

AGENDA ITEM 28

Consider and approve Credit Card Processing Agreement and Merchant Bankcard Agreement for Justice of the Peace Pct. #4.

Julie Kiley addressed the court.

Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To approve Credit Card Processing Agreement and Merchant Bankcard Agreement for Justice of the Peace Pct. #4.

Vote: 4 – 0

< Attachment >

CREDIT CARD PROCESSING AGREEMENT

This Agreement is dated the 15th Day of April, 2005 by and between:

SERVICE PROVIDER: Being Secure Government Payment Solutions, Inc, (SGPS) at PO Box 171012, Arlington, TX 76003;

And

CUSTOMER: Williamson County

FOR AND IN CONSIDERATION OF THE FOLLOWING MUTUAL COVENANTS AND PROMISES, SERVICE PROVIDER AND CUSTOMER (Jointly the 'Parties') AGREE AS FOLLOWS:

SERVICE PROVIDER:

A. Will service the receipt by CUSTOMER of all Credit Card Payments received for services or payments made to CUSTOMER through the (VT) Virtual Terminal or Web Site.

B. Will accept approved Credit Card (MasterCard and Visa) payments on behalf of the CUSTOMER at NO CHARGE to the CUSTOMER. A Convenience Fee of no more than 5% will be charged to the Credit Card Holder on all transactions. Charge backs, Charge back fees and credits are the responsibility of the CUSTOMER.

C. Will provide: one wedge (credit card reader) per end user account (additional readers are available for \$60.00 each); applicable links via the internet (The Technology) necessary for servicing the Credit Card Payments. However, at all times SERVICE PROVIDER will remain the owner of the Technology, and the full unencumbered Technology will be surrendered to SERVICE PROVIDER upon termination of this Agreement.

D. SGPS will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential information it receives in connection with its performance of Services.

E. Force Majeure SGPS will be excused from performing the Services as contemplated by this agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond SGPS's reasonable control and without its fault or judgement, including without limitation, acts of God, natural disasters, war, terrorists acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire storms, quarantine restrictions, floods, explosions, labor strikes, labor walkouts, extraordinary losses of utilities (including telecommunications service), external computer "hacker" attacks and/or delays of common carriers.

CUSTOMER:

A. Will allow SERVICE PROVIDER through its Processor, Humboldt Merchant Services, to make direct deposits into CUSTOMERS Bank Account for Credit Card Payments made to

CUSTOMER at: Bank _____

RTN# _____

ACCOUNT # _____

B. County will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential information it receives in connection with its receipt of Services.

The INITIAL TERM of this Agreement is for one year. This Agreement automatically renews each year. Either party may terminate this Agreement by providing 30 day written notice to the other party.

This Agreement shall be construed in accordance with the laws of the State of Texas. Exclusive venue for any lawsuits or action of law or in equity arising hereunder shall be in Tarrant County, Texas.

SERVICE PROVIDER:

SECURE GOVERNMENT PAYMENT SOLUTIONS, INC.

BY: _____ *[Signature]*

TITLE: President 4/15/05

CUSTOMER: Williamson County - JP pt 4

BY: John G Daefler

TITLE: County Judge 4/15/05



Merchant Bankcard Application and Agreement

Please print and fill out completely.

Sales ID #	Representative's Name	Representative's Phone
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Qualified Program/Event

PROCESSING INFORMATION

Fee Summary Maximum Monthly Visa/MC Volume \$ <u>50,000.00</u> Average Visa/MC Ticket \$ <u>225.00</u> Qualified Discount Rate <u>4.76</u> % Auth/Batch Fee \$ <u>.204</u> each AVS Fee \$ <u>0.10</u> each Device Monthly Fee (Internet/Wireless) \$ <u>-0-</u> Debit Monthly Fee \$ <u>-0-</u> Debit Transaction Fee \$ <u>-0-</u> each Debit Agreement Attached <input type="checkbox"/> Yes Refer to Merchant Agreement for additional fees.	Select the option that MOST represents your business: <input type="checkbox"/> Retail Storefront <input type="checkbox"/> Restaurant: <input type="checkbox"/> Tip <input type="checkbox"/> No Tip <input type="checkbox"/> Mail/Telephone Order <input type="checkbox"/> Trade Show/Outside Sales <input type="checkbox"/> Service <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Lodging: <input type="checkbox"/> 1 Day <input type="checkbox"/> 15% Margin* (*Discount Rate Surcharge: 0.20%) Do you accept card numbers over the internet? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <u>100</u> % Home-based business? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
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Visa/MasterCard Sales	
Swiped	<u>0</u> %
Non Swipe	<u>100</u> %
Total Must Equal 100%	

