	32,466
Assumption changes	34,133	367,927	-	554,491
Amortizing deferred outflows & deferred inflows	-	-	-	-
Contributions subsequent to measurement date	405,510	126,603	-	-
<b>Total</b>	<b>\$544,082</b>	<b>\$648,294</b>	<b>\$1,252,712</b>	<b>\$984,918</b>

The City reported \$1,192,375 as deferred outflows of resources related to pensions resulting from contributions subsequent to the measurement date which will be recognized as a reduction of the net pension liability in the year end June 30th. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as follows:

Fiscal Year Ending June 30th	Deferred Outflows of Resources	Deferred Inflows of Resources
2021	\$358,079	\$671,977
2022	149,286	280,152
2023	542,040	1,017,201
2024	142,970	268,300
<b>Total</b>	<b>\$1,192,375</b>	<b>\$2,237,630</b>

### Actuarial Assumptions

An experience study was conducted covering the five-year period ending December 31, 2016. The net pension liability as of December 31, 2020 is based on the results of an actuarial valuation as of January 1, 2020 rolled forward to a measurement date of December 31, 2020. The following actuarial assumptions applied to all periods included in the measurement:

<i>Public Employee Pension Plan</i>	
Actuarial cost method	Entry age normal
Amortization method	Level percentage of payroll, closed
Remaining amortization period	27 years
Asset valuation method	5-year smoothed market
Inflation	2.25%
Salary increases	2.5% to 6.5%, including inflation
Payroll growth rate	2.5%
Cost of living increase	0.00%
Investment rate of return	7.00%, net of pension plan investment expense

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Retirement age	Experience-based table of rates that are specific to the type of eligibility condition. Last updated for the 2018 valuation pursuant to an experience study of the period 2012-2016.
Post-retirement mortality	RP-2014 Healthy Annuitant Mortality Table, fully generational, projected with Scale MP-2017 Males: No set back with a multiplier of 100% Females: No set back with a multiplier of 88%
Pre-retirement mortality	RP-2014 Employee Mortality Table, fully generational, projected with Scale MP-2017 Males: No set back with a multiplier of 100% Females: No set back with a multiplier of 100%

*Law Enforcement Pension Plan*

Actuarial cost method	Entry age normal
Amortization method	Level percentage of payroll, closed
Remaining amortization period	25 years
Asset valuation method	5-year smoothed market
Inflation	2.25%
Salary increases	4.75% to 8.75%, including inflation
Payroll growth rate	2.5%
Cost of living increase	0.00%
Investment rate of return	7.00%, net of pension plan investment expense
Retirement age	Experience-based table of rates that are specific to the type of eligibility condition. Last updated for the 2018 valuation pursuant to an experience study of the period 2012-2016.
Post-retirement mortality	RP-2014 Healthy Annuitant Mortality Table, fully generational, projected with Scale MP-2017 Males: No set back with a multiplier of 100% Females: No set back with a multiplier of 88%
Pre-retirement mortality	RP-2014 Employee Mortality Table, fully generational, projected with Scale MP-2017 Males: No set back with a multiplier of 100% Females: No set back with a multiplier of 100%

*Asset Allocation*

The long-term expected rate of return on pension plan investments was determined using a building-block method in which expected future real rates of return are developed for each major asset class. These real rates of return are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. Each major asset class is included in the pension plans target asset allocation for the fiscal year 2020. These best estimates are summarized in the following table:

Asset Class	Target Allocation	Long-Term Expected Arithmetic Rate of Return
Cash	2.00%	-1.00%
Fixed Income	21.00%	1.34%
Equity	48.50%	7.34%

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Marketable Alternatives	19.00%	4.50%
Private Markets	9.50%	5.82%
<b>Total</b>	<b>100.00%</b>	<b>5.23%</b>

Discount Rate

The discount rate used to measure the total pension liability was 7.00% for the public employee plan and 7.00% for the law enforcement plan. Projected benefit payments are required to be discounted to their actuarial present values using a single discount rate that reflects (1) a long-term expected rate of return and (2) tax-exempt municipal bond rate based on an index of 20-year general obligation bonds with an average AA credit rating as of the measurement date.

The following table presents the City's proportionate share of the net pension liability calculated using the discount rate of 7.00%, as well as the City's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1% lower (6.00%) or 1% higher (8.00%) than the current rate:

Primary Government Pension Plans	1% Decrease (6.00%)	Current Discount Rate (7.00%)	1% Increase (8.00%)
Public Employee Plan	\$8,611,475	\$5,495,916	\$2,895,955
Law Enforcement Plan	1,645,915	622,684	(213,773)
<b>Total</b>	<b>\$10,257,389</b>	<b>\$6,118,600</b>	<b>\$2,682,182</b>

Wyoming Retirement System Reports

Financial reporting information pertaining to the City's participation in the Wyoming Retirement System (WRS) is prepared in accordance with Governmental Accounting Standards Board (GASB) Statement No. 68, Accounting and Financial Reporting for Pensions, as amended by GASB Statement No. 71. The WRS was established through State Statutes W.S. 9-3-401 through W.S. 9-3-432. The WRS issues a publicly available Comprehensive Annual Financial Report that includes its financial statements and required supplementary information. Contact the Wyoming Retirement System for additional information or a summary plan description detailing the provisions of the plan, including benefits, actuarial assumptions, discount rates, investments held, expected rates of return, discount rate sensitivity and cost of living adjustments at 6101 Yellowstone Road, Suite 500, Cheyenne, Wyoming 82002, or by calling 307-777-7691. The information is also available on their website at [www.retirement.state.wy.us](http://www.retirement.state.wy.us)

#### 4.B. RISK MANAGEMENT

Liability

The City is exposed to various risks of loss related to torts, theft of, damage to, or destruction of assets; errors and omissions; injuries to employees; employees' health and life; and natural disasters. The City manages these various risks of loss through participation in the Wyoming Local Government Liability Pool (LGLP). The City pays an annual actuarially determined assessment to LGLP for liability coverage. The coverage provides \$250,000 per claimant, but not more than \$500,000 per occurrence for all claimants. The deductible per occurrence is \$5,000. The contribution to the plan in the current year was \$44,154. Should claims exceed LGLP deposits, each participant is liable and will be assessed for its proportionate share whether or not



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it continues to participate in the plan, should LGLP terminate, the City would receive its proportionate share of excess funds remaining in the LGLP account. The City has incurred no losses of significance in excess of coverage provided by LGLP in the last three years.

#### Health Insurance

The City also participates in the Wyoming Association of Municipalities Joint Powers Insurance Coverage (WAM-JPIC) as a means to acquiring health and life insurance at competitive rates. The package is acquired by pooling resources with other governmental entities. The City pays 100% of the cost for single coverage and 85% of the cost for dependent coverage with employees paying the other 15%. In addition, the City contributes 50% of the employees' annual deductible into a health savings account (H.S.A.) for each covered employee. Employees with family coverage receive \$1,400 per year (contributed at \$58.33 per pay period) and employees with other than family coverage receive \$700 per year (contributed at \$29.16 per pay period). The total cost for health insurance and H.S.A contribution for the City in the current fiscal year was \$1,591,592.

#### Property Insurance

Buildings and equipment are adequately insured under commercial insurance policies. The City has incurred no losses of significance in excess of coverage provided by the commercial carriers in the last three years. Total costs for property insurance for the City in the current fiscal year were \$65,365.

#### Cyber Insurance

The City maintains cyber insurance to protect against internet-based risks and risks related to information technology infrastructure and activities. The City has incurred no losses. Total costs for cyber insurance for the City in the current fiscal year were \$9,823.

### **4.C. LEASES**

The City has entered into a lease agreement with the Cody Council on Aging, Inc. for a building constructed by the City for use as a senior center. The annual fair market value under the lease is approximately \$87,000. The term of the lease is 30 years beginning January 1, 2002 with valuation adjustments to be considered every five years. The annual lease payment is considered an in-kind contribution from the City to the Cody Council on Aging, a 501(c) (3) organization.

### **4.D. COMPENSATED ABSENCES**

Accumulated vacation, sick leave and compensatory pay of the City's employees vest every other week and is recorded as a liability in the respective City funds. The General Fund's accrued vacation pay and sick leave is reported as a liability on the government-wide financial statements. Liabilities of the proprietary funds are reported within those funds at the fund level and government-wide level of financial statements. See Note 3.F. for further disclosure of the liabilities.

### **4.E. RELATED PARTY TRANSACTIONS**

#### Purchases from Elected Officials

During the fiscal year ended June 30th the City of Cody purchased materials and services from a business owed by council members in the amount of \$69,418.

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

### Jointly Governed Organizations

The City paid the following jointly governed organizations for the following during the fiscal year ended June 30th:

Organization	Purpose	Amount Paid	Amount Owed as of June 30th
Shoshone Municipal Pipeline	Wholesale water	\$1,621,538	\$179,892
Wyoming Municipal Power Agency	Wholesale electricity	\$9,465,184	809,712

### **4.F. SEGMENT INFORMATION FOR ENTERPRISE FUNDS**

The City maintains four business-type activities which provide solid waste, water, wastewater and electric services. Only the Water Fund and the Electric Fund are required to have segment information presented, however Management has chosen to show limited segment information on each Proprietary Fund in this Note. Each fund is a major fund therefore the full segment information can be easily seen in the proprietary funds financial statements. Segment information for the year ended June 30th as follows:

	Solid Waste Fund	Water Fund	Wastewater Fund	Electric Fund	Combined Total
Total Assets	\$5,476,874	\$17,555,849	\$21,992,934	\$19,102,424	\$64,128,081
Current Assets	3,178,354	5,804,227	4,067,677	8,610,191	21,660,449
Capital Assets	2,298,520	11,751,622	17,925,257	10,492,233	42,467,632
Current Liabilities	266,872	865,657	339,737	1,093,883	2,566,149
Net Position Capital Assets	2,298,520	11,751,622	17,925,257	10,492,233	42,467,632
Net Position Unrestricted	2,411,329	4,568,678	446,022	6,695,997	14,122,026
Operating Revenues	2,322,281	3,440,251	1,440,171	12,212,325	19,415,028
Operating Expense	1,935,693	2,923,691	1,024,185	10,868,690	16,752,259
Operating Income (Loss)	386,588	516,560	415,986	1,343,635	2,662,769
Interest Income	11,719	8,663	2,932	16,425	39,739
Transfers Out	513,860	61,755	108,092	691,598	1,375,305
Change in Net Position	828,615	1,398,311	1,328,699	668,462	4,224,078
Net Position Beginning	3,881,234	14,921,989	17,261,371	16,519,768	52,584,371
Net Position Ending	4,709,849	16,320,300	18,590,070	17,188,230	56,808,449
Net Cash Flow Operations	508,036	1,007,223	826,649	1,558,537	3,900,445
Net Cash Flow Non-Capital	(511,360)	(61,755)	(108,092)	(691,598)	(1,372,805)
Net Cash Flow Capital	(116,683)	(1,081,811)	(348,197)	(452,611)	(1,999,302)
Net Cash Flow Investing	11,719	8,663	2,933	16,425	39,740
Beginning Cash	2,972,020	4,866,436	3,423,541	5,978,085	17,240,082
Ending Cash	\$2,863,732	\$4,738,756	\$3,796,834	\$6,408,838	\$17,808,160

### **4.G. CONTINGENCIES**

#### Contingencies

*Grant Program Involvement* – in the normal course of operations the City participated in various federal and state grant/loan programs from year to year. The grant/loan programs are often subject to additional audits by the granting or loan agency, the purpose of which is to ensure compliance with the specific conditions of the grant or loan. Any liability for reimbursement which may arise as a result of these audits cannot be reasonably determined at this time, although it is believed the amount, if any, would not be material.

*Litigation* – the City is a party to various legal proceedings which normally occur in the course of government operations. The financial statements do not include accrual or provisions for loss

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

contingencies that may result from these proceedings. While the outcome of the above noted proceedings cannot be predicted, due to the insurance coverage maintained by the City and the State Statute relating to judgments, the City feels that any settlement or insurance would not have a material adverse effect on the financial condition of the City.

#### 4.H. COMMITMENTS

##### Construction Commitments

At June 30th, the following construction commitments were outstanding of which some are being performed by City of Cody employees/departments:

Project	Department	Actual as of June 30 <sup>th</sup>	Anticipated Remaining Cost
Bomb robot upgrades	Police	\$72,118	\$85,592
LEC parking lot improvements	Public Works	25,810	11,449
Demaris Street overlay	Public Works	20,916	24,633
Sidewalk and pedestrian ramp upgrades	Public Works	47,222	452,778
Chip sealing	Public Works	240,839	109,160
Beacon Hill water tank	Water	2,724,184	875,815
Treated and raw water line replacements	Water	25,235	280,335
Wastewater treatment facility phase 2	Wastewater	5,119,800	880,199
Electric lines	Electric	230,140	199,739
<b>Total</b>		<b>\$8,506,268</b>	<b>\$2,919,705</b>

#### 4.I. SUBSEQUENT EVENTS/OTHER

Approved on third and final reading an Ordinance amending Title 4, Chapter 4, Article 1, Section 6 and Title 4, Chapter 4, Article III, Section 13 of the City of Cody Municipal Code to Establish the Bulk Item Removal Program and Set the Bulk Item removal Charge.

Approved the cost-share agreement on Public Utility Improvements for the Shadow Mountain No. 2 subdivision, and authorized the Mayor to sign and execute all associated documents

Awarded Bid 2021-07 to Spradley Barr Motors for three (3) Ford Explorer Police Interceptor Utility Vehicles for a total amount of \$105,552.00.

Approved the uncollectible account write offs in the amount of \$63,853.18.

Approved Resolution 2021-12 encumbering funds from the American Rescue Plan Act for the HVAC System Upgrade Project at the City Hall and Nichol Mall Public Buildings in the amount of \$250,000.

Approved Resolution 2021-13 encumbering funds from the American Rescue Plan Act for the Purchase of Mable Data Terminals, Related Software and Training for the Police Department in the amount of \$201,830.

City of Cody, Wyoming  
Notes to Basic Financial Statements  
June 30, 2021

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Approved Resolution 2021-14 encumbering funds from the American Rescue Plan Act to Contract with a Consulting Firm to Perform a Salary Study in the amount of \$27,500.

Approved Resolution 2021-15 amending the Fiscal Year 2021-2022 budget.

Awarded Bid 2021-05 for the YRA treated waterline replacement project to Harris Trucking and Construction in the amount of \$164,152.50.

Approved Resolution 2021-16 encumbering funds from the American Rescue Plan Act for the installation of a fire suppression system and sound system upgrade in the City auditorium building in the amount of \$150,000.

Approved Resolution 2021-17 encumbering funds from the American Rescue Plan Act to provide funding for two full time positions to restore public sector capacity in the amount of \$410,000.

Authorized Barry Cook, City Administrator, to enter into and sign an agreement between the City of Cody and Condrey & Associates for professional services relating to a Salary Study in the amount of \$27,500.

Awarded Bid 2021-11 to Vermeer Rocky Mountain for a Vermeer BC1500XL brush chipper in the amount of \$79,811.00.

Awarded Bid 2021-09 to Suburban Sales for a Load Trail tilt deck trailer in the amount of \$15,943.00.

Awarded Bid 2021-10 to Greiner Ford of Casper for a 2022 Ford F250 flatbed truck with snowplow in the amount of \$44,874.00.

**REQUIRED SUPPLEMENTAL INFORMATION**

City of Cody, Wyoming  
Statement of Revenues, Expenditures, and Changes in Fund Balances - Budget and Actual  
General Fund - Modified Accrual Basis  
for the fiscal year ended June 30, 2021

	<b>Original Budget</b>	<b>Final Budget</b>	<b>Actual</b>	<b>Variance Positive(Negative)</b>
<b>REVENUES</b>				
Taxes	3,100,064	3,100,064	3,921,401	821,337
Invergovernmental	2,843,543	2,998,029	2,992,646	(5,383)
Licenses & Permits	68,200	68,200	67,388	(812)
Fines & Assessments	71,400	71,400	103,700	32,300
Charges for Services	1,471,970	1,471,970	1,571,549	99,579
Operating Grants & Contributions	321,238	302,838	301,239	(1,599)
Investment Income	61,365	61,365	29,689	(31,676)
Miscellaneous	105,457	105,457	142,268	36,811
Total Revenues	<u>8,043,237</u>	<u>8,179,323</u>	<u>9,129,880</u>	<u>950,557</u>
<b>EXPENDITURES</b>				
General Government	852,546	895,159	782,824	112,335
Police	3,524,181	3,740,866	2,468,047	1,272,819
Parks & City Facilities	1,059,737	1,064,072	819,282	244,790
Community Development & Public Works	1,702,164	1,766,102	1,427,905	338,197
Recreation Center	2,149,722	2,140,970	1,808,211	332,759
Total Expenditures	<u>9,288,350</u>	<u>9,607,169</u>	<u>7,306,269</u>	<u>2,300,900</u>
<b>INTERFUND TRANSFERS</b>				
Transfers In	733,852	747,225	885,965	(138,740)
Transfers Out	-	-	(149,580)	149,580
Net Transfers	<u>733,852</u>	<u>747,225</u>	<u>736,385</u>	<u>10,840</u>
Net change in fund balance	(511,261)	(680,621)	2,559,996	3,240,617
<b>FUND BALANCE - BEGINNING</b>	8,856,886	8,856,886	8,856,886	-
<b>FUND BALANCE - ENDING</b>	<u>\$ 8,345,625</u>	<u>\$ 8,176,265</u>	<u>\$ 11,416,882</u>	<u>\$ 3,240,617</u>

**Adjustments to Generally Accepted Accounting Principles Basis:**

Changes in due from other governments	\$ 211,318
Changes in due from other entities	(87,139)
Changes in court receivables and related accounts	5,382
Changes in other receivables	(34,080)
Changes in allowances	18,481
Changes in inventory	9,196
Changes in accrued liabilities	(27,149)
Changes in deferred revenue	10,700
Net change in fund balances - GAAP basis	<u>106,709</u>

**Ending Fund Balance - GAAP Basis** \$ 11,523,591

**Notes:**

(1) The City of Cody operates a Vehicle Replacement capital project fund which accounts for transfers from other funds within the primary government which is to be used to purchase vehicles and equipment. Transfers are based upon each department's vehicles and assigned replacement schedules to allocate appropriate funds to cover future replacements. See Note 3.G. in the Notes to the Basic Financial Statements for additional details.

(3) The budget for the General Fund is prepared using the modified accrual basis of accounting.



City of Cody, Wyoming  
 Budgetary Comparison Schedule - Modified Accrual Basis  
 Major Governmental Fund  
 for the fiscal year ended June 30, 2021

	COVID-19 Fund			
	Original Budget	Final Budget	Actual Amounts	Variance Positive(Negative)
<b>REVENUES</b>				
Grants and Contributions	\$ -	\$ 1,662,780	\$ 1,662,780	\$ -
Total Revenues	-	1,662,780	1,662,780	-
<b>EXPENDITURES</b>				
General Government	-	1,429,061	1,429,061	-
Capital Outlay	-	77,740	77,740	-
Total Expenditures	-	1,506,801	1,506,801	-
<b>INTERFUND TRANSFERS</b>				
Transfers In	-	-	-	-
Transfers Out	-	(155,979)	(155,979)	-
Net Transfers	-	(155,979)	(155,979)	-
Net change in fund balance	\$ -	\$ -	\$ -	\$ -
<b>FUND BALANCE - BEGINNING</b>	\$ -	\$ -	\$ -	\$ -
<b>FUND BALANCE - ENDING</b>	\$ -	\$ -	\$ -	\$ -

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
 Budgetary Comparison Schedule - Modified Accrual Basis  
 Major Governmental Fund  
 for the fiscal year ended June 30, 2021

	VEHICLE REPLACEMENT FUND			
	Original Budget	Final Budget	Actual Amounts	Variance Positive(Negative)
<b>REVENUES</b>				
Investment Income	33,343	33,343	23,484	(9,859)
Total Revenues	33,343	33,343	23,484	(9,859)
<b>EXPENDITURES</b>				
Operating Expenses	100	100	39	61
Capital Outlay	1,266,476	1,640,939	1,430,809	210,130
Total Expenditures	1,266,576	1,641,039	1,430,848	210,191
<b>INTERFUND TRANSFERS</b>				
Transfers In	631,172	856,318	856,318	-
Transfers Out	-	-	-	-
Net Transfers	631,172	856,318	856,318	-
Net change in fund balance	\$ (602,061)	\$ (751,378)	\$ (551,046)	\$ 200,332
<b>FUND BALANCE - BEGINNING</b>	\$ 3,237,206	\$ 3,237,206	\$ 3,237,206	\$ -
<b>FUND BALANCE - ENDING</b>	\$ 2,635,145	\$ 2,485,828	\$ 2,686,160	\$ 200,332

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
 Budgetary Comparison Schedule - Modified Accrual Basis  
 Major Governmental Fund  
 for the fiscal year ended June 30, 2020

	<b>LODGING TAX FUND</b>			
	<b>Original Budget</b>	<b>Final Budget</b>	<b>Actual Amounts</b>	<b>Variance Positive(Negative)</b>
<b>REVENUES</b>				
Taxes	\$ -	\$ -	\$ -	\$ -
Investment Income	-	-	-	-
Total Revenues	-	-	-	-
<b>EXPENDITURES</b>				
General Government	-	-	-	-
Outside Agency Funding	-	-	-	-
Total Expenditures	-	-	-	-
<b>INTERFUND TRANSFERS</b>				
Transfers In	-	-	-	-
Transfers Out	(48,048)	(61,421)	(61,421)	-
Net Transfers	(48,048)	(61,421)	(61,421)	-
Net change in fund balance	\$ -	\$ -	\$ (61,421)	\$ (61,421)
<b>FUND BALANCE - BEGINNING</b>	<u>\$ 61,421</u>	<u>\$ 61,421</u>	<u>\$ 61,421</u>	<u>\$ -</u>
<b>FUND BALANCE - ENDING</b>	<u><u>\$ 61,421</u></u>	<u><u>\$ 61,421</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
 Budgetary Comparison Schedule - Modified Accrual Basis  
 Major Governmental Fund  
 for the fiscal year ended June 30, 2021

	ARPA FUND			
	Original Budget	Final Budget	Actual Amounts	Variance Positive(Negative)
<b>REVENUES</b>				
Grants & Contributions	\$ -	\$ -	\$ -	\$ -
Total Revenues	-	-	-	-
<b>EXPENDITURES</b>				
General Government	-	-	-	-
Capital Outlay	-	-	-	-
Total Expenditures	-	-	-	-
Net change in fund balance	\$ -	\$ -	\$ -	\$ -
<b>FUND BALANCE - BEGINNING</b>	\$ -		\$ -	\$ -
<b>FUND BALANCE - ENDING</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

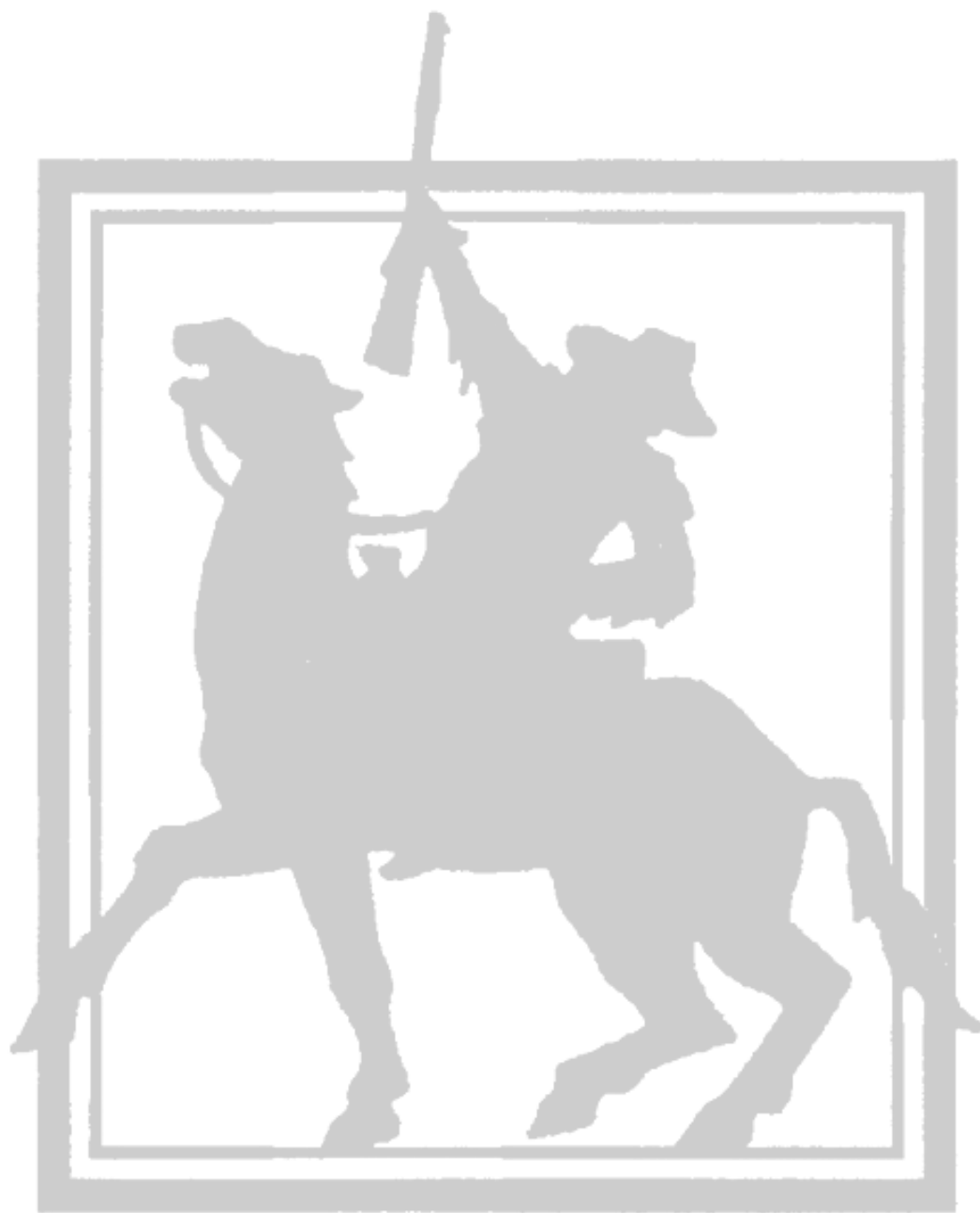
See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
 Budgetary Comparison Schedule - Modified Accrual Basis  
 Major Governmental Fund  
 for the fiscal year ended June 30, 2021

	SPECIFIC PURPOSE TAX FUND			
	Original Budget	Final Budget	Actual Amounts	Variance Positive(Negative)
<b>REVENUES</b>				
Taxes	\$ -	\$ -	\$ 11,904	\$ 11,904
Capital Grants	220,000	220,000	37,777	182,223
Investment Income	4,257	4,257	103	(4,154)
Total Revenues	224,257	224,257	49,784	189,973
<b>EXPENDITURES</b>				
Operating Expenses	-	-	18	(18)
Capital Outlay	1,841,978	2,069,065	1,167,027	902,038
Total Expenditures	1,841,978	2,069,065	1,167,045	902,020
Net change in fund balance	\$ (1,617,721)	\$ (1,844,808)	\$ (1,117,261)	\$ 727,547
<b>FUND BALANCE - BEGINNING</b>	\$ 1,991,644	\$ 1,991,644	\$ 1,991,644	\$ -
<b>FUND BALANCE - ENDING</b>	\$ 373,923	\$ 146,836	\$ 874,382	\$ 1,091,993

See independent auditor's report as it relates to required supplementary information.

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CITY OF CODY  

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WYOMING

## **OTHER SUPPLEMENTAL INFORMATION**



City of Cody, Wyoming  
Combining Balance Sheet  
Non-Major Governmental Funds  
June 30, 2021

	<u>Special Revenue Fund</u>	
	<u>Cody Public Art Fund</u>	<u>Total Non-Major Governmental Funds</u>
<b>ASSETS</b>		
Cash and Cash Equivalents	\$ 3,225	\$ 3,225
Investments	-	-
Accounts Receivable	-	-
	<u>\$ 3,225</u>	<u>\$ 3,225</u>
Total Assets	<u>\$ 3,225</u>	<u>\$ 3,225</u>
<b>LIABILITIES</b>		
Accounts Payable	\$ -	\$ -
	<u>\$ -</u>	<u>\$ -</u>
Total Liabilities	<u>\$ -</u>	<u>\$ -</u>
<b>FUND EQUITY</b>		
Fund Balance:		
Nonspendable:	\$ -	\$ -
Restricted:		
Public Art	3,225	\$ 3,225
Committed:	-	-
Assigned:	-	-
Capital Assets	-	-
Unassigned	-	-
	<u>\$ 3,225</u>	<u>\$ 3,225</u>
Total Fund Equity	<u>\$ 3,225</u>	<u>\$ 3,225</u>
Total Liabilities and Fund Equity	<u>\$ 3,225</u>	<u>\$ 3,225</u>

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
Combining Statement of Revenues, Expenditures and Changes in Fund Balance  
Non-Major Governmental Funds  
for the fiscal year ending June 30, 2021

	<u>Special Revenue Fund</u>	
	<u>Cody Public Art Fund</u>	<u>Total Non-Major Governmental Funds</u>
<b>REVENUES</b>		
Contributions	-	-
Investment Income	\$ -	\$ -
Total Revenues	-	-
<b>EXPENDITURES</b>		
Public Art Displays	42	42
Miscellaneous	-	-
Capital Outlay	-	-
Total Expenditures	42	42
Revenues Over(Under) Expenditures	(42)	(42)
Other Financing Sources(Uses)		
Transfers In	-	-
Revenues and Other Financing Sources Over(Under) Expenditures and Other Uses	(42)	(42)
<b>FUND BALANCE - BEGINNING</b>	3,267	3,267
<b>FUND BALANCE - ENDING</b>	\$ 3,225	\$ 3,225

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
Schedule of Pensions  
for the Fiscal Year Ended June 30, 2021

Schedule of Changes in Net Pension Liability and Related Ratios - Last 10 fiscal years\* (unaudited)

	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b>Public Employee Pension Plan</b>							
City's proportion of the net pension liability (Asset)	0.2528765%	0.2507178%	0.2481617%	0.2371331%	0.2390953%	0.2378250%	0.2320843%
City's proportionate share of the net pension liability	\$ 5,495,916	\$ 5,891,683	\$ 7,557,246	\$ 5,405,071	\$ 5,780,129	\$ 5,539,771	\$ 4,095,574
City's covered-employee payroll	\$ 4,601,873	\$ 4,491,988	\$ 4,420,111	\$ 4,212,379	\$ 4,262,843	\$ 4,169,999	\$ 3,967,278
City's proportionate share of the net pension liability (asset) as a percentage of covered employees	119.43%	131.16%	170.97%	128.31%	135.59%	133.56%	103.23%
Plan fiduciary net position as a percentage of the total pension liability	79.24%	76.83%	69.17%	76.35%	73.42%	73.40%	79.08%
<b>Law Enforcement Pension Plan</b>							
City's proportion of the net pension liability (Asset)	0.9140696%	0.8463188%	0.0849051%	0.8264306%	0.7681368%	0.8147468%	0.8126946%
City's proportionate share of the net pension liability	\$ 622,684	\$ 729,516	\$ 2,055,317	\$ 711,097	\$ 579,881	\$ 612,037	\$ 239,450
City's covered-employee payroll	\$ 1,556,330	\$ 1,418,031	\$ 1,344,341	\$ 1,268,960	\$ 1,188,916	\$ 1,225,377	\$ 1,201,088
City's proportionate share of the net pension liability (asset) as a percentage of covered employees	40.01%	51.45%	152.89%	56.04%	48.77%	49.95%	19.94%
Plan fiduciary net position as a percentage of the total pension liability	91.82%	89.05%	71.22%	87.99%	88.11%	87.49%	94.76%

Schedule of Pension Contributions - Last 10 fiscal years\* (unaudited)

	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b>Public Employee Pension Plan</b>							
Contractually required contributions	\$ 834,047	\$ 791,488	\$ 753,360	\$ 707,840	\$ 710,756	\$ 689,754	\$ 615,196
Contributions in relation to the contractually required contributions	\$ 834,047	\$ 791,488	\$ 753,360	\$ 707,840	\$ 710,756	\$ 689,754	\$ 615,196
Contributon deficiency(excess)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
City's covered employee payroll	\$ 4,601,873	\$ 4,491,988	\$ 4,420,111	\$ 4,258,964	\$ 4,276,510	\$ 4,150,144	\$ 3,876,471
Contributions as a percentage of covered employee payroll	18.12%	17.62%	17.04%	16.62%	16.62%	16.62%	15.87%
<b>Law Enforcement Pension Plan</b>							
Contractually required contributions	\$ 267,689	\$ 243,901	\$ 231,227	\$ 225,664	\$ 206,736	\$ 220,283	\$ 216,359
Contributions in relation to the contractually required contributions	\$ 267,689	\$ 243,901	\$ 231,227	\$ 225,664	\$ 206,736	\$ 220,283	\$ 216,359
Contributon deficiency(excess)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
City's covered employee payroll	\$ 1,556,330	\$ 1,418,031	\$ 1,344,341	\$ 1,312,002	\$ 1,201,953	\$ 1,280,715	\$ 1,257,901
Contributions as a percentage of covered employee payroll	17.20%	17.20%	17.20%	17.20%	17.20%	17.20%	17.20%

\* Information for years prior to 2015 is not available

\*\* The amounts presented for each fiscal year were determined as of the calendar year end that occurred within the fiscal year

See independent auditor's report as it relates to required supplementary information.

City of Cody, Wyoming  
Schedule of Expenditures of Federal Awards  
for the fiscal year ending June 30, 2021

<b>Federal Grantor/Pass Through Grantor/Program Title</b>	<b>Federal CFDA Number</b>	<b>Identifying Grant Number</b>	<b>Total Federal Expenditures</b>
<b><u>U.S. DEPARTMENT OF JUSTICE</u></b>			
Bulletproof Vest Partnership Act of 1998	16.607	N/A	\$ 2,259
Equitable Sharing	21.016	N/A	\$ 5,601
Total U.S. Department of Justice			<u>\$ 7,860</u>
<b><u>NATIONAL ENDOWMENT FOR THE ARTS</u></b>			
<i>Passed through the Wyoming Arts Council</i>			
National Foundation on the Arts and The Humanities Act of 1965	45.025	13116639	2,150
Total National Endowment for the Arts			<u>2,150</u>
<b><u>U.S. ENVIRONMENTAL PROTECTION AGENCY</u></b>			
<i>Passed through the Wyoming Office of State Lands and Investments, State clean water revolving account loan program</i>			
Safe Clean Water Act	66.458	CWSRF-157	597,619
Total U.S. Environmental Protection Agency			<u>597,619</u>
<b><u>U.S. DEPARTMENT OF HOMELAND SECURITY</u></b>			
<i>Passed through the Wyoming Office of Homeland Security</i>			
Homeland Security Grant Program	97.067	20-SHSP-COD-HIT20	72,118
Total U.S. Department of Homeland Security			<u>72,118</u>
<b><u>FEDERAL HIGHWAY ADMINISTRATION</u></b>			
<i>Passed through the Wyoming Department of Transportation</i>			
Transportation Alternatives Program	20.205	CD20512	47,222
Total Federal Highway Administration			<u>47,222</u>
<b><u>U.S. DEPARTMENT OF THE TREASURY</u></b>			
<i>Passed through the Wyoming Office of State Lands and Investments</i>			
Coronavirus Aid, Relief, and Economic Security Act (CARES)	21.019 *	CRG-127	1,662,780
<i>Passed through the Wyoming Department of Health</i>			
Coronavirus Aid, Relief, and Economic Security Act (CARES)	21.019	VC*86444	40,100
Total U.S. Department of the Treasury			<u>1,702,880</u>
Total Federal Award Expenditures			<u>\$ 2,429,849</u>

\*Major Federal Program

**NOTE A - BASIS OF PRESENTATION**

The accompanying schedule of expenditures of federal awards includes the federal award activity of the City of Cody, Wyoming under programs of the federal government for the year ended June 30, 2020. The information in this schedule is presented in accordance with the requirements of Title 12 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Because this schedule presents only a selected portion of the operation of the City of Cody, Wyoming, it is not intended to and does not present the financial position, change in net assets, or cash flows of the City of Cody, Wyoming, therefore some amounts presented in this schedule may differ from the amounts presented in, or used in the preparation of the basic financial statements.

**NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES FOR THIS SCHEDULE**

Expenditures reported on this schedule are reported on the generally accepted accounting principles basis of accounting. Such expenditures are recognized following, as applicable either the cost principles in Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, or the cost principles contained in Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement.

**NOTE C - PROGRAM COSTS/MATCHING CONTRIBUTIONS**

Certain Federal programs require that the City of Cody contribute non-Federal funds (matching funds) to support the Federally-funded programs. The City of Cody has complied with the matching requirements. The expenditure of non-Federal matching funds is not included in the Total Federal Expenditures on this schedule.

**NOTE D - INDIRECT COST RATE**

The City of Cody, Wyoming does not allocate indirect costs to federal award programs.

**NOTE E - LOANS OUTSTANDING**

The City of Cody, Wyoming had the following loan balances under federally guaranteed loan programs outstanding as June 30, 2021:

Program Title	Federal CFDA Number	Amount
U.S. ENVIRONMENTAL PROTECTION AGENCY <i>Passed through the Wyoming Office of State Lands and Investments State clean water revolving account loan program</i>	66.458	\$ 1,506,858
U.S. ENVIRONMENTAL PROTECTION AGENCY <i>Passed through the Wyoming Office of State Lands and Investments State clean water revolving account loan program</i>	66.458	\$ 1,620,037

These loans are secured with the pledge and assignment of revenues from the City of Cody, Wyoming's wastewater user fees and wastewater enterprise fund unrestricted reserves to be used for the annual loan payments which the City will make to the Clean Water State Revolving Fund.

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL  
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF  
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING  
STANDARDS*

To the Honorable Mayor and Members of the City Council  
City of Cody, Wyoming

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Cody, Wyoming, as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the City of Cody, Wyoming's basic financial statements, and have issued our report thereon dated November 19, 2021.

**Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the City of Cody, Wyoming's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Cody, Wyoming's internal control. Accordingly, we do not express an opinion on the effectiveness of the City of Cody, Wyoming's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the City of Cody, Wyoming's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Seckman & Thomas, Certified Public Accountants, PC

Powell, Wyoming

November 19, 2021



INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM;  
REPORT ON INTERNAL CONTROL OVER COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE

To the Honorable Mayor and Members of the City Council  
City of Cody, Wyoming

**Report on Compliance for Each Major Federal Program**

We have audited the City of Cody, Wyoming's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of the City of Cody, Wyoming's major federal programs for the year ended June 30, 2021. City of Cody, Wyoming's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

***Management's Responsibility***

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

***Auditor's Responsibility***

Our responsibility is to express an opinion on compliance for each of the City of Cody, Wyoming's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City of Cody, Wyoming's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the City of Cody, Wyoming's compliance.

***Opinion on Each Major Federal Program***

In our opinion, the City of Cody, Wyoming, complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2021.

**Report on Internal Control over Compliance**

Management of the City of Cody, Wyoming, is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the City of Cody, Wyoming's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City of Cody, Wyoming's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.



Seckman & Thomas, Certified Public Accountants, PC

Powell, Wyoming  
November 19, 2021

**CITY OF CODY**  
**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**  
Year Ended June 30, 2021

**SECTION 1 - SUMMARY OF THE AUDITOR'S RESULTS**

**Financial Statements**

- |    |  |                             |
|----|--|-----------------------------|
| 1. | Type of auditors report issued:  | Unmodified Opinion          |
| 2. | Internal control over financial reporting:                                     |                             |
|    | Material weakness(es) identified?  | _____ yes <u>  X  </u> no   |
|    | Significant Deficiency identified<br>not considered to be material weaknesses? | _____ yes <u>  X  </u> none |
| 3. | Noncompliance material to the financial<br>statements noted?                   | _____ yes <u>  X  </u> no   |

**Federal Awards**

- |    |  |                             |
|----|--|-----------------------------|
| 4. | Internal Control over major programs:  |                             |
|    | Material weakness(es) identified?  | _____ yes <u>  X  </u> no   |
|    | Significant Deficiency identified<br>not considered to be material weaknesses?   | _____ yes <u>  X  </u> none |
| 5. | Type of auditors report issued on compliance<br>for major programs   | Unmodified                  |
| 6. | Any audit findings disclosed that are required to<br>be reported in accordance with<br>2 CFR 200.516(a)?                       | _____ yes <u>  X  </u> no   |
| 7. | Identification of major programs<br>US Department of Treasury<br>Coronavirus Aid, Relief,<br>and Economic Security Act (CARES) | CFDA 21.019                 |
| 8. | Dollar threshold used to distinguish between<br>Type A and Type B programs:  | \$750,000                   |
| 9. | Auditee qualified as low-risk auditee:   | _____ yes <u>  X  </u> no   |

**CITY OF CODY**  
**SCHEDULE OF FINDING AND QUESTIONED COSTS**  
Year Ended June 30, 2021

**Section II - Financial Statement Findings**

Our audit did not disclose any matters required to be reported in accordance with Government Auditing Standards.

**Section III - Findings and Questioned Costs – Major Federal Programs**

Our audit did not disclose any matters required to be reported in accordance with 2 CFR 200.516(a).



MEETING DATE:	DECEMBER 7, 2021
DEPARTMENT:	COMMUNITY DEVELOPMENT
PREPARED BY:	TODD STOWELL
CITY ADM. APPROVAL:	_____
PRESENTED BY:	TODD STOWELL

## **AGENDA ITEM SUMMARY REPORT**

### **The Final Plat of the Best Choice Minor Subdivision**

#### **ACTIONS TO BE TAKEN**

Approve the final plat for the Best Choice Minor Subdivision, a 5-lot subdivision, subject to conditions of approval.

#### **SUMMARY**

Rick Hordichok of Best Choice, Inc. has submitted the final plat application for the 5-lot subdivision located southeast of the Robert Street and Kent Avenue intersection. The property currently consists of 0.91 acres in two lots, and is located in a residential R-3 zoning district. An updated preliminary plat showing the utility plan is attached, as well as the final plat.

#### **SUBDIVISION REGULATIONS**

The subdivision ordinance requirements were reviewed with the preliminary plat approval.

The City Council granted the following variances:

1. Variance to the alley requirement.
2. Variance to not dedicate any additional right-of-way for Robert Street.
3. Variance to the streetlighting requirement.



The Council approved the preliminary plat subject to the 15 conditions recommended by the Planning and Zoning Board. The status of each condition is noted below. There are two main changes to the proposal since the preliminary plat was reviewed, relating to irrigation and the pathway, which are discussed below.

#### **Status of Preliminary Plat Conditions:**

The conditions of the preliminary plat approval are listed below, with the status of each.

1. The applicant shall have a minimum 8-foot-wide pathway designed and installed along the Robert Street frontage of the property. The plans must be approved by Public Works and installation must meet City standards. Installation shall occur no later than a certificate of occupancy for any new development other than the house being moved onto Lot 3.

*Status: The above requirement was imposed through the authority for frontage improvements relating to installation of sidewalk. Public Works has since looked more closely at the conditions along the full length of Robert Street and has determined that the contemplated pathway would be more appropriately located on the west (other) side of Robert Street. As the pathway is no longer planned along this property frontage, it would appear appropriate to waive the*

**AGENDA ITEM NO. \_\_\_\_\_**

*requirement. In such cases when a waiver is granted, the subdivision ordinance specifies, "All waivers of curb, gutter and sidewalks shall require acknowledgment by the developer on the final plat that future improvement districts for the development of curb, gutter and sidewalks shall be supported by future owners of the lots and be so noted on the final plat."*

2. Remove the access easement from the east side of Lot 2.

*Status: Done.*

3. If Lot 3 is to accommodate the proposed house, modify its east boundary as noted in the staff report to meet setback requirements.

*Status: Done.*

4. Shift the south line of Lot 4 as needed to meet the setback requirement of 5 feet from the existing house. It is recommended that more than the minimum setback be provided due to the elevation difference next to the house on Lot 4, and to accommodate a driveway to the back of Lot 4 (otherwise a retaining wall is anticipated to be needed.)

*Status: Done. (Only one foot more than the minimum is provided.)*

5. Label and/or note on the plat the access restrictions as discussed in the staff report (Lots 1 and 2 access is from the easement to Kent Avenue. Lot 3 an individual access off Robert Street. Lots 4 and 5 a common access on Lot 5 to Robert Street, designed so that no backing onto Robert Street occurs.)

*Status: Modified as coordinated with City staff. Rather than Lots 4 and 5 sharing a common access, Lots 3 and 4 will share a common access. Either option is acceptable to staff. The final plat lacks the label or note requested. It will be listed as a condition of final plat approval.*

6. Add the access easement on Lot 5 to meet applicable dimensional requirements, which is a 24-foot width for the area next to Robert Street that serves as backup area for the parking spaces at the front of Lot 4, then at least 17 feet wide per infill subdivision standards if it continues to the back of the property.

*Status: Due to the change noted in #5, the access easement on Lot 5 is not needed. Instead, an access easement of the proper dimensions is provided for the shared access to Lots 3 and 4.*

7. Provide an updated utility plan to address the items noted in the staff report regarding sewer, water, power, irrigation, and private utilities. Provide utility easements on the final plat accordingly. All unused utility services shall be abandoned and removed per City and utility provider requirements.

*Status: An updated utility plan was provided July 22<sup>nd</sup>. It has since been further updated/clarified, as noted on the attached preliminary plat.*

8. The developer is responsible for extension of the City water main along the Kent Avenue Frontage. As the main will serve an existing dwelling, it needs to be installed and the service made to the house on Lot 2 prior to recording the final plat. Coordinate the plans and construction with Public Works.

*Status: The plans for the water main have been approved by Public Works and DEQ. Installation is wrapping up. It must be completed before the final plat is recorded.*

9. Change/modify the subdivision name so that it does not duplicate the name of any other subdivision in Park County.

*Status: Met (no longer Cedar View).*

10. The final plat application will need to address the surface water (irrigation) rights on the property. The options are either to transfer the water rights to another property in the Cody Canal irrigation district, or to develop a distribution plan to utilize those water rights.

**AGENDA ITEM NO. \_\_\_\_\_**

*Status: The applicant plans to transfer the water rights to another property in the Cody Canal irrigation district. Some of the initial paperwork needs to be completed for that process before the final plat can be recorded (see condition of approval). It is noted that the subdivision ordinance specifies the water is to be transferred to the City. Due to the small amount of water involved, and the low likelihood of this property ever being served with City raw water, transfer of the water rights to a third party in the district is a reasonable request.*

11. Verify that the existing well does not serve any neighboring properties.

*Status: The owner states that he has verified it does not serve any neighboring properties.*

12. All unused accesses to the City streets shall be removed.

*Status: The timing for this was not specified. It is understood that any unused access will be removed as the associated lot is developed, which will likely be after the final plat is recorded.*

13. The title report identifies an oil pipeline easement or two as potentially affecting the property. The surveyor must identify if those easements affect his property. If so, they must be shown on the plat.

*Status: Met. The surveyor has reviewed the legal descriptions and determined that the pipeline does not affect this property.*

14. All work within the street right-of-way requires a street encroachment permit from Public Works, prior to excavation or construction.

*Status: The encroachment permit for the street utility work was issued.*

15. Contact Cody Canal for approval of the irrigation distribution plan, or to give their permission for the State Engineer's Office to consider a transfer of the water rights.

*Status: Pending.*

Other:

1. Applicable water tap fees, sewer connections fees, and the estimate for the electrical materials have been paid.
2. The preliminary plat process did not clearly address the timing of removing the utility lines that currently cross intervening lots (sewer line to Lot 2, power and cable lines to Lot 4, gas line to Lot 2). The plan is to remove those lines before the final plat is recorded, so that associated easements do not need to be established for them.
3. TCT has commented, "We can follow proposed electrical. Is Mr. Hordichok going to pay for labor for us to move existing fiber underground? We have distribution fiber and service drops which will need moved."
4. If phone or cable are in the same situation as TCT, further coordination with those utilities is needed.

**POTENTIAL MOTION:**

The Planning and Zoning Board recommends to City Council the approval of the Best Choice Minor Subdivision final plat, with a waiver of sidewalk/pathway installation requirement and a variance to allow the surface water rights to be transferred to a third party in the Cody Canal Irrigation District, subject to the conditions listed below.

1. Add the following language, or similar language approved by staff, to the Certificate of Owner on the final plat: "That we hereby agree that the owners of the lots within this subdivision shall participate proportionally in any future City project to improve Robert Street and Kent Avenue to City standards, including installation of curb, gutter and sidewalk, and that this language shall be contained in each and all conveyances of record."