American Express	<input type="checkbox"/> American Express application attached
Discover	<input type="checkbox"/> Apply
Diners Club	Automatic enrollment for qualifying merchant. <input type="checkbox"/> Decline offer
JCB	

Terminal Type	Printer Type	PIN Pad Type
Wireless Network Carrier	Modem	
Gateway Type <u>USAe Pay</u>	Bank to setup Authorize.Net: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Software Type	Version	

BUSINESS INFORMATION

Legal Business Name <u>County of Williamson</u>		Doing Business As <u>Williamson County - JP #4</u>	
Location Address <u>211 W. 6th St.</u>		City <u>Taylor</u>	State <u>TX</u>
Billing Address <u>211 W. 6th St.</u>		City <u>Taylor</u>	Zip <u>76574</u>
Contact Name <u>Judy S. Hobbs</u>		Federal Tax ID# <u>746000978</u>	
Business Phone <u>238-2155</u> <u>512-352-4155</u>	Customer Service Phone <u>512-238-2159</u>	Fax <u>512-238-2194</u> <u>512-352-4194</u>	
Email <u>praszke2@wilco.org</u>		URL <u>www.co.williamson.tx.us</u>	

HUMBOLDT MERCHANT SERVICES
An Affiliate of 1st National Bank of Nevada, Reno, NV

Please print and fill out completely.

BUSINESS INFORMATION, cont.

Type of Ownership: Sole Proprietor Partnership Corporation Non-profit LLC Medical/Legal Government

Publicly Traded Company (NASDAQ/NYSE/AMEX) Yes (Provide 10Q/10K) Duns # - -

Years in Business: 150 years Do you currently process Visa/MC? Yes No (If yes, provide 3 most recent statements.)

Has this merchant or any of the principals ever had a merchant relationship terminated? Yes No (If yes, explain.)

Do you process transactions for other merchants? Yes No

Describe Products/Services Sold: Court Fees, Fines, etc.

Refund Policy: Credit Card Refund

Credit Cards Processed: At Time of Purchase At Time of Shipment/Service At Time of Order _____ Days in Advance of Delivery

Marketing Methods: Newspaper/Magazine Television/Radio Yellow Pages Direct Mail Internet

PRINCIPAL #1

Name <u>John Doerfler</u>		Position/Title <u>County Judge</u>		% Ownership
Social Security # <u>462-64-6669</u>		Driver's License #	State	Date of Birth
Home Address		City	State	Zip
Home Phone		How long at this address?	<input type="checkbox"/> Own	<input type="checkbox"/> Rent
Relative Not Living With You	Address		Phone	

PRINCIPAL #2

Name		Position/Title		% Ownership
Social Security #		Driver's License #	State	Date of Birth
Home Address		City	State	Zip
Home Phone		How long at this address?	<input type="checkbox"/> Own	<input type="checkbox"/> Rent
Relative Not Living With You	Address		Phone	

TRADE REFERENCES

Business Name/Contact		Account #	Phone
Business Name/Contact		Account #	Phone
Personal Reference	Address		Phone

AUTHORIZATION TO ACH (Include Voided Check)

Bank Name		Phone
Transit & Routing/ABA # <input type="text"/>	Account #/DDA	

HUMBOLDT MERCHANT SERVICES
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Please print and fill out completely.

25 FEES

Merchant agrees to pay FNBN and HMS all fees, discount rates, and other charges set forth herein or in any other document issued contemporaneously herewith, and any other charges as may be shown on the monthly statement or that arise out of this Agreement, as amended from time to time. Merchant agrees that all charges are considered accurate and final unless Merchant disputes them within sixty (60) calendar days of receipt of documentation showing the charges. No charges will be prorated for partial months, and all charges commence on the date that the Merchant Bankcard Application is approved by FNBN and HMS.