**AGENDA ITEM NO. \_\_\_\_\_**



2. Add the following note to the final plat: "Unless otherwise approved by the Public Works director, vehicle access for Lots 1 and 2 is limited to the access easement off of Kent Avenue, and vehicle access for Lots 3 and 4 is limited to their common access easement. The access easement for Lots 3 and 4 is to be utilized in a manner that no backing onto Robert Street occurs." The parking for Lots 3 and 4 will be verified before the occupancy permit is issued for the house on Lot 3.
3. Prior to the mayor signing the plat:
  - a. Provide verification of an agreement between the subdivider and a Wyoming licensed engineer or Wyoming licensed land surveyor to provide and submit all documentation as required by the state engineer's office to transfer the surface water rights to a third party within the Cody Canal district within one year from the date of final plat approval.
  - b. Provide documentation that the transfer of surface water rights to a third party is agreeable to the Cody Canal irrigation district. (Formal approval of the actual transfer is not needed before final plat approval.)
  - c. The water main in Kent Avenue, the new water service to Lot 2, the new sewer service to Lot 2, and the new electrical services to Lots 2 and 4 must be completed. (Other utility connections technically can occur after the final plat is recorded, but prior to occupancy of the lot served.)
  - d. Provide verification from Black Hills energy that all unused/abandoned gas services have been capped at the main.
  - e. Provide verification from TCT, Charter, and CenturyLink that a plan has been developed and is fully agreeable to both parties for relocation of any of their lines.
  - f. Verify that the existing well is no longer providing domestic service to any property. (It is recommended that the well be fully abandoned—plugged with bentonite.)
  - g. Provide the cost of the water main extension to the City (for purposes of tracking contributed capital).
  - h. Correct the typos on the final plat. Coordinate with the city planner. (Fix plat name in certificate, dimension west side of Lot 2, and use plat not ROS language in Surveyor's certificate.)

**ATTACHMENTS:**

Updated Preliminary Plat/Utility Plan  
Final Plat

H:\PLANNING DEPARTMENT\FILE REVIEWS\MAJOR-MINOR SUBDIVISION\2021\SUB2021-04 HORDICHOK, RICK\STAFF REPORTS\AGENDA SUMMARY BEST CHOICE FINAL PLAT.DOCX

**KENT AVENUE**

**ROBERT STREET**

**LOT 1**  
12,002.68 sq. ft.  
MULTI-FAMILY LOT

**LOT 2**  
4,791.16 sq. ft.

**LOT 3**  
3,200.97 sq. ft.

**LOT 4**  
7,905.05 sq. ft.

**LOT 5**  
18,418.29 sq. ft.

**EXISTING BUILDING**

**EXISTING GARAGE**

**EXISTING WELL**

**EXISTING 10.00' UTILITY AND IRRIGATION EASEMENT**

**PROPOSED NEW WATER LINE**

**PROPOSED NEW SEWER LINE**

**PROPOSED NEW POWER LINE**

**PROPOSED NEW 8" WATER LINE MAIN**

**PROPOSED WATER SERVICE**

**PROPOSED 34.00' ACCESS & UTILITY EASEMENT**

**PROPOSED SECONDARY ELECTRICAL FEEDAL**

**PROPOSED 10.00' UTILITY EASEMENT TO BENEFIT LOT 3**

**PROPOSED 10.00' UTILITY EASEMENT TO BENEFIT LOT 4**

**PROPOSED 60.00' UTILITY EASEMENT TO BENEFIT LOT 5**

**PROPOSED 10.00' UTILITY AND IRRIGATION EASEMENT**

**PROPOSED CHANGE FROM OVERHEAD POWER TO UNDERGROUND POWER**

**PROPOSED IRRIGATION**

**PROPOSED IRRIGATION PIPE**

**WOLLSCHLAGER ADDITION LOT 1**

**WOLLSCHLAGER ADDITION LOT 2**

**WOLLSCHLAGER ADDITION LOT 3**

**WOLLSCHLAGER ADDITION LOT 4**

**WOLLSCHLAGER ADDITION LOT 5**

**WOLLSCHLAGER ADDITION LOT 6**

**WOLLSCHLAGER ADDITION LOT 7**

**WOLLSCHLAGER ADDITION LOT 8**

**WOLLSCHLAGER ADDITION LOT 9**

**WOLLSCHLAGER ADDITION LOT 10**

**WOLLSCHLAGER ADDITION LOT 11**

**WOLLSCHLAGER ADDITION LOT 12**

**WOLLSCHLAGER ADDITION LOT 13**

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**WOLLSCHLAGER ADDITION LOT 15**

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**WOLLSCHLAGER ADDITION LOT 132**

**WOLLSCHLAGER ADDITION LOT 133**

**WOLLSCHLAGER ADDITION LOT 134**

**WOLLSCHLAGER ADDITION LOT 135**

**WOLLSCHLAGER ADDITION LOT 136**

**WOLLSCHLAGER ADDITION LOT 137**

**WOLLSCHLAGER ADDITION LOT 138**

**WOLLSCHLAGER ADDITION LOT 139**

**WOLLSCHLAGER ADDITION LOT 140**

**WOLLSCHLAGER ADDITION LOT 141**

**WOLLSCHLAGER ADDITION LOT 142**

**WOLLSCHLAGER ADDITION LOT 143**

**WOLLSCHLAGER ADDITION LOT 144**

**WOLLSCHLAGER ADDITION LOT 145**

**WOLLSCHLAGER ADDITION LOT 146**

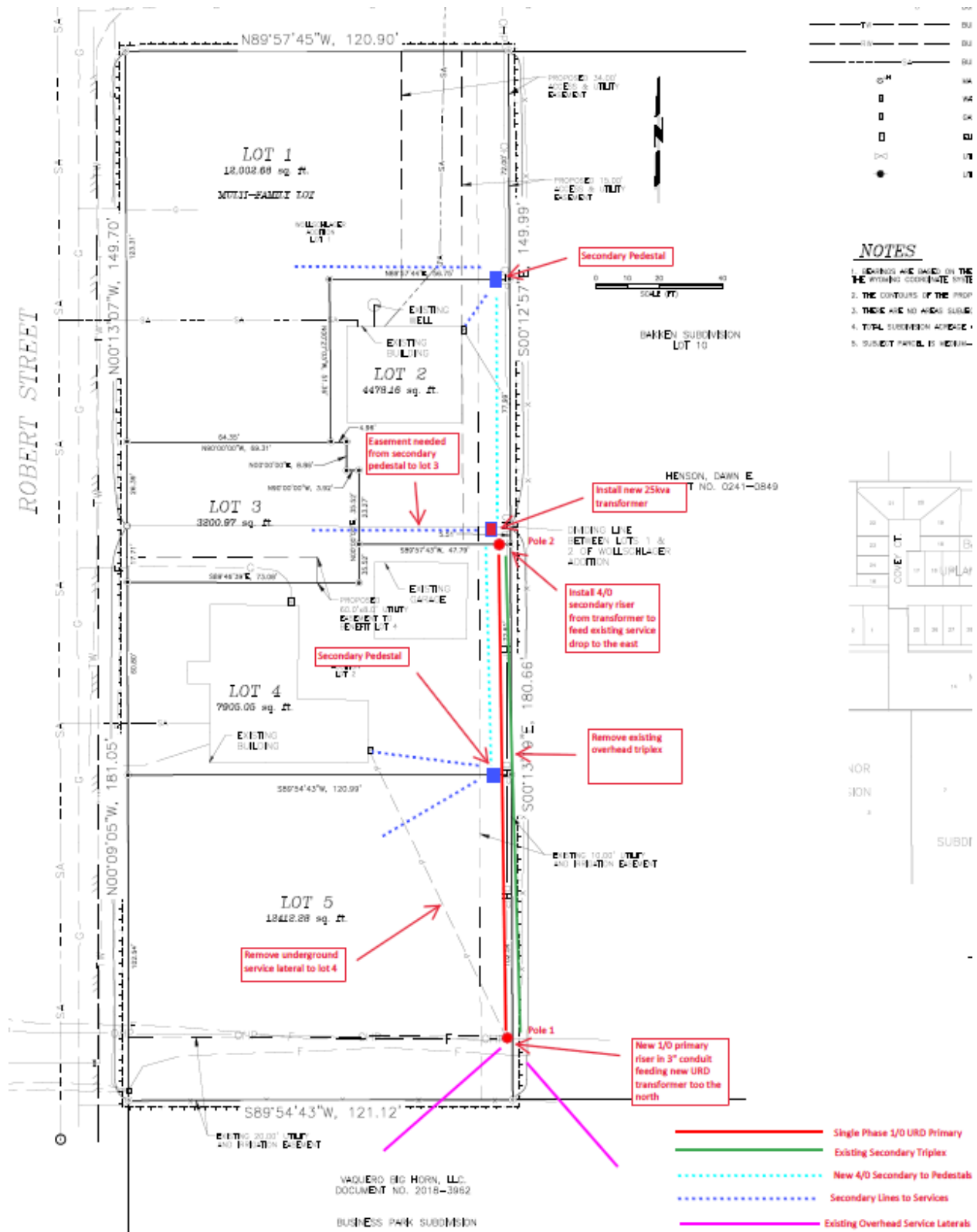
**WOLLSCHLAGER ADDITION LOT 147**

**WOLLSCHLAGER ADDITION LOT 148**

**WOLLSCHLAGER ADDITION LOT 149**

**WOLLSCHLAGER ADDITION LOT 150**</

# ELECTRICAL LAYOUT:



A horizontal scale bar with tick marks at 0, 200, 400, and 800. The text "SCALE (FT)" is centered below the bar.

⊙ FOUND 3.5" DIA. BRASS CAP  
● FOUND 2" DIA. ALUMINUM CAP, OTHERWISE NOTED

SET 2" DIA. ALUMINUM CAP ON 5/8" DIA. STEEL BAR.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ PROPOSED SUBDIVISION LOT LINES.  
\_\_\_\_\_  
\_\_\_\_\_ SUBDIVISION BOUNDARY  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ EASEMENTS CREATED BY THIS PLAT  
\_\_\_\_\_  
\_\_\_\_\_ EXISTING EASEMENTS  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
LOT 1 & LOT 2 WOLLSCHLAGER ADDITION DIVIDING LINE

1. BEARINGS ARE BASED ON THE CITY OF CODY COORDINATE SYSTEM, WHICH IS BASED ON THE WYOMING COORDINATE SYSTEM NAD83 WEST CENTRAL ZONE.
2. THE CONTOURS OF THE PROPOSED MINOR SUBDIVISION ARE RELATIVELY LEVEL.
3. THERE ARE NO AREAS SUBJECT TO FLOODING OR WETLANDS
4. TOTAL SUBDIVISION ACREAGE = 39.99,14 SQ. FT. OR 0.918 ACRES
5. SUBJECT PARCEL IS MEDIUM-HIGH DENSITY RESIDENTIAL (R3)
6. OIL PIPELINE WITHIN TITLE REPORT DOES NOT EFFECT THIS PROPERTY.

STATE OF WYOMING }  
COUNTY OF PARK } SS.

RICHARD C. HORDICHOK - CHAIRMAN  
BEST CHOICE, INC.  
A WYOMING CORPORATION

STATE OF WYOMING }  
COUNTY OF PARK } ss.

THE FOREGOING CERTIFICATE OF OWNER WAS ACKNOWLEDGED BEFORE ME BY RICHARD C. HORDICHOK,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021, WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

I, CODY A. SCHATZ, OF ENGINEERING ASSOCIATES IN CODY, WYOMING, HEREBY CERTIFY THAT THIS MAP WAS MADE FROM A SURVEY PERFORMED UNDER MY DIRECTION IN NOVEMBER, 2020; THAT THIS MAP IS MADE TO ACCOMPANY A DESCRIPTION OF THE EASEMENT SHOWN HEREON; AND THAT TO MY KNOWLEDGE, THIS MAP SHOWS THE SITUATION ON THE GROUND AT THE TIME OF ITS PREPARATION.

APPROVED AS OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021 BY THE CITY  
PLANNING AND ZONING BOARD OF CODY, WYOMING.

CHAIRMAN

APPROVED AS OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021 BY THE CITY  
COUNCIL OF CODY, WYOMING.

MAYOR - MATT HALL

ATTEST: CINDY BAKER  
ADMINISTRATIVE SERVICES OFFICER

THIS PLAT WAS ACCEPTED IN THE OFFICE OF THE CLERK AND RECORDER, PARK COUNTY, WYOMING, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021, FILED FOR RECORDING IN BOOK OR PLAT CABINET \_\_\_\_\_ AT PAGE \_\_\_\_\_ AND RECORDED AS COMPUTER RECORD DOCUMENT NUMBER \_\_\_\_\_.

PARK COUNTY CLERK

BY: \_\_\_\_\_, DEPUTY.

BEING A FURTHER SUBDIVISION OF

LOT 1 & 2, WOLLSCHLAGER ADDITION,  
CITY OF CODY, PARK COUNTY, WYOMING

PREPARED FOR: RICK HORDICHOK  
P.O. BOX 2718  
CODY, WY 82414

PREPARED BY: ENGINEERING ASSOCIATES  
CONSULTING ENGINEERS & SURVEYORS  
P.O. BOX 1900  
CODY, WYOMING 82414

NSH JOB NO. 20300.29 BOOK NO. 588 OCTOBER 25, 2021

P:\2020\20300.00 - Misc. Surveys North II\20300.29 Best Choice Simple Sub - Cody\ACAD

P:\2020\20300.00 - Misc. Surveys North \20300.11 Hiltz BLA - Cody\acad\20300.11\_Base+Final Plat 11/16/20

MEETING DATE:	DECEMBER 7, 2021
DEPARTMENT:	COMMUNITY DEVELOPMENT
PREPARED BY:	TODD STOWELL
CITY ADM. APPROVAL:	_____
PRESENTED BY:	TODD STOWELL

## **AGENDA ITEM SUMMARY REPORT**

### **The Preliminary and Final Plat of the Blessing 2<sup>nd</sup> Addition Subdivision**

#### **ACTIONS TO BE TAKEN**

Approve the preliminary and final plat for the Blessing 2<sup>nd</sup> Addition subdivision, a 5-lot subdivision, subject to conditions of approval.

#### **SUMMARY**

Engineering Associates, on behalf of Malcolm Blessing of Lazy DVM Enterprises and the Blessing Family Trust, Gregory Blessing of Blessing Enterprises, and Curt S. Dansie and Spencer Barton (Cody Overhead Door), has prepared a preliminary plat that is a replat of the original 3-lot Blessing Addition subdivision, and which incorporates two other metes-and-bounds parcels into the new plat. The resulting 5-lot subdivision does not create any additional lots. The platting process was determined, in consultation with the City, to be the cleanest way to address the proposal.

The proposal includes:

1. Vacation of unnecessary access and utility easements (cross hatched on attached plat map);
2. The adjustment of the east boundary of Lot 1 and a portion of Lot 2 to include a 2-foot-wide strip of land into what will now be Lots 101 and 102;
3. Recognition of a boundary line adjustment between original lots 1 and 2, as depicted by a prior boundary line adjustment (M-190);
4. The incorporation of the two additional parcels noted as lots in the plat, so as to make available the access and utility easements now indicated; and,
5. Expansion of some of the access and utility easements, as needed.



#### **STAFF COMMENTS:**

The proposed plat has been reviewed by applicable City departments and 3<sup>rd</sup> party utility providers. All are in agreement with the components of the project, subject to a few conditions.

Specifically, in order to provide access to the power poles within the remaining utility easement along the common boundary of Lots 3 and 102, the electrical division is requiring that the easement along the north side of Lot 102 be graded smooth. This would involve leveling or removing the dirt that

**AGENDA ITEM NO. \_\_\_\_\_**



has been deposited from the cleaning of the irrigation canal along the north end of the property, so that a smooth drivable surface is provided. That lane, which is within the access and utility easement, would need to be kept clear to provide utility access to the poles noted.



The second requirement relates to drainage. The easement along the common boundary of Lot 3 and Lot 102 is also a drainage easement. Admittedly, it is not entirely clear what that drainage easement was intended to address—whether it was to accommodate a common drainage facility for the lots, serve as a route for drainage to be collected and taken to the canal, or something else. If it was intended to serve as a route to the canal, the topography for that does not work, and conceptually canals are not designed or intended to accept stormwater anyway. If it was intended to be a joint drainage facility, it was not clearly improved as such, and since then Lot 102 has been developed with its own stormwater retention area (low area at north end of lot). However, Lot 3 never constructed their on-site drainage facility that was designed as part of an expansion project in 2002 (File SPR 2002-42). It involved a swale on the east side of Lot 3, which would have been at least partially within the drainage easement that is proposed to be vacated. That swale should be installed fully within Lot 3, so that stormwater does not flow onto Lot 102 (not rely on the easement being vacated). The original design of the stormwater swale was as follows:

Detention area: 38' by 38'  
Depth: 1.4 feet  
Side slopes: 10:1  
Total capacity: 1,011 cubic feet.

No further improvements are proposed to be required as part of the subdivision due to the fact that all lots were previously legally established, and all lots already have utilities available. It is noted that Lot 4 has some utility work to relocate a power line and phone/cable line, which relates to the mini-

**AGENDA ITEM NO. \_\_\_\_\_**

storage facility that was recently authorized for the lot. An easement is not noted for those existing lines, as they will be relocated. The easement for the new line is provided on the plat.

**ALTERNATIVES:**

Approve or deny the plat.

**RECOMMENDATION:**

The Planning and Zoning Board recommends that the City Council approve the preliminary and final plat of the Blessing 2<sup>nd</sup> Addition, subject to the following conditions.

1. Prior to the mayor signing the final plat:
  - a. Remove the "preliminary" items from the final plat.
  - b. Level the area along the north end of Lot 102, and south to the power poles, so as to provide a smooth drivable surface.
  - c. Provide the stormwater retention swale on Lot 3, as designed in the 2002 site plan review, or equivalent, within Lot 3.
  - d. Ensure that Lot 3 ownership is properly reflected in the signature block.
2. As soon as possible, and no more than 10 days following recording of the plat, file deeds for the property transfers associated with this plat. (The two pieces of the 2-foot-wide strip of land.)

**ATTACHMENT:**

Plat

H:\PLANNING DEPARTMENT\FILE REVIEWS\MAJOR-MINOR SUBDIVISION\2021\SUB2021-06 BLESSING\AGENDA SUMMARY BLESSING 2ND ADDITION.DOCX



PURPOSE STATEMENT

THE PURPOSE OF THIS PLAT OF BLESSING 2ND ADDITION IS AS FOLLOWS:

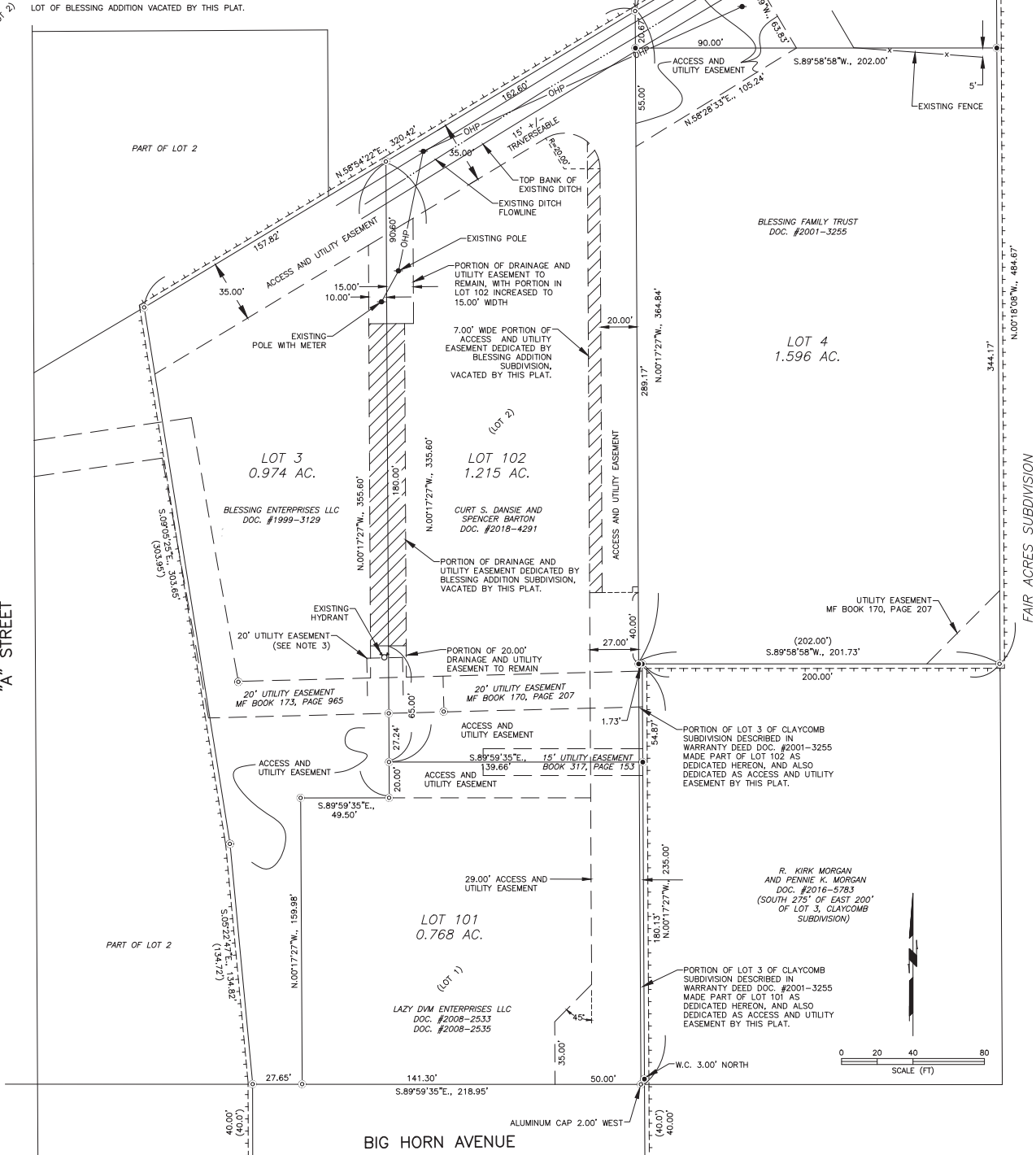
1. TO VACATE THOSE PORTIONS OF ACCESS AND UTILITY EASEMENTS DEDICATED BY THE BLESSING ADDITION SUBDIVISION, AS SHOWN HEREON, AND VACATE THAT INGRESS AND EGRESS FROM COURT DECREE RECORDED IN BOOK MF 71 AT PAGE 804.
2. TO AMEND THE LOT LINE BETWEEN LOT 1 AND LOT 2 AS REPRESENTED IN THAT RECORD OF SURVEY SHOWING BOUNDARY LINE ADJUSTMENT AS RECORDED IN PLAT CABINET M AT PAGE 190 IN THE OFFICE OF THE PARK COUNTY CLERK.
3. TO INCLUDE TWO ADDITIONAL ALREADY EXISTING PARCELS BEING PORTIONS OF LOT 3 OF CLAYCOMB SUBDIVISION THAT ARE TO BE BENEFITED BY THE ACCESS AND UTILITY EASEMENTS CONTAINED AND/OR DEDICATED HEREON.
4. TO INCLUDE THE 2 FOOT STRIP OF LAND EAST OF LOTS 1 AND 2 OF BLESSING ADDITION, AND INCORPORATE THEM INTO LOT 101 AND LOT 102 AS PLATTED HEREON (BOUNDARY LINE ADJUSTMENT).

NOTES

1. BEARINGS ARE BASED ON THE CITY OF CODY COORDINATE SYSTEM, WHICH IS BASED ON THE WYOMING COORDINATE SYSTEM NAD83 WEST CENTRAL ZONE.
2. THE BOUNDARY OF LOT 3 IS UNCHANGED FROM BLESSING ADDITION.
3. THE TOTAL AREA OF BLESSING 2ND ADDITION IS 4.927 ACRES.
4. THIS "20' UTILITY EASEMENT" IS FROM THE BLESSING ADDITION, IS NOT DIMENSIONED, AND IS VACATED BY THIS PLAT. THIS EASEMENT WAS INTENDED TO COVER AN EXISTING HYDRANT, WHICH IS COVERED BY THE REMAINING PORTION OF THE 20.00' DRAINAGE AND UTILITY EASEMENT.

LEGEND

- FOUND 2" DIA. ALUMINUM CAP, UNLESS OTHERWISE NOTED.
- SET 2" DIA. ALUMINUM CAP ON 5/8" DIA. STEEL REBAR.
- BOUNDARY OF BLESSING 2ND ADDITION.
- ▨ PORTIONS OF EASEMENTS TO BE VACATED BY THIS PLAT.



CERTIFICATE OF OWNERS

STATE OF WYOMING }  
COUNTY OF PARK } SS.  
KNOW ALL MEN BY THESE PRESENTS THAT I/WE, THE UNDERSIGNED, HEREBY CERTIFY THAT I/WE ARE OWNERS AND PROPRIETORS OF LOT 1 OF BLESSING ADDITION, AND THE SOUTHERLY 20.00 FEET OF LOT 2 OF THE BLESSING ADDITION, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE COUNTY CLERK OF PARK COUNTY, WYOMING, AS EVIDENCED BY THOSE WARRANTY DEEDS RECORDED AS DOCUMENT #2008-2533 AND DOCUMENT #2008-2535, SAID LANDS OWNED ALSO BEING REPRESENTED AS "LOT 1A" ON THAT RECORD OF SURVEY SHOWING BOUNDARY LINE ADJUSTMENT FILED IN PLAT CABINET "M" AT PAGE 190 IN THE OFFICE OF THE PARK COUNTY CLERK;  
THAT WE HAVE CAUSED SAID PROPERTY TO BE SURVEYED AND PLATTED AS SHOWN HEREON AS THE BLESSING 2ND ADDITION LOCATED WITHIN THE CITY OF CODY; THAT THE SUBDIVISION AS APPEARS ON THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS; THAT BIG HORN AVENUE AS IT CROSSES SAID BLESSING 2ND ADDITION IS HEREBY DEDICATED TO THE CITY OF CODY; THAT WE HEREBY VACATE THOSE EASEMENTS AND PORTIONS OF EASEMENTS AS SHOWN HEREON; THAT WE HEREBY DEDICATE EASEMENTS LABELED HEREON TO THE USES SO NOTED FOR THE BENEFIT OF THE CITY OF CODY AND THOSE LOTS WITHIN BLESSING 2ND ADDITION; THAT SAID LANDS ARE SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY AND MINERAL RIGHTS OR RESERVATIONS ON RECORD.

BY: \_\_\_\_\_  
MALCOLM L. BLESSING  
LAZY DVM ENTERPRISES LLC

STATE OF WYOMING }  
COUNTY OF PARK } SS.

THE FOREGOING CERTIFICATE OF OWNER WAS ACKNOWLEDGED BEFORE ME BY MALCOLM L. BLESSING, THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_, WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC

STATE OF WYOMING }  
COUNTY OF PARK } SS.

KNOW ALL MEN BY THESE PRESENTS THAT I/WE, THE UNDERSIGNED, HEREBY CERTIFY THAT I/WE ARE OWNERS AND PROPRIETORS OF LOT 2 OF BLESSING ADDITION, EXCEPT THE SOUTHERLY 20.00 FEET OF SAID LOT 2, NOW SHOWN AS LOT 2A ON RECORD OF SURVEY IN BOOK "M", PAGE 190, AS EVIDENCED BY THAT WARRANTY DEED RECORDED AS DOCUMENT #2018-4291 IN THE OFFICE OF THE PARK COUNTY CLERK;  
THAT WE HAVE CAUSED SAID PROPERTY TO BE SURVEYED AND PLATTED AS SHOWN HEREON AS THE BLESSING 2ND ADDITION LOCATED WITHIN THE CITY OF CODY; THAT THE SUBDIVISION AS APPEARS ON THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS; THAT BIG HORN AVENUE AS IT CROSSES SAID BLESSING 2ND ADDITION IS HEREBY DEDICATED TO THE CITY OF CODY; THAT WE HEREBY VACATE THOSE EASEMENTS AND PORTIONS OF EASEMENTS AS SHOWN HEREON; THAT WE HEREBY DEDICATE EASEMENTS LABELED HEREON TO THE USES SO NOTED FOR THE BENEFIT OF THE CITY OF CODY AND THOSE LOTS WITHIN BLESSING 2ND ADDITION; THAT SAID LANDS ARE SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY AND MINERAL RIGHTS OR RESERVATIONS ON RECORD.

BY: \_\_\_\_\_  
CURT S. DANSIE

BY: \_\_\_\_\_  
SPENCER BARTON

STATE OF WYOMING }  
COUNTY OF PARK } SS.

THE FOREGOING CERTIFICATE OF OWNER WAS ACKNOWLEDGED BEFORE ME BY CURT S. DANSIE AND SPENCER BARTON, THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_, WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC

STATE OF WYOMING }  
COUNTY OF PARK } SS.

KNOW ALL MEN BY THESE PRESENTS THAT I/WE, THE UNDERSIGNED, HEREBY CERTIFY THAT I/WE ARE OWNERS AND PROPRIETORS OF LOT 3 OF BLESSING ADDITION, AS EVIDENCED BY THAT WARRANTY DEED RECORDED AS DOCUMENT #1999-3129 IN THE OFFICE OF THE PARK COUNTY CLERK;  
THAT WE HAVE CAUSED SAID PROPERTY TO BE SURVEYED AND PLATTED AS SHOWN HEREON AS THE BLESSING 2ND ADDITION LOCATED WITHIN THE CITY OF CODY; THAT THE SUBDIVISION AS APPEARS ON THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS; THAT BIG HORN AVENUE AS IT CROSSES SAID BLESSING 2ND ADDITION IS HEREBY DEDICATED TO THE CITY OF CODY; THAT WE HEREBY VACATE THOSE EASEMENTS AND PORTIONS OF EASEMENTS AS SHOWN HEREON; THAT WE HEREBY DEDICATE EASEMENTS LABELED HEREON TO THE USES SO NOTED FOR THE BENEFIT OF THE CITY OF CODY AND THOSE LOTS WITHIN BLESSING 2ND ADDITION; THAT SAID LANDS ARE SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY AND MINERAL RIGHTS OR RESERVATIONS ON RECORD.

BY: \_\_\_\_\_  
GREGORY T. BLESSING  
BLESSING ENTERPRISES LLC

STATE OF WYOMING }  
COUNTY OF PARK } SS.

THE FOREGOING CERTIFICATE OF OWNER WAS ACKNOWLEDGED BEFORE ME BY GREGORY T. BLESSING, THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_, WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC

STATE OF WYOMING }  
COUNTY OF PARK } SS.

KNOW ALL MEN BY THESE PRESENTS THAT I/WE, THE UNDERSIGNED, HEREBY CERTIFY THAT I/WE ARE OWNERS AND PROPRIETORS OF THOSE LANDS DESCRIBED BY THAT WARRANTY DEED RECORDED AS DOCUMENT #2001-3255 IN THE OFFICE OF THE PARK COUNTY CLERK AS LOT 3 OF CLAYCOMB SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN BOOK "D" OF PLATS AT PAGE 36, PARK COUNTY, WYOMING, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACTS:  
a. TRACT CONVEYED BY MARIE F. CLAYCOMB, A SINGLE WOMAN, TO BOBBIE D. CLAYCOMB AND MARVIN E. CLAYCOMB BY WARRANTY DEED DATED 14 NOVEMBER, 1962, RECORDED 19 NOVEMBER, 1962, IN BOOK 273, AT PAGE 228 OF THE RECORDS OF PARK COUNTY, WYOMING, DESCRIBED AS FOLLOWS, TO-WIT:  
THAT PART OF LOTS 2 AND 3, CLAYCOMB SUBDIVISION, PARK COUNTY, WYOMING, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 2; THENCE SOUTHERLY ALONG THE WEST BOUNDARY LINE OF SAID LOT 2 FOR A DISTANCE OF 323 FEET TO A POINT, THENCE NORTHEASTERLY TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE WESTERLY ALONG THE NORTHERLY BOUNDARY LINES OF SAID LOTS 3 AND 2 TO THE POINT OF BEGINNING.  
b. TRACT CONVEYED BY W.E. CLAYCOMB ET UX TO COMMERCIAL MORTGAGE COMPANY, A TEXAS CORPORATION, BY WARRANTY DEED DATED JANUARY 28, 1961, RECORDED JANUARY 30, 1961, IN BOOK 254, AT PAGE 77 OF THE RECORDS OF PARK COUNTY, WYOMING, DESCRIBED AS FOLLOWS:  
THE EAST 200 FEET OF THE SOUTH 211 FEET OF LOT 3, CLAYCOMB SUBDIVISION.  
c. TRACT CONVEYED BY ERNESTA WILLIAMS BEAR, WILLIAM TED BEAR AND MARIE F. DELONG, FORMERLY KNOWN AS MARIE F. CLAYCOMB, TO N.L. SAMUELSON AND VIOLA Z. SAMUELSON BY DEED DATED DECEMBER 17, 1971 AND RECORDED IN BOOK 361, AT PAGE 549 OF THE RECORDS OF PARK COUNTY, WYOMING, DESCRIBED AS FOLLOWS, TO-WIT:  
THE SOUTH 275 FEET OF THE EAST 200 FEET OF LOT 3, CLAYCOMB SUBDIVISION, PARK COUNTY, WYOMING, EXCEPT THE SOUTH 211 FEET THEREOF.

THAT WE HAVE CAUSED SAID PROPERTY TO BE SURVEYED AND PLATTED AS SHOWN HEREON AS THE BLESSING 2ND ADDITION LOCATED WITHIN THE CITY OF CODY; THAT THE SUBDIVISION AS APPEARS ON THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS; THAT BIG HORN AVENUE AS IT CROSSES SAID BLESSING 2ND ADDITION IS HEREBY DEDICATED TO THE CITY OF CODY; THAT WE HEREBY VACATE THOSE EASEMENTS AND PORTIONS OF EASEMENTS AS SHOWN HEREON, AND FURTHER VACATE ALL PORTIONS OF THE INGRESS AND EGRESS ALONG THE EXISTING ROAD RUNNING NORTH AND SOUTH ALONG THE WESTERLY BOUNDARY OF LOT 3 OF CLAYCOMB SUBDIVISION THAT WAS GRANTED BY COURT DECREE FILED 10TH OF MAY, 1982 THAT LIE OUTSIDE OF THE EASEMENTS LAID OUT AND PLATTED HEREON; THAT WE HEREBY DEDICATE EASEMENTS LABELED HEREON TO THE USES SO NOTED FOR THE BENEFIT OF THE CITY OF CODY AND THOSE LOTS WITHIN BLESSING 2ND ADDITION; THAT SAID LANDS ARE SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY AND MINERAL RIGHTS OR RESERVATIONS ON RECORD.

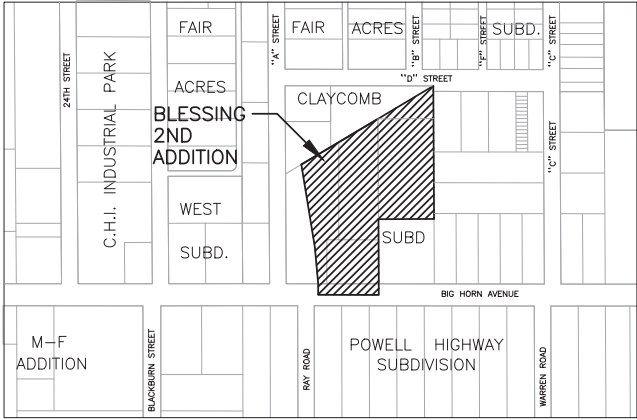
BY: \_\_\_\_\_  
MALCOLM L. BLESSING  
TRUSTEE, BLESSING FAMILY TRUST, DATED MAY 25, 2001

STATE OF WYOMING }  
COUNTY OF PARK } SS.

THE FOREGOING CERTIFICATE OF OWNER WAS ACKNOWLEDGED BEFORE ME BY MALCOLM L. BLESSING AND DEANNA O. BLESSING, THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_, WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC

CITY OF CODY



VICINITY MAP

N.T.S.

CERTIFICATE OF SURVEYOR

I, LYLE J. CASCIATO, OF ENGINEERING ASSOCIATES, HEREBY CERTIFY THAT THIS MAP WAS PREPARED USING DOCUMENTS ON FILE IN THE OFFICE OF THE PARK COUNTY CLERK, AND FROM NOTES TAKEN DURING ACTUAL SURVEYS PERFORMED UNDER MY DIRECTION BETWEEN OCTOBER 22, 2019 AND AUGUST 24, 2020; AND, THAT TO MY KNOWLEDGE, THIS MAP SHOWS THE SITUATION ON THE GROUND AT THE TIME OF ITS PREPARATION.

CITY PLANNING AND ZONING BOARD

APPROVED AS OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021 BY THE CITY PLANNING AND ZONING BOARD OF CODY, WYOMING.

CHAIRMAN

CITY COUNCIL APPROVAL

APPROVED AS OF \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021 BY THE CITY COUNCIL OF CODY, WYOMING.

MAYOR - MATT HALL

ATTEST: CINDY BAKER  
ADMINISTRATIVE SERVICES OFFICER

CLERK AND RECORDER ACCEPTANCE

THIS PLAT WAS ACCEPTED IN THE OFFICE OF THE CLERK AND RECORDER, PARK COUNTY, WYOMING, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, FILED FOR RECORDING IN BOOK OR PLAT CABINET \_\_\_\_\_ AT PAGE \_\_\_\_\_ AND RECORDED AS COMPUTER RECORD DOCUMENT NUMBER \_\_\_\_\_.

PARK COUNTY CLERK

BY: \_\_\_\_\_, DEPUTY.

PRELIMINARY PLAT OF BLESSING 2ND ADDITION

BEING A REPLAT OF BLESSING ADDITION SUBDIVISION AND PORTIONS OF LOT 3 OF CLAYCOMB SUBDIVISION AS DESCRIBED IN DOCUMENT #2001-3255 (INCLUDING A PARCEL PREVIOUSLY DESCRIBED IN MF BOOK 246 AT PAGE 525), IN THE OFFICE OF THE PARK COUNTY CLERK, CITY OF CODY, PARK COUNTY, WYOMING

PREPARED FOR: MALCOLM L. BLESSING  
2627 BIG HORN AVE.  
CODY, WY 82414

PREPARED BY: ENGINEERING ASSOCIATES  
CONSULTING ENGINEERS & SURVEYORS  
P.O. BOX 1900  
CODY, WYOMING 82414



JOB NO. 21100.30  
11/15/21

MEETING DATE:	DECEMBER 7, 2021
DEPARTMENT:	COMMUNITY DEVELOPMENT
PREPARED BY:	TODD STOWELL
CITY ADM. APPROVAL:	_____

## AGENDA ITEM SUMMARY REPORT

### Ordinance 2021-08

### Consider a Request to Rezone Lots 1-7 and Lots 10-16 of the Bakken Subdivision from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2)

#### **ACTION TO BE TAKEN**

Consider Ordinance 2021-08, to rezone Lots 1-7 and Lots 1-16 of the Bakken Subdivision (Including Subdivision of Lot 16) from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2).

#### **SUMMARY**

At their November 30, 2021 meeting, the Planning and Zoning Board held a public hearing to consider an application by Ronald Strong (with signatures of support from several of the other landowners), to rezone the subject properties to Medium-Low Density Residential (R-2).



**AGENDA ITEM NO. \_\_\_\_\_**



Rezoning the property from R-3 to R-2 would reduce the potential density of the area. A general comparison of the two zones is found in the attached report to the Planning and Zoning Board, starting on page 2.

The Board considered the staff report and comments at the public hearing. The public hearing included comments from the applicant (Ron Strong) and Steve Yekel in favor of the zone change, for the purposes of maintaining the character of the neighborhood and minimizing traffic. Andy Cowan commented as spokesperson for Bill Brantz, who is opposed to the zone change. Bill Brantz is the owner of the two vacant lots on Kent Avenue who plans to subdivide them into 12 lots for single-family homes or common wall units (duplexes split in the middle by a property line). It was discussed that the subdivision application and subsequent house construction would be allowed to proceed if a complete application were submitted before a rezone to R-2 was effective. In other words, the rezone of the two vacant lots would not automatically preclude that development. The subdivision has already been drawn up and could be submitted in short order.

After about 50 minutes of questions and discussion, the Planning and Zoning Board considered the following motions.

Cayde O'Brien made a motion, second by Carson Rowley, to recommend to City Council a rezone, following the staff recommendation to zone the excluded area as R-3 (keep that area as R-3) and to rezone the remaining portion of the subdivision as R-2. Voting in favor of the motion were Cayde O'Brien and Carson Rowley. Karinthia Herweyer, Scott Richard, and Richard Jones was opposed to the motion. With the majority voting against the motion, the motion failed. The excluded area mentioned is represented by the following map.



Scott Richards made a motion, second by Richard Jones to recommend that the City Council leave the zoning as is (R-3 Medium High Density Residential). Voting in favor of the motion were Scott Richard and Richard Jones. Carson Rowley, Karinthia Herweyer and Cayde O'Brien were opposed to the motion. With the majority voting against the motion, it failed.

As it was evident that no motion would achieve the necessary four votes (4 of 7 needed for a recommendation), the Board asked that the matter be send to the City Council without their recommendation, but noting the motions that were made.

Based on the Board discussion, there were two main positions. One position was that the R-3 zoning allows more options and higher density, thus actually increasing property values for the current residents in the long term (when they are ready to sell), and that the current owners could develop or not develop as they chose. The area has the necessary utilities to accommodate the R-3 density, and features that are substandard, such as street width and lack of pedestrian facilities could be addressed as development occurs. The R-3 zoning would allow the neighborhood to transition to accommodate additional housing, which is much needed in the Cody area.

**AGENDA ITEM NO. \_\_\_\_\_**

The other position, would closely reflect the responses of the individual property owners in the neighborhood, allowing development that is currently contemplated to proceed without any timeline restriction imposed by a rezone, while reducing the potential density in the remainder of the subdivision to a level that is perceived as more compatible with the existing neighborhood.

Each of the positions have logical justification.

As an observation, one of the fundamental differences between the two zones was not discussed by the Board, so it is not clear if it was included in their individual thought processes. As noted in the staff report, R-3 zoning allows townhouse development (up to 4 attached units in each building), and R-2 zoning does not. Admittedly, staff believes that townhouses would have a more significant impact on the character of the existing neighborhood.

The original staff report to the Planning and Zoning Board is attached for reference, and contains additional details.

#### **FINANCIAL IMPACT**

No direct impacts to the City budget are expected.

#### **ALTERNATIVES**

Approve, partially approve, or deny the requested rezone, by ordinance.

#### **RECOMMENDATION**

The Planning and Zoning Board was not able to pass a motion to provide a recommendation.

Of the two scenarios that the Board attempted to pass, only one would require action—to rezone a portion of the area. The other would not require action, as it would leave the existing R-3 zoning in place.

Planning staff has prepared a version of the ordinance to rezone a portion of the area to R-2, as originally recommended by staff, in case that is the council's desire. If they wish to modify the portion of the area to be rezoned, they could amend the proposed ordinance accordingly.

If the City Council does not desire to rezone all or part of the area to R-2, they could either allow the ordinance to die for lack of a motion, or fail a motion to approve the ordinance.

**ORDINANCE 2021-08**

**AN ORDINANCE REZONING PORTIONS OF THE BAKKEN SUBDIVISION LOCATED WITHIN THE CITY OF CODY, PARK COUNTY, WYOMING TO MEDIUM-LOW DENSITY RESIDENTIAL (R-2).**

WHEREAS, the City of Cody received a rezone application from Ronald Strong, with accompanying petitions of support from many other property owners in the rezone area, to rezone Lot 1-7 and Lots 10-16 of the Bakken Subdivision within the City of Cody from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2);

WHEREAS, the Planning and Zoning Board held a property advertised public hearing and considered the application at their meeting on November 30, 2021; and,

WHEREAS, the governing body of the City of Cody has reviewed the application, staff report, and public comments and finds that it is in the best interest of the public to rezone a portion of the area requested to Medium-Low Density Residential (R-2).

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING:

Section 1: That the following described property shall be and the same is hereby rezoned to Medium-Low Density Residential (R-2), as set forth in City of Cody Code Title 10.

Lots 1 through 7 and Lot 16 of the Bakken Subdivision, according to the plat recorded in Book "E" of Plats, Page 81, records of Park County, Wyoming. The Kent Avenue right-of-way adjacent to the lots indicated is also hereby zoned Medium-Low Density Residential (R-2), to the centerline of the right-of-way.

Section 2: That the official zoning map of the City of Cody is amended to show the foregoing zone change.

Effective Date. This Ordinance shall become effective after final passage and publication in the Cody Enterprise.

PASSED ON FIRST READING:

\_\_\_\_\_

PASSED ON SECOND READING:

PASSED, ADOPTED AND APPROVED  
ON THIRD AND FINAL READING:

\_\_\_\_\_  
Matt Hall, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia Baker, Administrative Services Officer

**CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
STAFF REPORT**

<b>MEETING DATE:</b>	NOVEMBER 30, 2021	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	
<b>SUBJECT:</b>	REQUEST TO REZONE LOTS 1-7 AND LOTS 10-16 OF THE BAKKEN SUBDIVISION FROM R-3 RESIDENTIAL TO R-2 RESIDENTIAL. FILE: ZON 2021-01	RECOMMENDATION TO COUNCIL:	X
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

**PROJECT DESCRIPTION:**

Ronald Strong of 3105 Kent Avenue, has submitted a rezone application, accompanied by petitions of support from property owners representing 9 of the 16 lots within the proposed rezone area. The request is to change the zoning from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2). This would constitute a downzoning of the neighborhood (less potential density). Presently, all lots in the rezone area are each at least 0.9 acres in size, with one lot being 3.8 acres.

Existing Zoning:



With the exception of two vacant lots towards the southwest portion of the area, each lot is developed with a single home.

**Neighboring Properties:**

<i>DIRECTION</i>	<i>EXISTING USE</i>	<i>ZONING</i>
North	Trailhead development—Single-family and duplexes.	R-2
East	Mobile Home Park	Mobile Home Park
South	Freemont Motors, Cody Enterprise, Haskells Furniture, Vacant lots	Light Industrial/Open Business (D-3)
West	Mix of single-family and tri-plex development	R-3

**Zoning:**

The following is a general comparison between the R-3 and R-2 zoning standards. For a full comparison see Title 10 of the City of Cody Code.

	<b>R-3 Zoning Standards</b>	<b>R-2 Zoning Standards</b>
Minimum Net Lot Area	3,200 sq. ft. for detached, semi-detached, and attached single-family dwellings only. <i>(For multi-unit dwellings see next row.)</i>	5,500 sq. ft. for single-family dwelling; 10,000 sq. ft. for duplex
Developable acreage per Dwelling	4,000 sq. ft. for multi-unit dwellings, including those in condominium ownership; also, for dwellings in residential subdivisions with yards in common area	N/A
Minimum Lot Width	30' for interior lot, 40' corner lot	50'
Maximum lot depth to width ratio	5:1	3.5:1
Minimum frontage on street/access easement	30'	45' (30' on cul-de-sac)
Maximum building height	2 stories and 30' above grade	2 stories and 30' above grade
Minimum size of dwelling in gross floor area, excluding garage	720 sq. ft.	864 sq. ft.
Maximum building coverage	65%	50%
Short Term Rental	Permitted	Permitted if property is owner-occupied.



Manufactured Homes	Generally permitted	Not Permitted
Site Built or Modular Homes	Permitted	Permitted
Duplexes	Permitted	Permitted
Triplexes, 4-plexes, or townhouses (up to 4)	Permitted	Not Permitted
Multiple primary dwellings permitted	Yes	No (must subdivide)

**PROCEDURE:**

The following section is found in the City of Cody code.

*10-5-1: CITY COUNCIL AUTHORITY: The city council may by ordinance at any time, on its own motion or petition, or upon the recommendations by the planning and zoning commission, amend, supplement or change the regulations or districts herein or subsequently established; provided, however, that a public hearing shall first be held in relation thereto, after one publication of notice of the time, place and purpose of such hearing, in an official newspaper, at least fifteen (15) days prior to such hearing.*

The public hearing has been advertised to occur with the Planning and Zoning Board, based on the thought that the Board needs public input in order to make a fully informed recommendation. Notice of the public hearing was published in the *Cody Enterprise* on November 11, 2021 and sent by certified mail to neighbors within 140 feet (plus R/W) on November 5, 2021.