The following charges are applicable to this Agreement as of the effective date hereof (Merchant acknowledges that such charges may be changed and that other fees and/or charges may be added by FNBN and HMS pursuant to this Agreement):

- | | |
|--|---|
| Qualified Discount Rate for sales and credits:
See Fee Summary on Application. | A.R.U. Method of processing constitutes a \$0.50 transaction fee for MasterCard and Visa. |
| Auth/Batch Fee: See Fee Summary on Application. | Documentation Research Fee: \$20.00 per hour |
| Voice Auth Fee: \$1.00 each | Overlimit Fee: \$25.00 per month |
| Merchant Statement Fee: \$10.00/mo | ACH Reject Fee: \$25.00 per occurrence |
| Address Verification Service (AVS): \$0.10 each | Early Cancellation Fee: \$99.00 If Merchant cancels this Agreement prior to its ninth month anniversary. |
| Device Monthly Fee: See Fee Summary on Application. | Settlement Account Change Fee: \$15.00 per occurrence |
| Retrieval Fee: \$7.00 each | Merchant DBA name change: \$15.00 per occurrence |
| Chargeback Fee: \$25.00 each | |
| Minimum monthly discount fee for each separate Merchant account is \$25.00. | |

Requests for refunds of fees or statements or questions relating to fees must be addressed in writing to FNBN and HMS within sixty (60) days of receipt of statement, but in no event more than ninety (90) days following imposition of the fee in question. FNBN's and HMS's liability with respect to any fee is limited to ninety (90) days from date statement issued.

26 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles.

AGREEMENT OF PARTIES

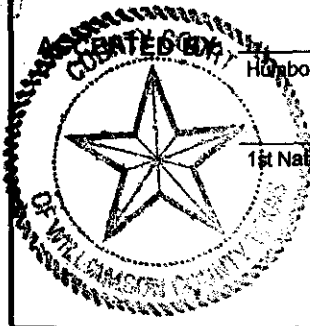
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____ 200_____.

MERCHANT: John C. Doepfer 3-15-05
Principal or Corporate Officer Signature Date

Nancy E. Ruster
Principal or Corporate Officer Signature Date

Humboldt Merchant Services, P.O. Box 1479, Eureka, CA 95502 Date

1st National Bank of Nevada Date



Please print and fill out completely.

HUMBOLDT MERCHANT SERVICES
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GUARANTEE

PERSONAL GUARANTEE: As a primary inducement to FNBN and HMS to enter into this Merchant Bankcard Processing Agreement with Merchant, and in consideration of FNBN's and HMS's acceptance of this Merchant Bankcard Processing Application and Agreement, the undersigned Guarantor (jointly and severally if more than one) by signing this Agreement unconditionally and irrevocably guarantees the full and faithful performance by Merchant of each of its obligations to FNBN and HMS pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received any notice of any amendment and, in the event of any breach by Merchant, hereby waives Notice of Default and agrees to indemnify FNBN and HMS for any and all funds due from Merchant and perform any other obligation of Merchant pursuant to the terms of the Agreement. FNBN and HMS may proceed directly against Guarantor without first exhausting its remedies against any other person or entity responsible to, or any security held by, FNBN and HMS. Guarantor waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant and all other rights and defenses available to Guarantor under California Civil Code Section 2787 to 2856, inclusive, (or any similar suretyship laws), and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance thereunder is due, and/or any change in any interest or discount rate or fee thereunder. Guarantor confirms that Guarantor, collectively or individually, is a party to the Agreement, and unconditionally and specifically authorizes FNBN and HMS, or its authorized agent, to debit any overdue fees, costs, chargeback, fines, penalties, expenses or obligations under the Agreement and/or any other contractual relationship between FNBN/HMS and Merchant from any personal checking account or other account owned or controlled by Guarantor, and further to report any default hereunder or inquiries hereof on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorney's fees and other legal expenses, incurred by or on behalf of FNBN and HMS in connection with the enforcement of this Guaranty.