**REVIEW CRITERIA:**

Rezoning is a legislative action, subject to the full discretion of the governing body. The Cody zoning ordinance does not have specific criteria outlined for granting or denying rezoning requests. For the purpose of providing guidance, staff will refer to the following general standards for zoning that are found in Wyoming state law, Section 15-1-601(d). Please note that the standards are in the context of initially adopting an overall zoning plan for a community, yet they can provide guidance for reviewing site specific proposals as well.

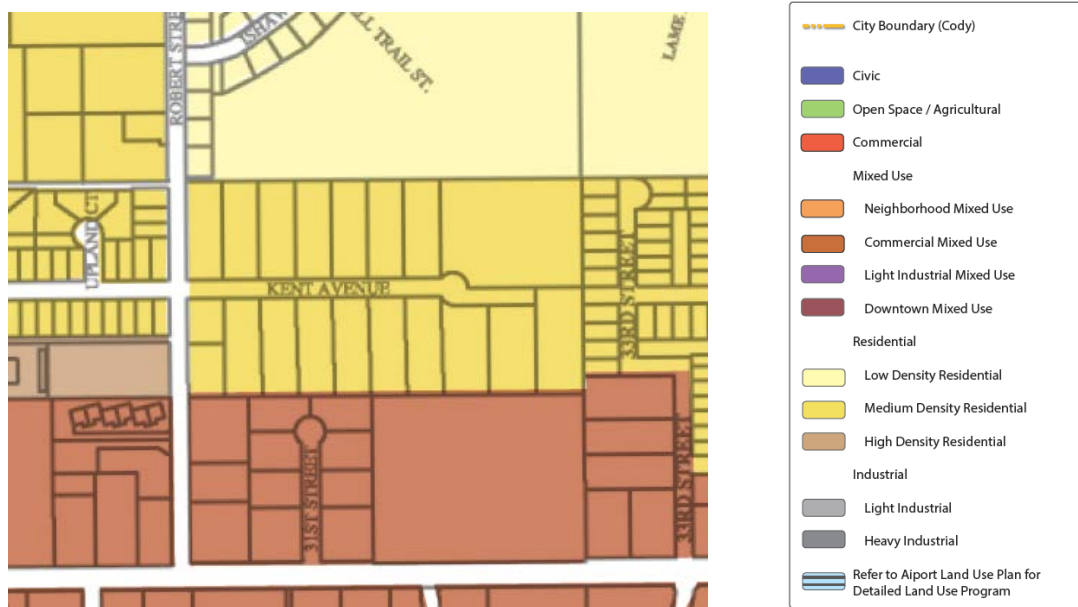
**(d) All regulations shall be made:**

**(i) In accordance with a comprehensive plan and designed to:**

Staff Comment: The current comprehensive plan was adopted by the City in March of 2014. Per the master plan "*The Future Land Use Map...will be the guide for future zoning and development within the City.*" The portion of the Future Land Use Map for this area is included below, which shows the neighborhood as "Medium Density Residential", which generally corresponds to the current R-3 zoning.

However, the Master Plan specifically states that, "*the boundaries between land use designation are not rigid and can accommodate reasonable rezoning requests that may encroach across boundaries depicted on the map.*" Also, "*These categories should be*

*considered as guidelines, with flexibility provided in the specific district regulations, such than an appropriate mixing of uses and density may occur to provide variety, opportunities for transitional densities, efficient land use patterns, and other desirable situations that will result in an attractive, efficient, and well-organized community."*



(A) Lessen congestion in the streets;

Staff Comment: The zoning would result in a decrease of potential density, and therefore potential traffic. However, both Kent Avenue and Robert Street appear to have sufficient capacity for development under the present R-3 zoning.

(B) Secure safety from fire, panic and other dangers;

Staff Comment: Regardless of the zoning, any new construction or use would need to comply with applicable development codes, which codes are intended to ensure that adequate protections occur so as to secure safety from fire, panic, or other physical dangers.

(C) Promote health and general welfare;

Staff Comment: In staff's view, either the R-2 or R-3 zones would not conflict with general provisions of promoting health and welfare in the neighborhood. There has been no evidence to suggest otherwise.

(D) Provide adequate light and air;

Staff Comment: This standard is typically related to providing sufficient open space and setbacks. (The language originally developed to address tenement housing conditions of the early 1900's.) Current building codes and zoning setbacks/buffers are intended to meet this requirement.

(E) Prevent the overcrowding of land:

Staff Comment: What constitutes "overcrowding" is subject to personal interpretation. Based on comments submitted, the neighborhood is clearly wanting to maintain the rural density that has existed. That being said, from an efficiency standpoint, a density of one dwelling per acre represents the underutilization of land within the City. Cody continues to suffer from a housing shortage, and excessive limitations on density, whether through zoning or private covenants, have the effect of either precluding some of that housing, or causing it to occur in greenbelt areas that necessitate a complete set of additional infrastructure, as opposed to utilizing streets and utilities that are already in existence within the City and have capacity.

That being said, it is not anticipated that any of the properties, other than the two vacant lots, would be developed at the density contemplated by the R-3 zone anytime in the near future, due to the placement of the existing houses and shops that already exist. R-2 zoning could still achieve a level of infill appropriate to the neighborhood, likely in the range of two to four new dwellings on each existing lot.

(F) Avoid undue concentration of population:

Staff Comment: See "E" above.

(G) Facilitate adequate provisions for transportation, water, sewerage, schools, parks and other public requirements.

Staff Comment: The neighborhood has all standard utilities except domestic water and raw water. Domestic water is readily available for extension and there has already been talk of forming an improvement district to extend domestic water through the neighborhood. Raw water is not available.

School capacity is not a concern (overall enrollment is historically flat or dwindling). A park is 1/4 to 1/3 mile away at the north end of the Trailhead subdivision, although direct pedestrian access through this subdivision is lacking. A rezone from R-3 to R-2 would not have a significant effect on the facilities noted.

(ii) With reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses:

Staff Comment: Perhaps the most convincing argument for the rezone is the elimination of potential multi-family dwellings. While one tri-plex exists and another is contemplated at the west end of Kent Avenue, at the Robert Street intersection, those are appropriately located at the periphery of the neighborhood. If multi-family dwellings were located in the middle of this neighborhood, it would have an effect on its character.

(iii) With a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city or town; and

Staff Comment: No additional comments.

(iv) With consideration given to the historic integrity of certain neighborhoods or districts and a view to preserving, rehabilitating and maintaining historic properties and encouraging compatible uses within the neighborhoods or districts, but no regulation made to carry out the purposes of this paragraph is valid to the extent it constitutes an unconstitutional taking without compensation.

Staff Comment: The properties themselves do not contain historic structures.

### **OTHER:**

#### *Significant Changes:*

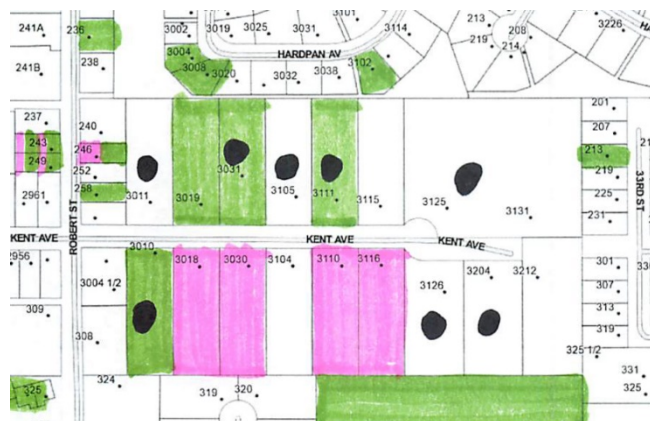
When reviewing rezones, it is beneficial to consider whether there has been a change in circumstances since the property was designated with its current zone. The area was originally developed in the County. When it was annexed in 1985, it was zoned Residential B, a multi-family zone that allowed all forms of residential development at a density of up to one unit per 2,250 square feet of lot. It remained that way until March 2017 when a city-wide residential zoning update occurred and it was placed in the R-3 zone, in response to neighbor input about the concern of apartment complexes. The current application seems to indicate that the City didn't go far enough to appease the overall neighborhood.

#### *Proximity to Like Zoning:*

The subject properties are next to R-2 zoning to the north, east, and a portion of the west boundary. The proposed configuration does not have the appearance of a spot zone.

#### *Public Hearing:*

Please note that this staff report was prepared without the benefit of the information that will be provided at the public hearing. All public comments need to be considered. As of the time of the staff report, the following map represents responses. The black dot means the lot owner signed a statement supporting the rezone application. Highlighting means they submitted a written comment in response to the notice. Green represents "no objection" and pink "objection". If the lot has both colors, the response was opposing the rezone, yet the comments were clearly in favor of reduced density. Copies of all responses are attached.



### **ATTACHMENTS:**

Public comments.

**ALTERNATIVES:**

Recommend approval, partial approval, or denial of the rezone application to the city council.

**RECOMMENDATION:**

The Planning and Zoning Board will need to provide a recommendation to the City Council.

Based on the pattern of responses thus far, and subject to any additional information that is submitted, staff is thinking that Lots 10 through 15 should be excluded from the rezone, as shown on the following map. The reasons are various, but center around relatively short-term plans of those lot owners doing some form of development that may necessitate R-3 zoning. The two vacant lots are contemplated for development, in the form of detached single-family dwellings or common wall units (duplexes split by lot lines), at a density of around twelve dwelling units. The contemplated lot sizes need the R-3 zoning.



While some in the neighborhood would like to preclude that subdivision, the property owner would be able to develop the property under the current R-3 zoning by submitting a complete subdivision application before any rezone to R-2 were effective, which effective date would not be before mid-January at the earliest. Provided the property owner continued with that subdivision application, it could be completed regardless of the zoning. The property owner has that application mostly prepared and would be able to submit it if needed to maintain his ability to develop as contemplated. However, simply leaving it as R-3 would avoid making the subsequent development non-conforming for no apparent purpose.

☒ I OBJECT to the Special Exemption request:

Name:

Ruthleen Casey

Address:

243 Robert St Cody WY 82414

Reason for Objection:

Kent - Robert - and Trail head subdivision  
TO much Traffic already connecting

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

Comments:



I OBJECT to the Special Exemption request:

Name:

ROBERT + LENDRA VARKONY

Address:

249 ROBERT ST. COOY. WY.

Reason for Objection:

WE HAVE ENOUGH TRAFFIC. CITY NEEDS TO STICK TO THE  
ZONING LAWS.

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

RV.

Comments:



I OBJECT to the Special Exemption request:

Name:

ANN WAY

Address:

246 ROBERT ST.

Reason for Objection:

I PREFER SINGLE-FAMILY DWELLINGS  
INSTEAD OF MULTIPLE FAMILY DWELLINGS

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

Comments:



I OBJECT to the Special Exemption request:

Name:

Todd Smyk

Address:

1229 14th Street (subject  
property = 3110 Kent ave)

Reason for Objection:

cody av, 82414

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

tsmyk@yahoo.com



**Notice to Owners of Neighboring Properties:**

Please return your comments by Nov. 23, 2021 to:

Date: November 8, 2021

Cody City Planner

P.O. Box 2200

RE: **REQUEST FOR REZONING**

Cody, WY 82414

Or, send an email to: [todds@cityofcody.com](mailto:todds@cityofcody.com)

**THE CITY OF CODY HAS RECEIVED AN APPLICATION TO REZONE THE PROPERTY IDENTIFIED BELOW. YOUR COMMENTS WOULD BE APPRECIATED.**

Applicant Name(s): Ronald Strong

(Apparent signatures of support received from owners of the lots marked with a dot.)

**Subject Property:** Lot 1 through 7 and Lots 10 through 16 of the Bakken Subdivision. (Including subdivision of Lot 16.)

**Description of Request:** Rezone the subject property from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2). To view the zoning and development standards for each zone see Title 10 of the City of Cody Code. <https://codelibrary.amlegal.com/codes/codywy/latest/overview>



This request will be considered at a **public hearing** held by the City of Cody Planning & Zoning Board at their regularly scheduled meeting on **Tuesday, November 30, 2021** at 12:00 p.m. in the City Hall Council Chambers, at 1338 Rumsey Ave. Anyone is welcome to attend and comment at the public hearing. After the public hearing, the Board will make a recommendation for consideration by the City Council at a later date—likely at the Council's December 7, 2021 meeting at 7:00 pm.

**Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:**  
(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☐ I have **NO OBJECTION** to the Special Exemption request.

Name

Address:

Comments:

☒ I **OBJECT** to the Special Exemption request:

Name: Katie Morales

Address: 3116 Kent Ave Cody WY

Reason for Objection:

Attached

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address:

[Kmonfekt@gmail.com](mailto:Kmonfekt@gmail.com)



I am apposed to rezoning. I bought this property with the intention of putting a vacation rental in the shop. It is part of my retirement plan and also supplemental income. I would not be able to do that if we get rezoned. I am a single mom with three kids and I am counting on this additional income.

Also, the letter that was sent out in favor of rezoning was extremely biased and only pointed out one side of what would change. It conveniently left out the things that we as a neighborhood would be giving up.

Please consider this in whether to rezone or not.

Thank You,  
Haine Morales

**Notice to Owners of Neighboring Properties:**

**Please return your comments by Nov. 23, 2021 to:**

**Date: November 8, 2021**

**Cody City Planner**

P.O. Box 2200

RE: **REQUEST FOR REZONING**

Cody, WY 82414

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**Applicant Name(s):** Ronald Strong

(Apparent signatures of support received from owners  
of the lots marked with a dot.)

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(Responses may be submitted in any written format. The following form is provided for your convenience.)

**Dear Planning and Zoning Board Members:**

**I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.**

☐ I have NO OBJECTION to the Special Exemption request.

Name \_\_\_\_\_

**Address:**

**Comments:**

☒ I OBJECT to the Special Exemption request:

Name: WALTER W. and WALTER G. DRANTZ

Address: 6 Brantz Trail & 3 Brantz Trail, Cody WY 82414

Reason for Objection: SEE ATTACHED

**If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please**

provide your email address: E-mail address: bill.brantz@thrivent.com

11/17/2021

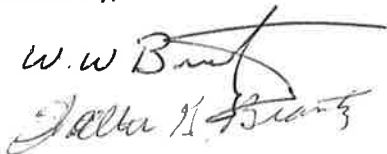
Our goal is to provide quality, affordable housing to an already tight real estate market in Cody.

Due to the fact, the property on Kent is an R-3, was one of the major considerations for our investment's years ago. If any of the concerned individuals wanted to discourage development of said property, they had the option of purchasing back then. Changing it to an R-2 makes everyone's property less valuable. It doesn't make sense to downgrade an R-3 to an R-2 next to commercial property. Additionally, it will begin to improve the infrastructure of the neighborhood.

Walter G. Brantz, who is 91 years old, expressed the following: "We just like our neighbors have paid taxes on an R-3 for years, and they have developed their properties with our neighborly influence or interference. It seems unfair that other people could prevent us from building on our property as they did earlier."

I will be out of the country from 11/19/21 through 12/5/2021. Because of that I would like to have the hearing remain open until January 2022. Andy Cowan will be attending the November 30<sup>th</sup> hearing in my stead. Any questions or comments should be directed to him.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. W. Brantz" followed by a stylized flourish.

Bill Brantz

6 Brantz Trail

Cody, WY 82414

(307)272-8731

☒ I have NO OBJECTION to the Special Exemption request.

Name Mr + Mrs Lloyd + Ruth Anderson

Address 213 33rd St.

Comments: see letter

Nov 12, 2021

I am familiar with the changes in zoning - we need to protect our Property Values.

his request, please

Zoning + planning put rules + regulations in place and then break them - I have lived in Cody 50 years and at my present location since 1991 -

I have seen how you allowed Banks - 4 B's Construction to go against zoning, by allowing a commercial building, above height regulations, to be built in a neighborhood (residential) and property values went down - Nothing done about the "Junk Yard" in City limits - a buffer zone (trees) were to be planted - Nothing has been done. Please protect what we have left of our neighborhood -

Sincerely:

Mr + Mrs Lloyd + Ruth Anderson

PS - Also concerned about this truck square as it is a customer as in front area -

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: Suzanne Haish Ostreich

Address: 3102 Hardpan Ave

Comments: No objection

☐ I OBJECT to the Special Exemption request:

Name:

Address:

**Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:**  
(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: Scott & Stacy Springer

Address: 3108 Hardpan Ave

Comments:

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

**Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:**  
(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name:

Address: 258 Robert

Comments:

*Deliberately*

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please  
provide your email address: E-mail address:

ap@selsover63@gmail.com

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: Darla Lotspeich  
Address: 3004 Hardpan Ave

Comments:

☐ I OBJECT to the Special Exemption request.

(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: David and Alisha Mills  
Address: 3111 Kent Ave

Comments: One of the reasons we bought this property was because of the lot size and quiet neighborhood. When we heard they were thinking of putting 10 homes on the empty lot on our street we thought about moving. We would prefer to keep our neighborhood as it is and would even support a change to

☐ I OBJECT to the Special Exemption request:

Name:

Address:

R1.

(Responses may be submitted in any written format. The following form is provided for your convenience.)

(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: DAWN E. DAY-HENSON  
Address: 3010 KENT AVE., CODY, WY 82414

Comments:

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

(Responses may be submitted in any written format. The following form is provided for your convenience.) indawn51@yahoo.com

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name: Chris Dandson (Channade Consulting LLC)  
Address: 315-321 Robert Street

Comments:

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name:

Address:

Comments:

Celeste & Chuck RADTKE

236 Robert Street, Cody, WY. 82414

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name:

Address:

Comments:

Laura Drewes  
3031 Kent Ave.  
I wish we could change it to R1. Somack New development in this area. We've lost all rural area we thought we'd bought 30 years ago.

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please

provide your email address: E-mail address:

DLLD@BRESNAN.NET



Notice to Owners of Neighboring Properties:

Please return your comments by Nov. 23, 2021 to:

Date: November 8, 2021

Cody City Planner

P.O. Box 2200

RE: REQUEST FOR REZONING

Cody, WY 82414

Or, send an email to [zodds@cityofcody.com](mailto:zodds@cityofcody.com)

THE CITY OF CODY HAS RECEIVED AN APPLICATION TO REZONE THE PROPERTY IDENTIFIED BELOW. YOUR COMMENTS WOULD BE APPRECIATED.

Applicant Name(s): Ronald Strong  
(Apparent signatures of support received from owners of the lots marked with a dot.)

Subject Property: Lot 1 through 7 and Lots 10 through 16 of the Bakken Subdivision. (Including subdivision of Lot 16.)

Description of Request: Rezone the subject property from Medium-High Density Residential (R-3) to Medium-Low Density Residential (R-2). To view the zoning and development standards for each zone see Title 10 of the City of Cody Code <https://codebook.amlegal.com/code/codywy/latest/overview>



This request will be considered at a public hearing held by the City of Cody Planning & Zoning Board at their regularly scheduled meeting on Tuesday, November 30, 2021 at 12:00 p.m. in the City Hall Council Chambers, at 1338 Rumsey Ave. Anyone is welcome to attend and comment at the public hearing. After the public hearing, the Board will make a recommendation for consideration by the City Council at a later date—likely at the Council's December 7, 2021 meeting at 7:00 p.m.

Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:  
(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezoning of Lots 1-7 and Lots 10-16 of the Bakken Subdivision described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name

Address

Comments

☐ I OBJECT to the Special Exemption request.

Name

Address

Reason for Objection

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address:

5 STAR LLC PRINCIPAL  
3127 BIG HORN AVE.



**CITY OF CODY**  
WYOMING

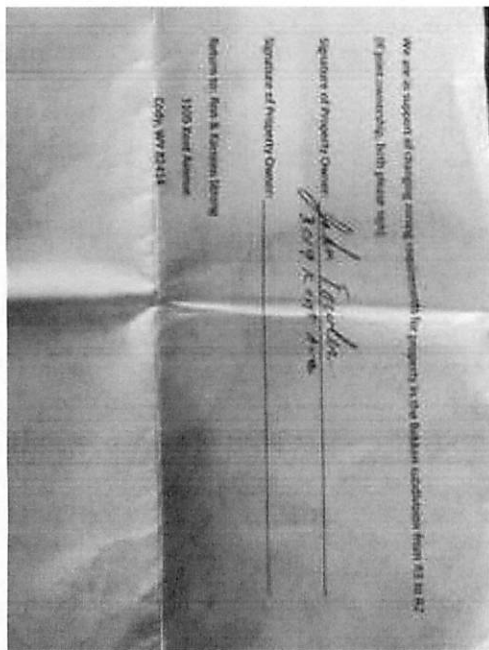
Todd Stowell <todds@cityofcody.com>

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## Fwd: Cody Enterprise Advertising

Ron Strong <restrong@bresnan.net>  
To: Todd Stowell <todds@cityofcody.com>

Fri, Nov 19, 2021 at 10:55 AM



Todd,  
I just found this in my mailbox. Let me know if you need the original copy. Please add it to the zone request approval file.  
Thanks,  
Ron  
Sent from my iPad

On Nov 8, 2021, at 10:13 AM, Todd Stowell <todds@cityofcody.com> wrote:

[Quoted text hidden]

*All City of Cody electronic correspondence and associated file attachments are public records and may be subject to certain disclosure in the event of a public records request.*

## AGENDA ITEM SUMMARY REPORT

### Ordinance 2021-09

### Consider a Request to Rezone 235 West Cooper Lane from Medium-High Density Residential (R-3) to Limited Business (D-1)

#### **ACTION TO BE TAKEN**

Consider Ordinance 2021-09, to rezone 235 West Cooper Lane from Medium-High Density Residential (R-3) to Limited Business (D-1).

#### **SUMMARY**

At their November 30, 2021 meeting, the Planning and Zoning Board held a public hearing to consider an application by Martin Brothers, LLC to rezone 235 West Cooper Lane from Medium-High Density Residential (R-3) to Limited Business (D-1). The rezone is necessary to accomplish the owner's desired project to build a mini-storage facility on the property. The subject property is approximately 2.4 acres in size and located on the west side of West Cooper Lane. The existing zoning is shown on this map.



The Board considered the staff report and comments at the public hearing. At the public hearing, two additional property owners (single property) spoke in opposition to the rezone. The following map represents the responses received. The green represents "no objection" by the property owner, and the pink represents "objection". All comments are attached.

Based on the information before them, the Planning and Zoning Board recommended that the City Council not grant the requested rezone—the existing R-3 zoning is most appropriate for the property.



It is noted that the applicant was not in attendance at the hearing or any portion of the Planning and Zoning Board meeting, although the notices were sent out by him. It would be reasonable to allow the applicant an opportunity for comment at the City Council meeting.

**AGENDA ITEM NO. \_\_\_\_\_**

The original staff report to the Planning and Zoning Board is attached for reference, and contains additional details.

**FINANCIAL IMPACT**

No direct impacts to the City budget are expected.

**RECOMMENDATION**

The Planning and Zoning Board recommendation, on a 5-0 vote, is to not grant the requested rezone of 235 West Cooper Lane to Limited Business (D-1). If this is the Council's desire as well, the attached ordinance should either die for lack of a motion, or fail to pass on a motion to approve the ordinance.

If the Board desires to approve the ordinance, they would need to approve the attached ordinance on first reading.

**ORDINANCE 2021-09**

**AN ORDINANCE REZONING 235 WEST COOPER LANE, LOCATED  
WITHIN THE CITY OF CODY, PARK COUNTY, WYOMING TO LIMITED  
BUSINESS (D-1).**

WHEREAS, the City of Cody received an application from Martin Brothers, LLC to rezone 235 West Cooper Lane, which is legally described in the warranty deed recorded as Document Number 2021-7581, Records of Park County, WY, to Limited Business (D-1);

WHEREAS, the Planning and Zoning Board held a property advertised public hearing and considered the application at their meeting on November 30, 2021; and,

WHEREAS, the governing body of the City of Cody has reviewed the application, staff report, and public comments and finds that it is in the best interest of the public to rezone the area requested to Limited Business (D-1).

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF  
THE CITY OF CODY, WYOMING:

Section 1: That the following described property shall be and the same is hereby rezoned to Limited Business (D-1), as set forth in City of Cody Code Title 10.