Signature X John C Deafler, An Individual Date 3-15-05
Signature _____, An Individual Date _____

MERCHANT SITE SURVEY To Be Completed by Sales Representative

Business Premises: <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> Lease		Landlord's Name	Phone
Permanent Signage: <input type="checkbox"/> Yes <input type="checkbox"/> No		Zoning: <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Residential	
Type of Building: <input type="checkbox"/> Shopping Center <input type="checkbox"/> Office Building <input type="checkbox"/> Residence <input type="checkbox"/> Retail Storefront <input type="checkbox"/> Other (describe)			
Is inventory consistent with business? <input type="checkbox"/> Yes <input type="checkbox"/> No Appears Legitimate? <input type="checkbox"/> Yes <input type="checkbox"/> No			
<input type="checkbox"/> I certify that I have inspected the business premises of the merchant identified in this Application. <input type="checkbox"/> I certify that I have personally confirmed the identity of each person listed in the Business Information and Principal Sections of this Application. <input type="checkbox"/> I certify that I have conducted my review of this merchant to the best of my ability and that, to the best of my knowledge and belief, the information set forth in this Application is true and accurate.			
Sales Representative's Signature			Date



MERCHANT BANKCARD AGREEMENT TERMS/CONDITIONS

THIS AGREEMENT (the "Agreement") by and between Humboldt Merchant Services, L.P. ("HMS"), First National Bank of Nevada ("FNBN"), and "Merchant," whose name, complete address, business organization and type of business are stated on the attached Merchant Bankcard Application, is entered into as of the date it is accepted by HMS, as such date is set forth immediately following Paragraph 26 on the reverse side hereof. FNBN is a Member Bank (as defined below) and HMS is an affiliate of FNBN. In consideration of the premises set forth herein, FNBN, HMS and Merchant hereby agree as follows:

1. DEFINITIONS

The terms set forth below and used in this Agreement shall have the following meaning:

- a) "Bank Card" means a Visa or MasterCard credit card.
- b) "Electronic Combined Warning Bulletin or National Card Recovery File" refers to the Restricted Card List maintained by Visa and MasterCard. The Restricted Card List/Electronic Warning Bulletin contains the account numbers of Bank Cards which have been lost, stolen, fraudulently used, or which otherwise are not to be honored by Merchant.
- c) "Electronic Commerce" means transactions which occur over the Internet; "Electronic Commerce Merchant" is any merchant accepting customer credit card information via the Internet for the purpose of processing Bank Card transactions.
- d) "Floor Limit" is a term used by Visa and MasterCard to specify the threshold transaction dollar amount below which Merchant is not required to obtain authorization. Under this Agreement, the Floor Limit on all transactions is always zero.
- e) "Member Bank" means any financial institution which is a member of either MasterCard International, Inc., or VISA U.S.A., Inc. or VISA International.
- f) "Non-Qualified Transactions" or "NQT" means any item not received by FNBN and HMS within two (2) calendar days from the authorization date and any transaction excluded from the QT criteria set forth in subparagraph h immediately below. The authorization date and the FNBN and/or HMS processing date are each counted as one (1) day. NQTs also include any keyed transaction where Address Verification System and order number are not utilized or which does not qualify for Visa's Custom Payment Service rates for any reason. There is an additional 1.60% fee for all NQT transactions.
- g) "Purchaser" or "Cardholder" means the person whose name is embossed on the Bank Card or whose signature appears thereon in the signature panel as an authorized user.
- h) "Qualified Transaction" or "QT" means a transaction which meets all of the following requirements: (i) if from a retail estab-

lishment, (other than one described in subparagraph f above), it is magnetically swiped and electronically authorized; (ii) if from a mail order, phone order, Electronic Commerce order, or from any merchant whose percentage of keyed transactions is expected to exceed thirty percent (30%) of the total of all transactions submitted, it is manually keyed and, electronically authorized; (iii) and the batch is closed daily, and the transaction qualifies to receive Visa's Custom Payment Service rates, and applies to items destined only to United States Bank Card issuing members; and (iv) if manually keyed, utilizes the Address Verification System ("AVS") and contains an order number. In all cases, the term specifically excludes MasterCard/Visa Business Bank Cards, Corporate Bank Cards, Procurement Bank Cards, Visa Signature Cards and MasterCard World Cards. A transaction from a retail establishment only which would otherwise be a QT except that it was manually keyed will be treated as a QT provided AVS is utilized and an order number is provided, but will be charged an additional 0.70% (which equals Mid-Qualified rate) fee.

- i) "Sales Draft" and "Credit Voucher" mean the respective forms supplied by FNBN and HMS, or Merchant's own forms if approved by FNBN and HMS, for the purpose of consummating sales or credits/refunds to be charged or credited to the credit card account of a Purchaser on the basis of a Bank Card properly honored by Merchant pursuant to the terms hereof. Sales Drafts and Credit Vouchers shall be transmitted to FNBN and HMS electronically by Merchant and shall be in a medium and form and approved in advance by FNBN and HMS. All references in this Agreement to "Sales Drafts" and "Credit Vouchers" shall include, as applicable, all authorized forms of Sales Drafts and Credit Vouchers, whether electronically transmitted, on magnetic tape or original paper format.
- j) "Settlement Account" (hereinafter "Account") means a demand deposit account established at a financial institution capable of receiving credits and debits from the Automated Clearing House ("ACH") system operated by the U.S. Federal Reserve Bank for the limited purposes of debiting or crediting Merchant for Bank Card activity pursuant to this Agreement. If the Account is maintained at FNBN, no minimum balance will be required; however, Merchant shall be charged applicable overlimit and nonsufficient fund fees.
- k) Other capitalized terms set forth in this Agreement have the meanings ascribed to them in the rules and regulations of VISA U.S.A., Inc., VISA International or MasterCard, Inc., as applicable.

2. MERCHANT WARRANTIES AND ACKNOWLEDGMENTS

Merchant warrants to FNBN and HMS all of the following:

- a) That all representations and statements in this Merchant Bankcard Application and Agreement, or in any other document relating hereto, made by Merchant or on Merchant's behalf are true, accurate and complete in all material respects. Merchant hereby authorizes FNBN and HMS to investigate and confirm any information related hereto which is provided at any time by Merchant. For this purpose, FNBN and HMS may utilize credit bureau/reporting agencies and/or its own agents. Upon Merchant's request, FNBN

Initials Jed Initials _____
HUMBOLDT MERCHANT SERVICES

and HMS will provide Merchant with a copy of the results of such investigation.

b) That Merchant is engaged in the lawful business shown on the Merchant Bankcard Application, which includes the sale of merchandise and/or services, and is duly licensed to conduct such business under the laws of the state, county and city in which Merchant is located, and, further, that Merchant will not process Bank Card transactions for any other type of business.

c) That Merchant has not been terminated from settlement of Bank Card transactions by any financial institution or determined to be in violation of any of the rules and/or regulations of Visa or MasterCard except as specifically disclosed in the Merchant Bankcard Application. Merchant acknowledges that the signature of the representative on the Merchant Bankcard Application and/or this Agreement only constitutes a conditional offer made on behalf of, and is contingent upon the final approval of, FNBN and HMS and that this Agreement is not binding until approved by FNBN and HMS.

d) That Merchant has the authority to enter into this Agreement and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and directed to do so by Merchant.

e) That all of Merchant's sales locations engage in the same or substantially similar business activity as that listed on the Merchant Bankcard Application.

f) That as to each transaction presented to FNBN and HMS for payment:

- i) the Sales Draft is valid in form and has been completed with all applicable requirements;
- ii) the goods or services described on the Sales Draft have been delivered or completed in accordance with Merchant's agreement with the Cardholder;
- iii) the Cardholder has no defense, right of setoff or counterclaim against Merchant in connection with the purchase of the goods or services;
- iv) the transaction was placed by the Cardholder or other authorized user of the Bank Card; and
- v) the transaction was not previously charged back or declined.

g) Merchant acknowledges that all transactions are subject to all rules and regulations of Visa and MasterCard and agrees to comply with and be subject to, all such rules and regulations as they may exist from time to time, including but not limited to chargeback procedures and the resolution of any disputes relating thereto. Visa and MasterCard rules and regulations, as presently in effect and as they be amended from time to time, are hereby incorporated by reference herein and made a part hereof as though fully set forth herein. Any violation of Visa and MasterCard rules and regulations by Merchant shall constitute a breach of this Agreement and may, at the option of FNBN and HMS, be grounds for terminating this Agreement.