**T. 53 N., R. 101 W., 6th P.M., Park County, Wyoming**

**A tract of land located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 27, Original Survey; now being Tract 39K; the tract being more particularly described as follows:**

**Beginning at the Southeast corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 27; thence S.89°58'49"W. on and along the South line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  for a distance of 20.00 feet to an existing 2" aluminum cap witness corner; thence S.89°58'49"W. for a distance of 242.80 feet to the Southwest corner of the tract; thence N.03°15'36"W. for a distance of 5.11 feet to an existing 2" aluminum cap witness corner set this survey; thence N.03°15'36"W. for a distance of 423.76 feet to an existing 2" aluminum cap set this survey at the Northwest corner of the tract; thence N.89°58'49"E. for a distance of 255.88 feet to an existing 2" aluminum cap witness corner; thence N.89°58'49"E. for a distance of 30.00 feet to the Northeast corner of the tract; thence S.00°12'12"E. on and along the east line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 27 for a distance of 428.12 feet to the POINT OF BEGINNING. Bearing Base = N.00°12'12"W. along the East line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 27 Original Survey = Tract #38-K, Resurvey, T. 53N., R. 101W., 6th P.M.**

(A.K.A. 235 West Cooper Lane)

Section 2: That the official zoning map of the City of Cody is amended to show the foregoing zone change.

Effective Date. This Ordinance shall become effective after final passage and publication in the Cody Enterprise.

PASSED ON FIRST READING: \_\_\_\_\_

PASSED ON SECOND READING:

PASSED, ADOPTED AND APPROVED  
ON THIRD AND FINAL READING:

\_\_\_\_\_  
Matt Hall, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia Baker, Administrative Services Officer



# CITY OF CODY PLANNING, ZONING AND ADJUSTMENT BOARD STAFF REPORT

<b>MEETING DATE:</b>	NOVEMBER 30, 2021	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	
<b>SUBJECT:</b>	REQUEST TO REZONE 235 WEST COOPER LANE FROM R-3 RESIDENTIAL TO LIMITED BUSINESS (D-1). FILE: ZON 2021-02	RECOMMENDATION TO COUNCIL:	X
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

## **PROJECT DESCRIPTION:**

Martin Brothers, LLC, represented by Robert Martin, has submitted an application to rezone 235 West Cooper Lane from Medium-High Density Residential (R-3) to Limited Business (D-1). The rezone is necessary to accomplish the owner's desired project to build a mini-storage facility on the property. As part of that project, an existing barn and garage would be removed, while the residence would remain.

The subject property is approximately 2.4 acres in size and located on the west side of West Cooper Lane.



## **Existing Zoning:**



Neighboring Properties:

<i>DIRECTION</i>	<i>EXISTING USE</i>	<i>ZONING</i>
North	Single-family development.	Planned Unit Development/ R-2
East	Single-family development.	R-2 Residential and County zoning of R-H (1/2 acre residential)
South and Southeast	Vacant.	Light Industrial/Open Business (D-3) to south. County zoning of Commercial to SE.
West	Single-family development and open space/drainage swale.	Planned Unit Development/ R-2

*Existing Zoning vs. Proposed Zoning*

The existing R-3 residential zoning of the property allows many forms of residential development, with the exception of multi-family buildings containing more than four dwelling units (apartments). Density is limited to one dwelling per 4,000 square feet of lot area in a multi-family situation, or a minimum lot size of 3,200 square feet for single-family detached or attached dwellings. The property could theoretically accommodate approximately 26 dwelling units with the current R-3 zoning, although due to the lot dimensions, about 18-20 dwelling units is more realistic.

The proposed Limited Business (D-1) zoning is the least intense of the four commercial zoning districts, yet it allows more residential density than any of the residential zones. In effect, residential density is not limited in the D-1 zone, other than by the need to provide access and parking and to comply with individual building size as follows: Maximum 5,000 square feet on any one story and no more than 10,000 square feet total (no limit on number of stories).

The D-1 zone also allows professional offices, storage facilities, and most retail businesses that are not auto-oriented (no auto repair, no drive-thrus, no restaurants, no hotels, no public entertainment venues, etc.). For a complete list of uses permitted in the D-1 zone see City of Cody Code 10-10A-2. The D-1 zone limits hours of operation of business activities to between 6:00 a.m. and 10:00 p.m.

Like the other commercial zones, development on D-1 zoned land requires a 6-foot-tall privacy fence and 15-foot-wide landscape buffer on the D-1 property where it abuts residential zoning. The requirement would be applicable to the north and west sides of the subject property. The buffer can accomplish much in promoting compatibility between differing uses. There is no such requirement in the residential zones.



As noted initially, the applicant plans to develop the property as a storage facility. However, if the rezone is granted, any form of development that met the D-1 standards could be developed.

**PROCEDURE:**

The following section is found in the City of Cody code.

*10-5-1: CITY COUNCIL AUTHORITY: The city council may by ordinance at any time, on its own motion or petition, or upon the recommendations by the planning and zoning commission, amend, supplement or change the regulations or districts herein or subsequently established; provided, however, that a public hearing shall first be held in relation thereto, after one publication of notice of the time, place and purpose of such hearing, in an official newspaper, at least fifteen (15) days prior to such hearing.*

The public hearing has been advertised to occur with the Planning and Zoning Board, based on the thought that the Board needs public input in order to make a fully informed recommendation. Notice of the public hearing was published in the *Cody Enterprise* on November 11, 2021 and sent by mail to neighbors within 140 feet (plus R/W) on November 8, 2021.

**REVIEW CRITERIA:**

Rezoning is a legislative action, subject to the full discretion of the governing body. The Cody zoning ordinance does not have specific criteria outlined for granting or denying rezoning requests. For the purpose of providing guidance, staff will refer to the following general standards for zoning that are found in Wyoming state law, Section 15-1-601(d). Please note that the standards are in the context of initially adopting an overall zoning plan for a community, yet they can provide guidance for reviewing site specific proposals as well.

**(d) All regulations shall be made:**

**(i) In accordance with a comprehensive plan and designed to:**

Staff Comment: The City adopted a new comprehensive plan in March of 2014. Per the master plan "*The Future Land Use Map...will be the guide for future zoning and development within the City.*" The portion of the Future Land Use Map for this area is shown on the following page, which shows the property as low-density residential. The undeveloped property to the south is shown as light industrial.

The Master Plan specifically states that, "*the boundaries between land use designation are not rigid and can accommodate reasonable rezoning requests that may encroach across boundaries depicted on the map.*" In effect the requested rezoning to commercial is an extension of that light industrial/commercial area, but stepped down in intensity to the least intense of the commercial zones. Stepping down the intensity of the commercial zoning before it reaches residential zoning is preferred when possible.



(A) Lessen congestion in the streets;

Staff Comment: West Cooper Lane is major collector street and still has capacity to carry additional traffic.

(B) Secure safety from fire, panic and other dangers;

Staff Comment: Any new construction or use would need to comply with applicable development codes, which codes are intended to ensure that adequate protections occur so as to secure safety from fire, panic, or other physical dangers.

(C) Promote health and general welfare;

Staff Comment: Any effect on the general health and welfare is difficult to determine, especially since it can have more to do with how a use is operated than the use itself. Furthermore, there is no guarantee of what the future use of the property will be. The D-1 zone is intended to be generally compatible with neighboring residential uses, and the City's site plan review process is intended to ensure mitigation of significant negative effects of any specific development proposal. Depending how a site is designed can do a lot to help or hurt compatibility.

(D) Provide adequate light and air;

Staff Comment: This standard is typically related to providing sufficient open space and setbacks for residential development. Current building codes and zoning setbacks/buffers are intended to meet this requirement. If the rezone to D-1 is granted, a 15-foot landscape buffer and a 6-foot-tall solid fence would be required along the north and west boundaries of any development of the site.

(E) Prevent the overcrowding of land;

Staff Comment: What constitutes "overcrowding" is subject to personal interpretation. While D-1 zoning would allow high-density residential development, that

is apparently not the applicant's intent. If the property is developed with mini-storage, there would likely be only the one existing residence, and all storage buildings would be single-story. That scenario does not appear to be clearly constitute overcrowding.

(F) Avoid undue concentration of population;

Staff Comment: See "E" above.

(G) Facilitate adequate provisions for transportation, water, sewerage, schools, parks and other public requirements.

Staff Comment: The property has access to all standard utilities and other public facilities necessary for development, regardless of the zone.

(ii) With reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses;

Staff Comment: It is necessary to consider what other uses would have a potential to be conducted on the property under the D-1 zoning district. As mentioned previously, D-1 zoning permits all forms of residential and permits retail uses such as hardware stores, grocery stores, bakeries, and clothing stores. However, it does not permit the more intense retail uses like drive-thrus, restaurants, hotels, auto repair, banks, public entertainment venues, and vehicle sales lots. While the intent of the D-1 zone is to permit services normally accessory to a residential area with only moderate interference to the neighborhood, staff is concerned that the standard D-1 requirements are inadequate to ensure compatibility with the surrounding residential development when it comes to the retail type uses, and perhaps full-scale multi-family development.

(iii) With a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city or town; and

Staff Comment: This determination needs the input of the public hearing. One of the most affected property owners claims that selling his residential lots will be more difficult if this property is developed commercially. If true, that would likely ultimately mean a direct impact to the value of those properties and houses.

Perhaps the most compelling argument for the neighbors opposed to the rezone is that the historical residential zoning of the property has given them reasonable assurance that commercial development would not extend into the neighborhood. When traveling north on West Cooper Lane, the south boundary of the property has the feeling of the neighborhood boundary. Moving that boundary has never been their expectation. One of the primary purposes of zoning is to provide some predictability to neighboring landowners of how properties will develop, and this proposal upsets that predictability.

Another point likely in their favor is the answer to the question of "what is the most appropriate use of the land from a community-need perspective?" Is it mini-storage (or other commercial D-1 activity) or additional residential dwellings? The perception of the City planner, is that the low availability of quality residential land and its lack of development for housing is the primary limitation on growth of the community. Admittedly, D-1 zoning would allow more residential density than the

existing R-3 zoning, but we know that is not the owner's intent. (And increased residential density could be accomplished by a rezone to R-4.) The point that there are 97 acres of vacant commercial land immediately to the south (20 acres on the west side of Cooper Lane and 77 acres on the east side), lessens the argument that the City needs additional commercial land. Conversely, while in the year and a half since the below photo was taken, there are at least seven new homes in that area. At present rates, all lots in Trailhead will have been sold by the developer within about the next two years.



(iv) With consideration given to the historic integrity of certain neighborhoods or districts and a view to preserving, rehabilitating and maintaining historic properties and encouraging compatible uses within the neighborhoods or districts, but no regulation made to carry out the purposes of this paragraph is valid to the extent it constitutes an unconstitutional taking without compensation.

Staff Comment: The property itself may have some historic components (Cooper family homestead?), but the existing farm buildings are in a state of disrepair. There are no restrictions on removal of the current buildings.

**OTHER:**

*Significant Changes:*

When reviewing rezones, it is beneficial to consider whether there has been a change in circumstances since the property was designated with its current zone. It appears that the property has been zoned residential since it was annexed into the city in 1985.

While the City has seen significant changes, the immediate area has only seen residential development. The commercial lands to the south remain undeveloped.

*Proximity to Like Zoning:*

The subject property abuts commercial zoning to the south. While the commercial zoning is of a different variety, the D-1 zone has historically been used as a separation between more intensive commercial zones and residential zoning, without respect to the size of the individual D-1 zone. As such, a rezone to D-1 would not constitute a 'spot zone', which is to be avoided. Examples of using the D-1 in this manner are shown here:



*Public Hearing:*

Please note that this staff report was prepared without the benefit of the information that will be provided at the public hearing. All public comments need to be considered.

The map here represents comments received thus far, with green indicating "no objection" and pink indicating "objection". All comments are attached.



**ATTACHMENTS:**

Neighbor comments.

**ALTERNATIVES:**

Recommend approval or denial of the requested rezone to the City Council.

**RECOMMENDATION:**

The Planning and Zoning Board will need to provide a recommendation to the City Council. The City Planner is not making a staff recommendation at this time, as there is a high likelihood that additional information could still be presented to influence the decision.



**Notice to Owners of Neighboring Properties:**

**Please return your comments by Nov. 23, 2021 to:**

Date: November 8, 2021

Cody City Planner

P.O. Box 2200

Cody, WY 82414

Or, send an email to: [todds@cityofcody.com](mailto:todds@cityofcody.com)

RE: **REQUEST FOR REZONING**

**THE CITY OF CODY HAS RECEIVED AN APPLICATION TO REZONE THE PROPERTY IDENTIFIED BELOW. YOUR COMMENTS WOULD BE APPRECIATED.**

Applicant Name(s): Martin Brothers, LLC

Subject Property: 235 West Cooper Lane. Property is described in the deed recorded as document 2021-7581, records of Park County, WY.

Description of Request: Rezone the subject property from Medium-High Density Residential (R-3) to Limited Business (D-1). To view the zoning and development standards for the D-1 Zone see Title 10 of the City of Cody Code.

<https://codebook.amlegal.com/codes/codywy/latest/overview>  
(The property owner contemplates development of a mini-storage facility on the property.)



This request will be considered at a **public hearing** held by the City of Cody Planning & Zoning Board at their regularly scheduled meeting on **Tuesday, November 30, 2021 at 12:00 p.m.** in the City Hall Council Chambers, at 1338 Rumsey Ave. Anyone is welcome to attend and comment at the public hearing. After the public hearing, the Board will make a recommendation for consideration by the City Council at a later date—likely at the Council's December 7, 2021 meeting at 7:00 pm.

**Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:** (Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of 235 West Cooper Lane to Limited Business (D-1).

☐ I have **NO OBJECTION** to the rezone request.

Name \_\_\_\_\_

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

Comments: \_\_\_\_\_

☒ I **OBJECT** to the rezone request:

Name: Jesse & Katy Brittain

Address: 3539 Cooper Ln

Reason for Objection: Please see attached letter

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address: \_\_\_\_\_

To Whom it May Concern,

We are writing to object to the rezone request by Martin Brothers, LLC at 235 West Cooper Lane. We own multiple properties adjacent to this property on Twin Creek Trail and Hardpan Ave and we live farther down Cooper Lane.

Most of my reasons for objecting to this request have to do with the effects a commercial property could have on a residential neighborhood. We are afraid that a commercial property could add to the traffic in this area as well as create more noise and potential debris. We also have concerns about it affecting the property value. This would adversely affect the people who own houses in the neighborhood as well as those of us contractors who own land in the area. It will be very difficult to sell a house that borders a storage unit facility. We also think it could affect the value of properties farther down Cooper Lane.

We have spoken with our clients who are in the process of purchasing 3344 Hardpan Ave. They are very against the idea of a storage unit being built directly behind their new house. We also own the lot directly north of the property and worry about the ability to sell a house there.

We feel like there are many empty commercial properties in Cody that would be a better fit for a storage unit. There are very few residential properties available in city limits and with the increasing number of people moving in lots are becoming almost impossible to find.

We feel that there are more negatives than positives to the request and the rezone would place a commercial property right in the center of completely residential neighborhoods.

Sincerely,

Jesse and Katy Brittain  
Brittain's Remodel and Custom Homes  
3539 Cooper Ln  
Cody, WY 82414  
307-899-5196



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Cody City Planner

P.O. Box 2200

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<https://codelibrary.amlegal.com/codes/codywy/latest/overview>

(The property owner contemplates development of a mini-storage facility on the property.)



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**Response Letter from Owners of Neighboring Properties either within, or within 140 feet of, the Subject Property:** (Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of 235 West Cooper Lane to Limited Business (D-1).

☐ I have **NO OBJECTION** to the rezone request.

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

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

Comments: \_\_\_\_\_

☒ I **OBJECT** to the rezone request: *-strongly against-*

Name: *Cory and Shildon Krebes*

Address: *3502 Maple Leaf Ave*

Reason for Objection: *We do not want the extra traffic, people, etc that would come along with it. We believe it would instantly lower our property value.*

**If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address:** E-mail address: *skrebes3@gmail.com*

**Notice to Owners of Neighboring Properties:**

Date: November 8, 2021

RE: **REQUEST FOR REZONING**

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Cody City Planner

P.O. Box 2200

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Dear Planning and Zoning Board Members:

I am familiar with the proposed rezone of 235 West Cooper Lane to Limited Business (D-1).

☒ I have NO OBJECTION to the rezone request.

Name: Charles & Karen Winkle

Address: 227 Cooper Lane W

Comments: \_\_\_\_\_

☐ I OBJECT to the rezone request:

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

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

Reason for Objection: \_\_\_\_\_

**If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address: \_\_\_\_\_**

MEETING DATE: DECEMBER 7, 2021

DEPARTMENT: PUBLIC WORKS – STREETS

PREPARED BY: PHILLIP M. BOWMAN, P.E.

PRESENTED BY: PHILLIP M. BOWMAN, P.E.



## **AGENDA ITEM SUMMARY REPORT**

### **Approval of the Professional Services Agreement with Stantec Consulting Services Inc. for the Big Horn Avenue Corridor Study**

#### **ACTION TO BE TAKEN**

Consider Approval of the Professional Services Agreement with Stantec Consulting Services Inc. for the Big Horn Avenue Corridor Study, and authorize the Mayor to sign all associated documents.

#### **SUMMARY OF INFORMATION**

The City of Cody has entered into a Cooperative Agreement (CA) with the Wyoming Department of Transportation (WYDOT) to complete the Big Horn Avenue Corridor Study. Per the terms outlined in the CA, City Staff has worked with members of the Cody Urban Systems and Traffic Committee (CUSTC) to form a consultant selection subcommittee for this project. Five (5) firms were invited to submit Letters of Interest for consideration by the subcommittee, and upon evaluation of the submittals received the subcommittee recommended Stantec Consulting Services Inc. (Stantec) located in Sheridan, Wyoming, as the engineering consultant for the project. City Staff has entered into negotiations with Stantec to develop a scope of work and fee proposal for the project, and the Professional Services Agreement attached is the outcome of those negotiations.

The existing CA between the City and WYDOT provides funding in the amount of \$62,500 for the project, with WYDOT providing \$50,000 (80%) and the City providing a match of \$12,500 (20%). The negotiated fee proposal from Stantec is \$93,909, which is higher than the funding currently available. It has been proposed to WYDOT that the additional project funding necessary be provided by WYDOT and the City at the cost share percentages contained in the existing CA. If this proposal is agreed to by WYDOT, the project would be funded with WYDOT providing \$75,127 (80% of total, a \$25,127 increase) and the City providing \$18,782 (20% of total, a \$6,282 increase).

City Council approval of the Professional Services Agreement will be subject to (1) final approval of all agreement documents by the City Attorney and (2) concurrence of WYDOT for the increased funding amounts outlined above prior to signature by the Mayor.

#### **FISCAL IMPACT**

Funding for the current Cooperative Agreement City match amount of \$12,500 was approved by the City Council with FY 2022 Budget Amendment No. 1 on August 17, 2021. The additional funding of \$6,282 needed for the project will be addressed in a future budget amendment utilizing General Fund reserves.

#### **ATTACHMENTS**

1. Professional Services Agreement with Attachments A, B, and C

#### **AGENDA & SUMMARY REPORT TO:**

None

**AGENDA ITEM NO. \_\_\_\_\_**



This Agreement is made and entered into effective December 1, 2021 (the "Agreement Date") by and between:

**"Client"**

Name: City of Cody Wyoming  
Address: PO Box 2200, Cody, WY 82414  
Phone: (307) 527-7511  
Representative: Phillip Bowman, PE, Public Works Director Email: pbowman@cityofcody.com

**"Stantec"**

Name: Stantec Consulting Services Inc.  
Address: 203 South Main Street, Suite 2003, Sheridan, WY 82801  
Phone: (307) 675-1148  
Representative: Ben Weaver, PE, PLS, PTOE, Project Manager Email: ben.weaver@stantec.com

Project Name (the "Project"):

Big Horn Avenue Corridor Study

**DESCRIPTION OF WORK:** Stantec shall render the services described in Attachment "A" (hereinafter called the "Services") in accordance with this Agreement. Stantec may, at its discretion and at any stage, engage subconsultants to perform all or any part of the Services. The Client and Stantec by written amendment to this Agreement may from time to time make changes to the Services. All changed work shall be carried out under this Agreement. The time for completion of the Services shall be adjusted accordingly.

**COMPENSATION:** Charges for the Services rendered will be made in accordance with the Contract Price indicated in Attachment "A", or, if no Contract Price is indicated, in accordance with Stantec's Schedule of Fees and Disbursements in effect from time to time as the Services are rendered. The Client will make payment by Electronic Funds Transfer when requested by Stantec.

Invoices shall be paid by the Client in the currency of the jurisdiction in which the Services are provided without deduction or setoff upon receipt. Failure to make any payment when due is a material breach of this Agreement and will entitle Stantec, at its option, to suspend or terminate this Agreement and the provision of the Services. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest.

**REPRESENTATIVES:** Each party shall designate in the space provided above a representative who is authorized to act on behalf of that party and receive notices under this Agreement. Such representatives have complete authority to act on behalf of their principals in respect to all matters arising under this Agreement.

**NOTICES:** All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by certified mail or email, addressed to the regular business address of such party as identified above.

**CLIENT'S RESPONSIBILITIES:** The Client shall provide to Stantec in writing, the Client's total requirements in connection with the Project, including the Project budget and time constraints. The Client shall make available to Stantec all relevant information or data pertinent to the Project which is required by Stantec to perform the Services. Stantec shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the Client, including information and data originating with other consultants employed by the Client whether such consultants are engaged at the request of Stantec or otherwise. Where such information or data originates either with the Client or its consultants then Stantec shall not be responsible to the Client for the consequences of any error or omission contained therein.

When required by Stantec, the Client shall engage specialist consultants directly to perform items of work necessary to enable Stantec to carry out the Services. Whether arranged by the Client or Stantec, these services shall be deemed to be provided under direct contracts to the Client unless expressly provided otherwise.

The Client shall give prompt consideration to all documentation related to the Project prepared by Stantec and whenever prompt action is necessary shall inform Stantec of Client's decisions in such reasonable time so as not to delay the schedule for providing the Services.

When applicable, the Client shall arrange and make provision for Stantec's entry to the Project site as well as other public and private property as necessary for Stantec to perform the Services. The Client shall obtain any required approvals,

licenses and permits from governmental or other authorities having jurisdiction over the Project so as not to delay Stantec in the performance of the Services.

**STANTEC'S RESPONSIBILITIES:** Stantec shall furnish the necessary qualified personnel to provide the Services. Stantec represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, Stantec will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure Stantec's performance. There are no other representations or warranties expressed or implied made by Stantec. In particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply to the Services provided by Stantec nor shall Stantec warrant or guarantee economic, market or financial conditions, proforma projections, schedules for public agency approvals, or other factors beyond Stantec's reasonable control. Stantec does not warrant the Services to any third party and the Client shall indemnify and hold harmless Stantec from any demands, claims, suits, or actions of third parties arising out of Stantec's performance of the Services.

In performing the Services under this Agreement, Stantec shall operate as and have the status of an independent contractor and shall not act as or be an employee of the Client.

**TERMINATION:** Stantec may terminate this Agreement without cause upon thirty (30) days' notice in writing. If either party breaches this Agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to remedy the breach. On termination of this Agreement, the Client shall forthwith pay Stantec for the Services performed to the date of termination. Non-payment by the Client of Stantec's invoices within 30 days of Stantec rendering same is agreed to constitute a material breach of this Agreement and, upon written notice as prescribed above, the duties, obligations, and responsibilities of Stantec are terminated.

**SUSPENSION OF SERVICES:** If the project is suspended for more than thirty (30) calendar days in the aggregate, Stantec shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) days, Stantec may, at its option, terminate this agreement upon giving notice in writing to the Client.

**ENVIRONMENTAL:** Except as specifically described in this Agreement, Stantec's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater.

Where the Services include storm water pollution prevention (SWPP), sedimentation or erosion control plans, specifications, procedures or related construction observation or administrative field functions, Client acknowledges that such Services proposed or performed by Stantec are not guaranteed to provide complete SWPP, sedimentation or erosion control, capture all run off or siltation, that any physical works are to be constructed and maintained by the Client's contractor or others and that Stantec has no control over the ultimate effectiveness of any such works or procedures. Except to the extent that there were errors or omissions in the Services provided by Stantec, Client agrees to indemnify and hold Stantec harmless from and against all claims, costs, liabilities, or damages whatsoever arising from any storm water pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland or woodland and any resulting charges, fines, legal action, cleanup, or related costs.

In the prosecution of work, Stantec will take reasonable precautions to avoid damage to subterranean structures or utilities. However, it is the responsibility of the Client to provide Stantec with assistance in locating underground structures and utilities in the vicinity of any construction, exploration, or investigation. Stantec shall also rely upon third party sources in order to determine the existence and location of any underground structures and utilities of any kind. The Client acknowledges and agrees that Stantec may rely on such third-party advice, so long as such third party is, in Stantec's opinion, a reasonable source for such information, without any requirement that Stantec shall make an independent evaluation or investigation of such underground structures and utilities. In the event that the information supplied by third parties is incorrect, the Client acknowledges that Stantec shall not be responsible for any damages done to any such underground structures or utilities. If neither party can confirm the location of such structures and utilities, the Client agrees to accept all liabilities, costs, expenses and damages, whether direct, indirect, economic, punitive, incidental, special, exemplary or consequential, associated with the repair, replacement or restoration of any damages to such structures and utilities caused by Stantec or its subcontractor(s) or subconsultant(s) in the performance of the Services and the Client agrees to defend, indemnify and hold Stantec harmless from any such damages.

**BUILDING CODES, BYLAWS AND OTHER PUBLIC REGULATIONS:** Stantec shall, to the best of its ability, interpret building codes, by-laws, and other public regulations as they apply to the Project and as they are published at the time Services commence. Furthermore, Stantec shall observe and comply with all applicable laws, ordinances, codes, and regulations of government agencies, including federal, state, provincial, municipal, and local governing bodies having jurisdiction over the conduct of the Services ("LAWS"). However, it is expressly acknowledged and agreed by the Client that as the

Project progresses such building codes, by-laws, other public regulations, and LAWS may change or the interpretation of any public authority may differ from the interpretation of Stantec, through no fault of Stantec, and any extra costs necessary to conform to such changes or interpretations during or after execution of the Services will be paid by the Client.

Stantec shall continue to provide equal employment opportunity to all qualified persons and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

**COST AND SCHEDULE OF CONSTRUCTION WORK:** In providing opinions of probable cost and project schedule, it is recognized that neither the Client nor Stantec has control over the costs of labor, equipment, or materials, or over the Contractor's methods of determining prices or time. The opinions of probable cost or project duration are based on Stantec's reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the Contractors' bids, project schedules, or the negotiated price of the Work or schedule will not vary from the Client's budget or schedule or from any opinion of probable cost or project schedule prepared by Stantec. Exact costs and times will be determined only when bids have been received for the Project and when the construction work has been performed and payments finalized.

**ADMINISTRATION OF CONSTRUCTION CONTRACTS:** When applicable, Stantec shall provide field services during the construction of the Project only to the extent that such Services are included and defined in this Agreement. The performance of the construction contract is not Stantec's responsibility nor are Stantec's field services rendered for the construction contractor's benefit.

It is understood and agreed by the Client and Stantec that only work which has been seen during an examination by Stantec can be said to have been appraised and comments on the balance of any construction work are assumptions only.

When field services are provided by Stantec, the authority for general administration of the Project shall reside with Stantec only to the extent defined in this Agreement. In such case, Stantec shall coordinate the activities of other consultants employed by the Client, only to the extent that Stantec is empowered to do so by such other consultants' contracts with the Client.

Stantec shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents nor for the acts or omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the Project. When field services are provided, no acceptance by Stantec of the work or services of a construction contractor or other consultants, whether express or implied, shall relieve such construction contractor or other consultants from their responsibilities to the Client for the proper performance of such work or services and further, Stantec shall not be responsible to the Client or to the construction contractor or to the other consultants for the means, methods, techniques, sequences, procedures and use of equipment of any nature whatsoever, whether reviewed by Stantec or not, which are employed by the construction contractor or the other consultants in executing, designing, or administering any phases of the Project, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

When field services are provided, Stantec will not be designated as the party responsible for the compliance by others on the construction work site with the purposes or requirements of applicable environmental, occupational health and safety, or similar legislation. The Client shall designate a responsible party, other than Stantec, for the coordination and performance of environmental, occupational health and safety activities on the construction work site as required by applicable legislation and associated regulations.

**JOBSITE SAFETY:** Neither the professional activities of Stantec, nor the presence of Stantec or its employees and subconsultants at a construction site, shall relieve the Client and any other entity of their obligations, duties and responsibilities with respect to job site safety. Subject only to applicable legislation, Stantec and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

**INDEMNITY:** The Client releases Stantec from any liability and agrees to defend, indemnify, and hold Stantec harmless from any and all claims, damages, losses, and/or expenses, direct and indirect, or consequential damages, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of, or claimed to arise out of, the performance of the Services, excepting liability arising from the negligence or willful misconduct of Stantec.

**LIMITATION OF LIABILITY:** It is agreed that, to the fullest extent possible under the applicable law, the total amount of all claims (including any and all costs associated with such claims such as attorney and expert fees and interest) the Client may have against Stantec under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of the fees paid to Stantec for the Services or \$500,000. No claim may be brought against Stantec in contract or tort more than two (2) years after the cause of action arose. As the Client's sole

and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against Stantec and not against any of Stantec's employees, officers, or directors.

Stantec's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the Services and Stantec shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.

In no event shall Stantec's obligation to pay damages of any kind exceed its proportionate share of liability for causing such damages.

**DOCUMENTS:** All documents prepared by Stantec or on behalf of Stantec in connection with the Project are instruments of service for the execution of the Project. Stantec retains the property and copyright in these documents, whether the Project is executed or not. Payment to Stantec of the compensation prescribed in this Agreement shall be a condition precedent to the Client's right to use documentation prepared by Stantec. These documents may not be used for any other purpose without the prior written agreement of Stantec. The Client shall have a permanent non-exclusive, royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the Services rendered by Stantec in connection with the Project, for the life of the Project. The Client shall not use, infringe upon, or appropriate such concepts, products or processes without the express written agreement of Stantec. In the event Stantec's documents are subsequently reused or modified in any material respect without the prior consent of Stantec, the Client agrees to indemnify Stantec from any claims advanced on account of said reuse or modification.

Any document produced by Stantec in relation to the Services is intended for the sole use of Client. The documents may not be relied upon by any other party without the express written consent of Stantec, which may be withheld at Stantec's discretion. Any such consent will provide no greater rights to the third party than those held by the Client under the contract and will only be authorized pursuant to the conditions of Stantec's standard form reliance letter.

Stantec cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). Client shall release, indemnify, and hold Stantec, its officers, employees, consultants, and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of Stantec, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without Stantec's written consent.

**PROJECT PROMOTION:** Where the Client has control or influence over construction signage, press releases and/or other promotional information identifying the project ("Project Promotion"), the Client agrees to include Stantec in such Project Promotion.

**FORCE MAJEURE:** Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic, or any other cause beyond the reasonable control or contemplation of either party. Nothing herein relieves the Client of its obligation to pay Stantec for services rendered.

**GOVERNING LAW:** This Agreement shall be governed, construed, and enforced in accordance with the laws of the jurisdiction in which the majority of the Services are performed.

**DISPUTE RESOLUTION:** If requested in writing by either the Client or Stantec, the Client and Stantec shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. The Parties agree that any actions under this Agreement will be brought in the appropriate court in the jurisdiction of Governing Law, or elsewhere by mutual agreement. Nothing herein however prevents Stantec from any exercising statutory lien rights or remedies in accordance with legislation where the project site is located.

**ATTORNEYS FEES:** In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this Agreement and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

**ASSIGNMENT AND SUCCESSORS:** The Client shall not, without the prior written consent of Stantec, assign the benefit or in any way transfer the obligations of this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

**PROTECTION OF PRIVACY LAWS:** The parties acknowledge that information relating to an identified or identifiable person ("Personal Information") may be exchanged in the course of this Project pursuant to this Agreement.

The party disclosing Personal Information (the "Disclosing Party") warrants that it has all necessary authorizations and approvals required to process and disclose the Personal Information and to enable the party receiving the Personal Information (the "Receiving Party") to process it in performing the Services. The Disclosing Party will provide the Receiving Party with written notice containing the details of what Personal Information will be provided.



The Receiving Party will comply with any reasonable instruction from the Disclosing Party in respect of such Personal Information and implement appropriate technical and organization measures to protect the Personal Information against unauthorized or unlawful processing and accidental loss, theft, use, disclosure, destruction and/or damage.

The Receiving Party shall be permitted, upon prior written consent of the Disclosing Party, to transfer Personal Information outside the jurisdiction if required for performance of the Services provided that such transfers are in accordance with relevant and applicable requirements under applicable legislation. The Receiving Party shall provide the Disclosing Party with full cooperation and assistance in meeting its obligations under applicable privacy legislation, including in relation to the security of processing, the notification of Personal Information breaches, the notification of requests from individuals and Personal Information protection impact assessments.

On termination of this Agreement, the Receiving Party shall cease processing Personal Information and shall delete and destruct or return to the Disclosing Party (as the Disclosing Party may require) all Personal Information held or processed by the Receiving Party on the Disclosing Party's behalf. It is understood however, that the Receiving Party may need to keep a copy of all Personal Information for legal purposes and therefore it will continue to take reasonable steps to protect the Personal Information as outlined herein and will proceed with the destruction of the Personal Information within a reasonable period of time if there is no longer any legal justification to keep the Personal Information.

Nothing herein relieves either party from their responsibilities for compliance with applicable privacy legislation.

**ENTIRE AGREEMENT:** This Agreement constitutes the sole and entire agreement between the Client and Stantec relating to the Project and supersedes all prior agreements between them, whether written or oral respecting the subject matter hereof and no other terms, conditions, or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the Client and Stantec. All attachments referred to in this Agreement are incorporated herein by this reference; however, in the event of any conflict between attachments and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall take precedence.

**SEVERABILITY:** If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be binding on the Client and Stantec.

**CONTRA PROFERENTEM:** The parties agree that in the event this Agreement is subject to interpretation or construction by a third party, such third party shall not construe this Agreement or any part of it against either party as the drafter of this Agreement.

**BUSINESS PRACTICES:** Each Party shall comply with all applicable laws, contractual requirements and mandatory or best practice guidance regarding improper or illegal payments, gifts or gratuities, and will not pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person (whether a government official or private individual) or entity for the purpose or illegally or improperly inducing a decision or obtaining or retaining business in connection with this Agreement or the Services.

**THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THIS AGREEMENT CONTAINS LIMITATION OF LIABILITY PROVISIONS RESTRICTING RIGHTS FOR THE RECOVERY OF DAMAGES.**

The Parties, intending to be legally bound, have made, accepted, and executed this Agreement as of the Agreement Date noted above.

**City of Cody Wyoming**

**Stantec Consulting Services Inc.**

\_\_\_\_\_  
Print Name and Title

Jill Rosselott, PE  
Senior Civil/Transportation Engineer  
\_\_\_\_\_  
Print Name and Title

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Attached to and forming part of the Agreement BETWEEN:

City of Cody Wyoming  
(Hereinafter called the "Client")  
- and -  
Stantec Consulting Services Inc.  
(Hereinafter called "Stantec")

EFFECTIVE: December 1, 2021

This Attachment details the Services, Contract Time, Contract Price, Additional Conditions and Additional Attachments forming part of the above-described Agreement.

SERVICES: Stantec shall perform the following Services:

**Task 1: Administration**

This task will include the administrative work required to complete the Project. Stantec will prepare the necessary progress reports, update the Project schedule, and prepare invoices as part of this task. This task will include coordinating and working with funding partners to include, but not limited to, WYDOT, Park County, Park County School District #6, and the City.

**Task 2: Data Collection**

This task will include work associated with gathering existing Project data from WYDOT and the City of Cody to include as-constructed plans, existing access permits, existing traffic data (crash reports, volume data, classification data, speed data, turning movement counts, videos, etc.), previous study reports, and current land use information. Stantec will not perform any field data collection.

**Task 3: Data Analysis**

As part of this task, Stantec will utilize the data compiled during Task 2 to analyze the existing roadway network within the study area, and make recommendations for the improvement of traffic mobility, pedestrian mobility and connectivity, safety, speed and accessibility. The analysis will include the following:

Purpose and Need: Perform a purpose and need analysis for the recommended improvements to the roadway system.

Roadway Inventory: Provide current classification of all roads within the study area in relation to the proposed corridor utilizing both current traffic counts and future traffic projections.

Land Use: Provide current and future land use of the area, in relation to the City or County Land Use Plans and any other existing regulations.

Roadway Network Analysis: Evaluate the overall functionality of the roadway network in the study area to determine deficiencies including, but not limited to, roadway ownership, roadway geometrics, local and regional connectivity, property and roadway accessibility, and right-of-way limitations.

Alternatives Analysis: Develop a list of viable alternatives to alleviate the deficiencies discovered in the network analysis. Each alternative will be evaluated for functionality, safety, constructability, cost, infrastructure analysis and conformity to Federal Highway Administration guidelines.

Pedestrian/Bicycle Considerations: The requirements for bicycle and pedestrian access, movements and safety within the study area will be addressed to assist the City in developing a better understanding of how to direct future pedestrian flow through the community to safely and efficiently travel along and across US 14A (Big Horn Avenue) to access recreation, business, residential, schools, and historic areas.

Environmental Considerations: Identify environmental constraints and permitting requirements that may impact preliminary alignment and project timing and then coordinate with the

appropriate federal, state, and local agencies to develop a permit coordination plan. Anticipated permitting requirements may include but are not limited to: The Clean Water Act; The National Flood Insurance Act; The National Historic Preservation Act; The Threatened and Endangered Species Act; The Migratory Bird Treaty Act; The Clean Air Act; Section 4(f) considerations and The National Environmental Policy Act.

**Task 4: Concept Alternatives**

Based on the Roadway network analysis completed in Task 3, Stantec will prepare recommendations to include the following:

Projected traffic volumes: Traffic volumes will be projected through the year 2050, based on current traffic volumes, growth projections, and current and projected land use within the study area.

Roadway Network Improvements: Possible changes to the roadway network within the study area will be identified, including added capacity, roadway geometric improvements, new roadway linkages, functional classification changes, speed recommendations, additions to the local roadway system, and improved accessibility to the State Highway System.

Intersection Improvements: Based on traffic and pedestrian warrants, improvements will be identified and the approximate year and/or timeframe for these improvements based on these warrants will be projected. Possible improvements such as traffic signals, roundabouts, or other intersection control means will be considered.

Preferred Alternative: Based on the alternatives analysis, a preferred alternative will be identified. The recommended alternative will place priority on addressing current transportation concerns within the study area, including improved traffic flow, speed, pedestrian crossings, safety, and accessibility.

Pedestrian Improvements: Both interim and long-term alternatives for a pedestrian crossing at Freedom and Roberts Street will be investigated. Focus on possible improvements with the current intersection configuration (not aligned) that could remain in place until further intersection alignment to the east in the future. Upon completion of the interim alternatives evaluation, a recommended alternative should be identified for interim condition pedestrian improvements.

Cost Estimates: Reconnaissance level cost estimates will be prepared for each viable alternative. Recommendations will then be prioritized based on these estimates and the potential funding sources.

**Task 5: Final Report**

The final study report will be submitted in both hard copy and electronic formats, and will be completed within 14 months of Notice To Proceed. The report will outline the process that was followed to complete the roadway network analysis of the study area, including any conclusions drawn from the analysis. Conceived alternatives to solve functional deficiencies within the roadway network will be explained in detail, including the reasoning and justification behind the selection of the preferred alternative. Included in the analysis will be detailed cost estimates for each alternative, as well as advantages and disadvantages for each alternative. All information and data collected for and as part of this study, including all materials used for and collected as part of the public forums, will be included in the final report.

**Task 6: Meetings**

This task will include coordination, preparation and attendance for the meetings associated with this Project. Under this task, Stantec will prepare for and attend three (3) public meetings associated with the Project. The first public meeting will be an in-person meeting to inform the public of the scope of the project and to serve as an information gathering meeting. The second public meeting, via a virtual platform, will be held near the mid-project point to discuss project progress and gather additional input. The final public meeting will be an in-person meeting to discuss the findings and conclusions of the study and to solicit public comments prior to completion of the final written report. Stantec will brief the City and Cody Urban Systems and Traffic Committee (CUSTC) about the project progress and information to be presented prior to each public meeting via a virtual platform. In addition to the three (3) public meetings, Stantec will hold bi-monthly conference calls with the City, CUSTC, PCSD #6 and WYDOT to update progress on the study. There will also be three (3) meetings with the CUSTC throughout the project, with the first being after data collection has been completed but prior to analysis of the data. These meetings will primarily be held via a virtual platform.

**Task 7: QA/QC**

This task will include QA/QC throughout all stages of the project. Exhibits, handouts, and other visual aids used throughout the project will be reviewed by senior staff prior to being presented to the public or provided to the client. This review will also be conducted during the initial data collection, analysis and final report phases of the project.

(Hereinafter called the "Services")

CONTRACT TIME: Commencement Date: December 13, 2021  
Estimated Completion Date: December 31, 2022  
CONTRACT PRICE: Subject to the terms below, Client will compensate Stantec as follows:

Project specific charges, such as subconsultants; travel, accommodations, and meals; project-specific printing of deliverables; consumables; usage charges for specialized field equipment and company-owned, leased, or rented project vehicles; external testing lab charges and other external services charges; specialized computer software costs; and other significant project-specific expenses will be invoiced in addition to labor fees and to the FRD.

Where not stated as being included in the fees, project specific subconsultant, contractor, lab and other similar third-party charges will be charged as invoiced to Stantec with a zero percent (0%) markup.

Unless otherwise noted, the fees in this agreement do not include any value added, sales, or other taxes that may be applied by Government on fees for services. Such taxes will be added to all invoices as required.

Where the Services or services conditions change, Stantec shall submit to the Client in a timely manner, documentation of the revisions to Attachment "A" adjusting the Contract Services Time and Price as required.

Unless otherwise specified, charges for Services are based on Stantec's hourly billing rate table ("Rate Table"), attached hereto. The Rate Table is subject to escalation from time to time. At a minimum, effective each January 1 during the term of this Agreement, Stantec's charges for Services shall escalate by either (a) the most current Consumer Price Index year over year percentage increase, not seasonally adjusted, for the preceding July, all items, as published by Statistics Canada (for Projects in Canada) plus 1.0%, or (b) the most current Consumer Price Index for All Urban Consumers (CPI-U) year over year percentage increase, not seasonally adjusted, for the preceding July, as published by the U.S. Bureau of Labor Statistics plus 1.0% (for all other projects).

ADDITIONAL CONDITIONS: The following additional conditions shall be read in conjunction with and constitute part of this Agreement:

**COVID-19:** The parties acknowledge the ongoing COVID-19 pandemic and agree that the CONTRACT PRICE and CONTRACT TIME are based on what is currently understood. Where conditions change, the parties may have further discussions to manage and mitigate the impact of this evolving situation on the Project.

**PROFESSIONAL SERVICES AGREEMENT  
ATTACHMENT "A"**

**ADDITIONAL  
ATTACHMENTS:**

The following additional attachments shall be read in conjunction with and constitute part of this Agreement:

**Attachment B – Cost Proposal.**

**Attachment C – Federal General Provisions.**

**INSURANCE  
REQUIREMENTS:**

Before any services are provided under this agreement, Stantec shall procure, and maintain insurance coverage during the term of this agreement.

## **COST PROPOSAL**

### **Big Horn Avenue Corridor Study**

Prepared By:

Stantec Consulting Services Inc  
203 South Main Street, Suite 2003  
Sheridan, WY 82801  
(307) 675-1148

**\$ 93,909.00 COST-NOT-TO-EXCEED**

By:

---

JILL ROSSELOTT, PE  
SENIOR CIVIL/TRANSPORTATION ENGINEER  
2-Dec-21



Stantec Consulting Services Inc  
203 South Main Street, Suite 2003  
Sheridan, WY 82801  
(307) 675-1148

**BIG HORN AVENUE CORRIDOR STUDY**

**Direct Labor Cost**

<u><b>TASK 1-ADMINISTRATION</b></u>	\$ 3,073.28
<u><b>TASK 2-DATA COLLECTION</b></u>	\$ 1,734.72
<u><b>TASK 3-DATA ANALYSIS</b></u>	\$ 5,443.82
<u><b>TASK 4-CONCEPT ALTERNATIVES</b></u>	\$ 7,543.20
<u><b>TASK 5-FINAL REPORT</b></u>	\$ 5,504.80
<u><b>TASK 6-MEETINGS</b></u>	\$ 7,387.20
<u><b>TASK 7-QA/QC</b></u>	\$ 1,947.84

**DIRECT LABOR SUBTOTAL** \$ 32,634.86

**Adjusted Direct Labor Costs (2.523)** \$ 82,337.75

**Profit (12%)** \$ 9,880.53

**FCCM Multiplier (0.003)** \$ 97.90

**Direct Non-Labor Charges**

Displays and Prints (Third Party) \$ 1,000.00

Travel Expenses

Mileage (IRS Rate) \$ 492.80

Per Diem \$ 100.00

**DIRECT NON-LABOR CHARGES SUBTOTAL** \$ 1,592.80

**TOTAL FEE REQUESTED (Cost-Not-To-Exceed)** \$ **93,909.00**

**Stantec Consulting Services Inc**  
**203 South Main Street, Suite 2003**  
**Sheridan, WY 82801**  
**(307) 675-1148**

**BIG HORN AVENUE CORRIDOR STUDY**

**TASK 1-ADMINISTRATION**

NAME	RATE	HOURS	COST
Benjamin Weaver	\$49.52	24	\$ 1,188.48
Jill Rosselott	\$47.12	40	\$ 1,884.80
<b>Task 1 Total</b>		<b>64</b>	<b>\$ 3,073.28</b>

**TASK 2-DATA COLLECTION**

NAME	RATE	HOURS	COST
Benjamin Weaver	\$49.52	16	\$ 792.32
Jill Rosselott	\$47.12	20	\$ 942.40
<b>Task 2 Total</b>		<b>36</b>	<b>\$ 1,734.72</b>

**TASK 3-DATA ANALYSIS**

NAME	RATE	HOURS	COST
Benjamin Weaver	\$49.52	10	\$ 495.20
Jill Rosselott	\$47.12	16	\$ 753.92
Angie Bolstad	\$40.12	60	\$ 2,407.20
Adam Capets	\$35.75	50	\$ 1,787.50
<b>Task 3 Total</b>		<b>136</b>	<b>\$ 5,443.82</b>

**TASK 4-CONCEPT ALTERNATIVES**

NAME	RATE	HOURS	COST
Pat McGraw	\$61.00	10	\$ 610.00
Edward Terhaar	\$60.92	8	\$ 487.36
Tom Fidler	\$60.56	8	\$ 484.48
Benjamin Weaver	\$49.52	40	\$ 1,980.80
Jill Rosselott	\$47.12	35	\$ 1,649.20
Angie Bolstad	\$40.12	24	\$ 962.88
Abigail Labahn	\$29.85	24	\$ 716.40
Benjamin Bonnet	\$27.17	24	\$ 652.08
<b>Task 4 Total</b>		<b>173</b>	<b>\$ 7,543.20</b>

## TASK 5-FINAL REPORT

NAME	RATE	HOURS	COST
Benjamin Weaver	\$49.52	20	\$ 990.40
Jill Rosselott	\$47.12	24	\$ 1,130.88
Angie Bolstad	\$40.12	20	\$ 802.40
Adam Capets	\$35.75	40	\$ 1,430.00
Abigail Labahn	\$29.85	24	\$ 716.40
Benjamin Bonnet	\$27.17	16	\$ 434.72
<b>Task 5 Total</b>		<b>144</b>	<b>\$ 5,504.80</b>

## TASK 6-MEETINGS

NAME	RATE	HOURS	COST
Benjamin Weaver	\$49.52	66	\$ 3,268.32
Jill Rosselott	\$47.12	48	\$ 2,261.76
Kimberly Banathy	\$33.91	8	\$ 271.28
Abigail Labahn	\$29.85	24	\$ 716.40
Benjamin Bonnet	\$27.17	16	\$ 434.72
Hunter Hoon	\$27.17	16	\$ 434.72
<b>Task 6 Total</b>		<b>178</b>	<b>\$ 7,387.20</b>

### TASK 7-QA/QC

NAME	RATE	HOURS	COST
Pat McGraw	\$61.00	16	\$ 976.00
Edward Terhaar	\$60.92	8	\$ 487.36
Tom Fidler	\$60.56	8	\$ 484.48
<b>Task 7 Total</b>		<b>32</b>	<b>\$ 1,947.84</b>
<b>DIRECT LABOR TOTAL</b>		<b>763</b>	<b>\$ 32,634.86</b>

The individual task estimates are included to allow for manpower and staff time allocations. Some cross over of task manpower/budget or staff may be necessary for efficiency and to fully utilize our staff expertise.