h) Insofar as Merchant represents that it reasonably anticipates a monthly Bank Card sales volume based upon an average ticket amount as set forth in the Merchant Bankcard Application, Merchant acknowledges that any monthly Bank Card volume in excess of approved Bank Card volume will cause the Merchant account to be reviewed and may result in the possible interruption of service and/or the delay of transmission of funds and/or the diversion of

funds into a Reserve Account. Merchant hereby indemnifies and holds FNBN and HMS harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

3. ADVERTISING

a) Merchant shall prominently display any advertising or promotional materials provided or required by FNBN and HMS to inform the public that Visa and MasterCard Bank Cards will be honored at Merchant's place of business. Such displays, however, are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by MasterCard International, Inc. ("MasterCard"), VISA U.S.A., Inc. or VISA International, as applicable.

b) In no event will Merchant advertise or display any promotional material containing the name or symbol of FNBN, HMS, Visa or MasterCard which states or implies that only Bank Cards issued by FNBN will be honored by Merchant. Additionally, Merchant shall not indicate or imply that FNBN, HMS, Visa or MasterCard endorses Merchant's products or services.

c) Nothing herein is intended to restrict Merchant from honoring other credit cards or from entering into any other transaction with a Purchaser. Merchant may display and advertise any other credit card or credit plan. Visual parity shall be maintained between the MasterCard and Visa symbols and any local/regional acceptance mark also displayed.

d) All advertising media and displays supplied to Merchant by FNBN and HMS are the property of FNBN and HMS, and upon termination of this Agreement, Merchant will return them to FNBN and HMS. Merchant shall have the right to use and display the proprietary Visa and MasterCard names and symbols only while this Agreement is in effect or until Merchant is notified by FNBN, HMS, Visa or MasterCard to cease such usage, and then only in compliance with applicable Visa and MasterCard rules and regulations concerning such usage.

e) Merchant shall have no right to use the proprietary name and/or symbol of FNBN or HMS unless the materials containing such are provided to Merchant by, and/or are approved in advance by, FNBN and HMS.

4. HONORING BANK CARDS

a) Merchant shall honor without discrimination all valid Bank Cards when properly presented as payment for a transaction from a Cardholder, and only in connection with a bona fide, legal business transaction. Merchant will maintain a policy which will not discriminate among Purchasers seeking to make purchases through the use of a Bank Card. If Merchant does not deal with the public at large (for example, a private club), Merchant will be deemed to have complied with this rule if it honors valid Bank Cards of Purchasers who have purchasing privileges with Merchant.

b) Merchant shall use due diligence and verify that Cardholder is authorized to use the Bank Card presented and that such Bank Card is not counterfeit. If the Bank Card is present at the time of the transaction, Merchant shall examine the Bank Card's security features (such as a hologram and signature panel) before accepting the Bank Card. Merchant shall obtain an authorization on each transaction in advance of each transaction.

c) Merchant shall not establish minimum or maximum

transaction amounts as a condition for honoring Bank Cards.

d) Merchant shall not impose any surcharge on Bank Card transactions.

e) Any tax required to be collected by Merchant must be included in the total transaction amount and not collected separately.

f) Merchant shall not accept any foreign Bank Cards not valid outside the country of issuance.

5. ELECTRONIC COMMERCE MERCHANTS

Electronic Commerce Merchants are required to post their consumer privacy policy and method of transaction security on their web site. Furthermore, Merchant is required to display the country of its outlet immediately prior to the cardholder's payment instructions.

6. USE OF SALES DRAFTS/CREDIT VOUCHERS

Each Bank Card transaction made by Merchant will be evidenced by a Sales Draft or Credit Voucher drawn by Merchant or the Purchaser in favor of the issuing Member Bank, and all such drafts shall be on the appropriate form which has been approved by FNBN and HMS. If the Bank Card is present at the time of the transaction, Merchant shall deliver to the Cardholder a true and completed copy of the Sales Draft or Credit Voucher, as the case may be.