Stantec Consulting Services Inc  
203 South Main Street, Suite 2003  
Sheridan, WY 82801  
(307) 675-1148

**BIG HORN AVENUE CORRIDOR STUDY**

**DIRECT NON-LABOR CHARGES**

TITLE	RATE	UNITS	COST
Displays and Prints (Third Party)	Actual Cost	1 \$	1,000.00
Travel Expenses			
Mileage (IRS Rate)	\$0.560	880 \$	492.80
Per Diem	GSA CONUS Rate	1 \$	100.00
<b>TOTAL DIRECT NON-LABOR</b>			<b>\$1,592.80</b>

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# **BIG HORN AVENUE CORRIDOR STUDY**

## **2021 SCHEDULE OF CHARGES**

DIRECT SALARY MULTIPLIER @ 2.523 : DIRECT SALARY FCCM MULTIPLIER @ 0.003: PROFIT @ 15%

Employee Name	Billing Level	2021 HOURLY PAY	FCCM MULTIPLIER @ 0.003	DIRECT SALARY MULTIPLIER @ 2.523	PROFIT @ 12%	TOTAL BILLING RATE
Tom Fidler	14	\$ 60.56	\$ 0.18	\$ 152.79	\$ 18.33	\$ 171.30
Pat McGraw	14	\$ 61.00	\$ 0.18	\$ 153.90	\$ 18.47	\$ 172.55
Edward Terhaar	14	\$ 60.92	\$ 0.18	\$ 153.70	\$ 18.44	\$ 172.32
Morgan Wardell	12	\$ 48.97	\$ 0.15	\$ 123.55	\$ 14.83	\$ 138.53
Jill Rosselott	12	\$ 47.12	\$ 0.14	\$ 118.88	\$ 14.27	\$ 133.29
Benjamin Weaver	12	\$ 49.52	\$ 0.15	\$ 124.94	\$ 14.99	\$ 140.08
Angie Bolstad	10	\$ 40.12	\$ 0.12	\$ 101.22	\$ 12.15	\$ 113.49
Kimberly Banathy	9	\$ 33.91	\$ 0.10	\$ 85.55	\$ 10.27	\$ 95.92
Adam Capets	9	\$ 35.75	\$ 0.11	\$ 90.20	\$ 10.82	\$ 101.13
Abigail Labahn	8	\$ 29.85	\$ 0.09	\$ 75.31	\$ 9.04	\$ 84.44
Hunter Hoon	7	\$ 27.17	\$ 0.08	\$ 68.55	\$ 8.23	\$ 76.86
Benjamin Bonnet	7	\$ 27.17	\$ 0.08	\$ 68.55	\$ 8.23	\$ 76.86

## **DIRECT NON-LABOR CHARGES**

TITLE	RATE
Field Supplies	Actual Cost
Displays and Prints (Third Party)	Actual Cost
Mileage (IRS Rate)	\$0.560
Per Diem	GSA CONUS Rate
Lodging	CONUS Rate

I certify that the above base wage rates and effective dates(s) are true and accurate as of current date.

Signature:

Name:

Title:

Date:

**FEDERAL GENERAL PROVISIONS  
ATTACHMENT "C"**

**FEDERAL GENERAL PROVISIONS**

The below General Provisions shall also apply to all subconsultants engaged by the Consultant.

**SECTION A. ASSUMPTION OF RISK**

The Consultant shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Consultant's failure to comply with state or federal requirements. The City of Cody shall notify the Consultant of any state or federal determination of noncompliance.

**SECTION B. AUDITING AND ACCESS TO RECORDS**

The City of Cody and its representatives shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Agreement.

**SECTION C. BREACH OF AGREEMENT**

The Consultant agrees to provide all professional services as required by the terms, conditions, provisions, and obligations of this Agreement. Failure by the Consultant to perform as required by the terms, conditions, provisions, or obligations of this Agreement shall constitute a breach of contract. The City of Cody shall consider a Consultant's failure to perform as a material breach of contract when it can be determined that the terms, conditions, provisions, or obligations of the Agreement will not be completed and the City of Cody will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. A material breach may result in remedies as the City of Cody deems appropriate, which may include, but are not limited to:

1. Termination as provided in SECTION T – TERMINATION OF AGREEMENT;
2. Withholding monthly progress payments;
3. Assessing damages/sanctions;
4. Disqualifying the Consultant from future solicitations; and/or
5. Legal remedy.

**SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES**

This provision is applicable to all Agreements exceeding One Hundred Thousand dollars (\$100,000). By signing this Agreement, the Consultant certifies and agrees that, to the best of their knowledge:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress,

## FEDERAL GENERAL PROVISIONS ATTACHMENT “C”

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or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

### SECTION E. COMPLIANCE WITH LAWS

The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

### SECTION F. CONFLICTS OF INTEREST

1. The Consultant shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which may result in a disadvantage to the City of Cody or a disclosure which may adversely affect the interests of the City of Cody. This provision does not prohibit or affect the Consultant’s ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
2. A conflict of interest may be considered a material breach of this Agreement. A material breach under this section may result in remedies as provided in SECTION C – BREACH OF AGREEMENT. In the event the Agreement is terminated under this provision, the Consultant shall take steps to insure that the file, evidence, evaluation and data are provided to the City of Cody or its designee.
3. The Consultant shall notify the City of Cody of any potential or actual conflicts of interest, including financial or other personal interests, arising during the course of the Consultant’s performance under this Agreement. This Agreement may be terminated in the event a conflict of interest arises. Termination of this Agreement



**FEDERAL GENERAL PROVISIONS  
ATTACHMENT "C"**

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will be subject to a mutual settlement of accounts. In the event this Agreement is terminated under this provision, the Consultant shall take steps to ensure that all files, evidence, evaluations, and data are provide to the City of Cody or its designee.

**SECTION G. DETERMINATION OF ALLOWABLE COSTS**

The Consultant shall assure, prior to submittal of periodic progress payments, that all costs are in accordance with federal cost principals as provided in 48 CFR 31. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

**SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE**

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR 26 in all subconsultant contract documents.

Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

**SECTION I. ENVIRONMENTAL POLICY ACTS**

The Consultant agrees all activities under this Agreement shall comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

**SECTION J. ERRORS AND OMISSIONS**

The Consultant shall be responsible for assuring that professional services provided under this Agreement are accurate and without mistakes or omissions. The Consultant shall endeavor to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The City of Cody shall notify the Consultant at the earliest possible time of the professional services which require corrective action and the Consultant, by mutual agreement with the City of Cody and without additional compensation, shall correct those services. Failure by the Consultant to carry out these requirements may be considered, in the sole discretion of the City of Cody, a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

**FEDERAL GENERAL PROVISIONS  
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**SECTION K. HUMAN TRAFFICKING**

As required by 22 USC 7104(g), 2 CFR 175, and 48 CFR 52.222-50 (Amended March 2015), severe forms of human trafficking, procurement of commercial sex acts, and the use of forced labor are prohibited. The March 2015 amendments expand the original requirements and introduce a list of specific types of conduct that are prohibited. The amendments modify mandatory disclosure obligations and specify the minimum level of cooperation required of consultants responding to a trafficking investigation. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

**SECTION L. KICKBACKS**

The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, the City of Cody may, at its discretion, terminate this Agreement without liability to the City of Cody, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**SECTION M. MANDATORY DISCLOSURES**

The Consultant shall disclose, in a timely manner, in writing, to the City of Cody all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Failure to make required disclosures can result in remedies for non-compliance including suspension or debarment.

**SECTION N. MONITORING ACTIVITIES**

The City of Cody shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its subconsultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the Agreement-related work.

**SECTION O. OWNERSHIP AND RETURN OF DOCUMENTS AND INFORMATION**

The City of Cody is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Consultant in the performance of this Agreement. Upon termination of services, for any reason, the Consultant agrees to return all such original and derivative information and documents to the City of Cody in a useable format. In the case of electronic transmission, such transmission shall be secured. The

**FEDERAL GENERAL PROVISIONS**  
**ATTACHMENT "C"**

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return of information by any other means shall be by a parcel service that utilizes tracking numbers.

**SECTION P. PATENT OR COPYRIGHT PROTECTION, AND RIGHTS IN DATA**

The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Consultant or its subconsultants shall violate any such restriction. The Consultant shall defend and indemnify the City of Cody for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Copyrighting or other exclusions placed on any documents or materials developed by the Consultant, its sublets, agents or assigns under this Agreement are prohibited.

Data produced, furnished, acquired, or used in meeting the terms and conditions of this Agreement shall be available to the City of Cody, WYDOT and/or the federal funding agency with unlimited rights. Data means all recorded information, regardless of form, to include both technical – scientific or technical nature - and computer software information. It does not include information related to administration of the Agreement such as financial, cost or pricing, or management information. Unlimited rights means that the City of Cody, State or federal agency has the right to use, disclose, reproduce, and distribute the data in any manner and for any purpose, and to permit others to also have unlimited rights. Meanings and uses described in this SECTION P are superseded and/or supplemented by 48 CFR 52.227-14.

**SECTION Q. PROFESSIONAL REGISTRATION**

The Consultant shall endorse, if required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming.

**SECTION R. PUBLICITY**

Any publicity given to the projects, program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Consultant and related to the services and work to be performed under this Agreement, shall identify the City of Cody, WYDOT and the federal funding agency as the sponsoring agencies and shall not be released without prior written approval of the City of Cody.

**SECTION S. SUSPENSION AND DEBARMENT**

By signing this Agreement, the Consultant certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or non-financial

**FEDERAL GENERAL PROVISIONS  
ATTACHMENT “C”**

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assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the disbarred, or otherwise ineligible, vendors list at [www.sam.gov/portal/public/SAM/](http://www.sam.gov/portal/public/SAM/). Further, the Consultant agrees to notify the City of Cody by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

**SECTION T. TERMINATION OF AGREEMENT**

The City of Cody may terminate all or part of the Agreement, without cause, upon thirty (30) days written notice. The Agreement may be terminated by the City of Cody immediately for cause if the City of Cody determines that the Consultant has failed to perform as required by the terms, conditions, provisions, or obligations of the Agreement – Termination for Cause or Breach – or the City of Cody determines that termination is in the public’s best interest – Termination on Public’s Behalf/Convenience. In either event, compensation shall be made to the Consultant based upon the progress of the work performed prior to termination.

Work performed shall be defined as the deliverables specified in the Agreement and accepted by the City of Cody, and not the labor hours billed. The ownership of the work completed or partially completed at the time of such termination or abandonment shall be retained by the City of Cody.

The City of Cody shall notify the Consultant, in writing, of Agreement termination.

**SECTION U. TITLE VI ASSURANCES FOR NON-DISCRIMINATION**

The Consultant agrees to comply with the requirements of the nondiscrimination clauses as described in the U.S. Department of Transportation (DOT) Order 1050.2.

**ORDINANCE 2021-07**

**AN ORDINANCE AMENDING TITLE 8, CHAPTER 2  
OF THE CITY OF CODY MUNICIPAL CODE TO MODIFY AND SET  
TREATED WATER AND RAW WATER SERVICE FEES AND RATES**

Title 8, Chapter 2, Article I, shall be hereby amended as follows effective January 1, 2022.

**8-2-15: WASTING WATER; LEAKS TO BE REPAIRED**

No person shall waste water from the city water system. No leaks in service pipes, connecting pipes or any water fixture shall be permitted; and, if not repaired within five (5) days or as otherwise authorized by the public works director or administrative services director so as to stop such waste of water, after notice from the public works director or administrative services director, water shall be shut off and not turned on again until the leak is so repaired.

Adjustments may be made for water leaks in excess of twenty thousand (20,000) gallons of water. If such leak occurs, the administrative services department will calculate the account holder's average usage for the prior twelve (12) month period. The account holder will be charged the regular rate of water for the average usage and the wholesale rate for the number of gallons used in excess of the average. If it is determined that the water went into the ground, and did not go into the sewer system, the same calculation will be performed for wastewater services and an adjustment will be made on the account holder's bill for the excess wastewater as a result of the water leak. If the water did enter the sewer system, no adjustment to wastewater will be made. Adjustments will only be calculated once the account holder, property owner or manager repairs the leak.

\* NO FURTHER MODIFICATIONS TO TITLE 8, CHAPTER 2, ARTICLE I \*

Title 8, Chapter 2, Article II, shall be hereby amended as follows effective January 1, 2022.

**8-2-37: WATER METERS; INSPECTIONS; SERVICE CHARGES**

The following charges apply to all levels of service, in addition to any other charges:

Connection and reconnection charge:		
	Normal office hours (7:30 A.M. to 5:00 P.M.)	\$35.00
	Other than normal office hours	\$60.00
Returned check charge		\$30.00
Utility service deposits shall be as outlined in the City electric ordinance, chapter 1 of this title		Refer to section 8-1-9 of this title
Meter testing:		
	Testing of meters more than once at customer's request in a 12-month period, where meter is found to be accurate within 3 percent	\$50.00

**8-2-40: SCHEDULE OF RATES AND CHARGES**

The rates for metered water sold within the City limits shall be as follows:  
The minimum monthly charge for each meter shall be as follows:

<u>Meter Size</u>	<u>SMP Charge</u>	<u>City Base Charge</u>
3/4 inch	\$11.00	\$14.05
1 inch	\$22.00	\$28.10
1 1/2 inch	\$44.00	\$56.20
2 inches	\$77.00	\$98.35
3 inches	\$176.00	\$224.80
4 inches	\$308.00	\$393.40
6 inches	\$704.00	\$899.20

The SMP Charge is the wholesale tap equivalency fee charged by the Shoshone Municipal Pipeline. The City Base Charge is the fee assessed by the City for the operation and maintenance of the treated water storage and distribution system. The minimum monthly fee is calculated as follows:

SMP Charge + City Base Charge + two dollars and eighty-one cents (\$2.81) per thousand gallons per month.

All sections shall remain unchanged until Item B.1.

1. For water taken and purchased from the City Water Crane, a minimum of seven dollars and eighty cents (\$7.80) for the first one thousand (1,000) gallons or less, plus seven dollars and eighty cents (\$7.80) per one thousand (1,000) gallons for each additional one thousand (1,000) gallons, or any fraction thereof per trip or load.
2. For water taken from a fire hydrant on or after April 1, 2020:
  - a. Except as provided in division c. below, prior to any person or entity (customer) using or taking domestic City water from any fire hydrant, the customer shall be required to complete a hydrant water sales agreement, pay the required deposit to the City of Cody, and obtain a hydrant meter assembly from the City's water department.

All sections shall remain unchanged until Item B.2.d.

- d. The fee for water use shall be a minimum of seven dollars and eighty cents (\$7.80) per thousand gallons or any fraction thereof of water used. This fee may be adjusted to the wholesale cost to the City if the water is used for a City-funded project subject to the approval of the Public Works Director.

All sections shall remain unchanged until Item B.2.g.

g. Customer shall return the meter (rented or purchased) and additional equipment checked out to the City within fifteen (15) days of the one-year anniversary of the check-out date for testing and inspection. If the meter is rented, the customer shall be given a replacement meter and will be billed for the repair or replacement of any components of the assembly found to be damaged. If a purchased meter fails the testing and inspection the customer shall either (1) purchase a new meter or (2) rent a meter from the City. Failure to return the meter and equipment for inspection by the due date shall result in a fee of \$100.00 and may be cause for confiscation of the rented meter and/or equipment, and forfeiture of the deposit.

h. The City may terminate the hydrant water sales agreement if the customer violates or breaches any part of the agreement, or violates any part of the applicable ordinance. A breach or violation which may result in termination includes, but is not limited to: failure to report meter readings by the due date, non-compliance with the annual meter exchange and inspection requirements, non-payment or partial payment of any fees or charges due, late payments, or damaging hydrants and/or hydrant meter assemblies. If the City terminates the agreement due to a breach by the customer, the City may demand return of the rented hydrant meter assembly and immediate payment of any and all charges, fees, and costs owed to the City. Upon such demand, the customer shall return the rented hydrant meter assembly and any additional items checked out, in as good a condition as when it was received by the customer (normal wear and tear excepted), no later than five (5) business days after the date of the termination of the agreement.

All sections shall remain unchanged until Item B.3.

3. Any person desiring to take domestic City water from any other unmetered source, excepting City personnel for authorized City purposes and Fire Department personnel for authorized Fire Department purposes, shall first obtain a written permit from the Public Works Director or his/her designee. Such permit shall fully state the name and billing address of the person or party responsible for payment of water taken, meter number for meter used, and the location of the source (hydrant) from where the water is to be taken. The fee for the use of water shall be a minimum of seven dollars and eighty cents (\$7.80) for the first one thousand (1,000) gallons or less, plus seven dollars and eighty cents (\$7.80) per one thousand (1,000) gallons for each additional one thousand (1,000) gallons, or fraction thereof, per trip or load. This fee may be adjusted to the wholesale

cost to the City, if the water is used for a City project or as determined by the Governing Body.

\* NO FURTHER MODIFICATIONS TO TITLE 8, CHAPTER 2, ARTICLE II \*

Title 8, Chapter 2, Article III, shall be hereby amended as follows effective January 1, 2022.

**8-2-45: APPLICATION FOR PERMISSION TO TAKE WATER:**

- A. Application: Except as otherwise provided by ordinance, no person shall knowingly, either directly or indirectly, take water from the raw water system without having first made application therefor to the administrative services department. Applications for service from the raw water system may be made only by those whose property is immediately adjacent to an installed main and if they are current in all billings due the City.
- B. Pumps Prohibited: No pumps shall be allowed on any raw water tap.

**8-2-46: EXTENSION OF SYSTEM; USE OF RAW WATER:**

At such times as the needs of the City require, extensions of the raw system may be made. Owners adjacent to such extensions may then make application for such services. Prior to hooking up said extensions, applicants will be required to pay for line assessment costs suitable to cover the applicants' proportionate share of extension. Raw water users are authorized to use raw water on alternating days. The use of raw water shall be based upon the days of the week and the street address of the user. Even-numbered (addressed) property shall be authorized to use water on Sunday, Wednesday and Friday of each week. Odd-numbered (addressed) property shall be authorized to use water on Tuesday, Thursday and Saturday of each week. There shall be no use of water on Monday. The provisions of this section shall not apply to the City and Park County School District 6 with regard to recreation fields, parks and school grounds. Users may make application to the City for a special waiver for areas that have been newly seeded, sodded or have special watering needs. Those individuals watering on unauthorized days will be subject to the following penalties:

- A. First offense: Verbal warning accompanied by watering/use pamphlet and explanation by enforcement personnel.
- B. Second offense: Twenty-five dollar (\$25.00) fine.
- C. Third offense: Fifty dollar (\$50.00) fine and raw water turned off and sealed for the balance of the irrigation season with no refund or waiver of the customer's monthly raw water fees.

**8-2-55: CROSS CONNECTIONS**

No person shall connect the raw water system lines to any water lines that are connected to the domestic water supply system. Application must be made to the public works director or water/wastewater supervisor in order to change a sprinkling system from the raw water system to the domestic water supply system and, if such change be allowed, the public works director or water/wastewater supervisor may require removal of a section of pipe no less than twelve inches (12") in length from the supply line not being used. The use of valves between two (2) water systems shall be prohibited. If such a cross connection is found to exist, the public works director or water/wastewater supervisor shall order the water to be shut off and the offending property owner shall be disconnected from the water system until compliance is made with the terms of this article.

\*\* REMAINDER OF PAGE INTENTIONALLY BLANK \*\*



**8-2-56: SCHEDULE OF RATES AND CHARGES; TIME OF PAYMENT; FAILURE TO PAY; REQUIREMENT FOR METER:**

- A. All users tapped to the raw water system, except as provided in subsections B, C, D, E and F of this section, shall pay a raw water fee based on tap size. All utility bills generated on or after January 1, 2022, shall be billed in monthly installments as follows:

Tap Size	Annual Fee	Payable In Monthly Installments
3/4 inch	\$136.00	\$11.33
1 inch	\$204.00	\$17.00
1 1/4 inches	\$340.00	\$28.33
1 1/2 inches	\$544.00	\$45.33
2 inches	\$816.00	\$68.00
2 1/2 inches	\$1,020.00	\$85.00
3 inches	\$1,224.00	\$102.00
4 inches	\$1,700.00	\$141.67

All sections remain unchanged until Item E.

- E. Individual taps for townhouse residences shall pay an annual fee of sixty-eight dollars (\$68.00), which shall be billed in monthly installments of five dollars and sixty-seven cents (\$5.67).

All further sections remain unchanged.

**8-2-57: RESPONSIBILITY FOR PAYMENT:**

The utility account holder shall be responsible for the payment of all raw water used upon each property according to the rate table set out in section 8-2-56 of this chapter. Payment of bills shall be as outlined in the City electric ordinance, chapter 1 of this title.

\* NO FURTHER MODIFICATIONS TO TITLE 8, CHAPTER 2, ARTICLE III \*

Title 8, Chapter 2, Article IV, shall be hereby amended as follows effective January 1, 2022.

**8-2-58: SPECIAL USE WATER POLICY:**

- A. Eligibility: Those residential customers who live in areas where City raw water is not available for lawn and garden use and who do not have rights to the Cody Canal, may be eligible for the City special use water policy. Commercial customers may be eligible for the special use water policy with the authorization from the Public Works Director or his/her designee. Account holders who are interested in this provision must apply at City Hall and once approved, the policy will be effective for each subsequent year thereafter without the account holder reapplying for the policy. Those customers approved for the special use water policy that have even-numbered (addressed) property shall be authorized to use water on Sunday, Wednesday and Friday of each week. Odd-numbered (addressed) property shall be authorized to use water on Tuesday, Thursday and Saturday of each week. There shall be no use of water on Monday.
- B. Use; Calculation: The special use water policy allows authorized customers a reduced rate on the treated water for lawn and garden use. The special use water policy is calculated as follows:
1. An average will be calculated using the November through May billing periods based on the account holder's treated water usage.
  2. For the June through October billing periods, customers will be billed their average usage at the regular rate of two dollars and eighty-one cents (\$2.81) per one thousand (1,000) gallons of treated water used. The amount used over the average usage will be billed at

one dollar and thirty-four cents (\$1.34) per one thousand (1,000) gallons of treated water used. Wastewater will be billed based on the average treated water use from the November through May billing periods. There is no additional sewer charge on the additional water beyond the average used for irrigation purposes.

3. For the November through May billing periods, the account holder will be charged two dollars and eighty-one (\$2.81) per one thousand (1,000) gallons of water actually used, and wastewater will be charged at one dollar and eighty-four cents (\$1.84) per one thousand (1,000) gallons based on the actual amount of treated water used.

**8-2-59: MODIFIED SPECIAL USE WATER POLICY:**

- A. Eligibility: Those residential customers who live in areas where City raw water is not available for lawn and garden use and have rights to the Cody Canal, but are not able to access it on a routine basis, may be eligible for the City modified special use water policy. Commercial customers may be eligible for the modified special use water policy with the authorization from the Public Works Director or his/her designee. Account holders who are interested in this provision must apply at City Hall and, once approved, the policy will be effective for each subsequent year thereafter without the account holder reapplying for the policy. Those customers approved for the modified special use water policy that have even-numbered (addressed) property shall be authorized to use water on Sunday, Wednesday and Friday of each week. Odd-numbered (addressed) property shall be authorized to use water on Tuesday, Thursday and Saturday of each week. There shall be no use of water on Monday.
- B. Use; Calculation: The modified special use water policy allows authorized customers a reduced rate on the wastewater charges when water is used for lawn and garden use. The modified special use water policy is calculated as follows:
  1. For calculation of wastewater purposes, an average will be calculated using the November through May billing periods based on the account holder's treated water usage.
  2. For the June through October billing periods, customers will be billed for the actual amount of water used at the regular rate of two dollars and eighty-one cents (\$2.81) per one thousand (1,000) gallons of treated water used. Wastewater will be billed at one dollar and eighty-four cents (\$1.84) per one thousand (1,000) gallons based on the average treated water use from the November through May billing periods. There is no additional sewer charge on the additional water beyond the average used for irrigation purposes.

\* NO FURTHER MODIFICATIONS TO TITLE 8, CHAPTER 2, ARTICLE IV \*

\*\* REMAINDER OF PAGE INTENTIONALLY BLANK \*\*

This Ordinance 2021-07 shall become effective at the final passage after third reading and publication in the Cody Enterprise as required by law:

PASSED ON FIRST READING: 11/16/2021

PASSED ON SECOND READING:

PASSED ON THIRD READING:

Matt Hall, Mayor

ATTEST:

Cynthia D. Baker, Administrative Services Officer