7. TRANSACTION REQUIREMENTS

a) In effecting a Bank Card transaction, Merchant shall, subject to the other provisions of this Paragraph 7 and Paragraphs 8, 9 and 10 herein, complete the Sales Draft or Credit Voucher in the following manner:

1) If the Bank Card is present at the time of the transaction (a "Card Present Transaction"), imprint or swipe through an electronic terminal, with a suitable imprinter or electric printer, all data embossed on the face of the Bank Card and the Merchant's imprinter plate, or legibly type such data thereon; Merchant shall notify FNBN and HMS in the event that the information on the Merchant's plate is changed. Whenever the Bank Card's magnetic stripe cannot be read by the electronic terminal, Merchant shall manually imprint the Bank Card. Failure to do so will constitute a waiver by Merchant of any right to dispute chargebacks arising from the transaction. Each Merchant outlet is required to have its own processing software or terminal, and its own printer and manual imprinter with an accurate Merchant plate for use when its electronic printer is not functional or when the Bank Card's magnetic stripe cannot be read by the electronic terminal. Merchant understands that sales completed at one location may not be processed through a terminal at another location.

2) Legibly fill in the appropriate spaces thereof showing (a) the date of the sale, (b) the Sales Draft amount which includes applicable tax for all charges purchased in the same transaction, (c) a brief description of the services in sufficient detail to identify same, (d) the Cardholder's Bank Card number truncated to bear no more than the last 5 digits of the Bank Card number, (e) the Cardholder's name, (f) the authorization number, and (g) Merchant's name and unique Merchant I.D. number.

3) For a Card Present Transaction, require the Purchaser to sign the Sales Draft in Merchant's presence. Merchant should retain Bank Card while Purchaser is signing in order to perform signature

verification.

4) Obtain authorization pursuant to Paragraph 15 prior to consummating the sale and indicate the authorization code in the appropriate space. **THE FLOOR LIMIT ON ALL TRANSACTIONS IS ALWAYS ZERO.** Merchant understands that authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence nor shall it validate a transaction which would otherwise be invalid. Merchant shall remain fully liable for all chargebacks and fees related to an invalid or disputed transaction whether or not prior authorization was obtained.

5) For a Card Present Transaction, complete the transaction only if the signature on the Sales Draft appears to be the same as the authorized signature on the Bank Card and the Bank Card account number read from the magnetic stripe is the same as that embossed on the front of the Bank Card. If such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Bank Card, Merchant shall contact FNBN's and HMS's authorization center for instructions. Except in the case of a Telephone Order, Mail Order, Electronic Commerce Order, Pre-authorization Order or Recurring Transaction, no sale may be completed if the Purchaser fails to present his or her Bank Card. Furthermore, Merchant shall be liable for all chargebacks for magnetically altered or counterfeit cards.

6) For Card Present Transactions, if the signature panel on the Card is blank, in addition to requesting authorization, Merchant must do all of the following (a signature panel bearing the words "See I.D." or equivalent language shall be deemed to be blank):

- Review positive identification to determine that the user is the Cardholder. Such identification must consist of a current, official government identification document (such as a passport or driver's license) that bears the Cardholder's signature.

- Indicate such positive identification (including any serial number and expiration date) on the Sales Draft.

- Require the Cardholder to sign the signature panel of the Bank Card prior to completing the transaction.

b) In effecting a Bank Card sale, Merchant shall not permit sales through the use of a Bank Card:

1) Which is not yet in effect, according to the effective dates thereon, if any.

2) Which is an expired Bank Card.

3) Which is contained in the latest Combined VISA and MasterCard Electronic Warning Bulletin.

c) Merchant agrees not to:

1) Alter the total amount of a Sales Draft after the transaction has been completed and the Sales Draft has been signed by the Purchaser.

2) Present Sales Drafts or Credit Vouchers which it knows, or should have known, to be fraudulent or not authorized by the Purchaser.

3) Divide a single transaction between two (2) or more Sales Drafts.

4) Attempt multiple authorizations on a single Bank Card.

5) Submit to FNBN and HMS any Sales Drafts or Credit Vouchers using Bank Card accounts affiliated with Merchant, its principals or its guarantors.

6) Utilize the credit available on any Bank Card to provide cash advances to Cardholders.

7) Force authorizations.

Any of the actions set forth in this subparagraph 7c immediately above will be grounds for immediate termination of this Agreement and all funds of Merchant, including any funds in other Merchant/Guarantor accounts, may be garnered by FNBN and placed on hold pursuant to the provisions of Paragraph 13 below.

8. MAIL, ELECTRONIC COMMERCE, TELEPHONE AND PREAUTHORIZED ORDER

Upon electing to make a Bank Card sale pursuant to a Mail Order (MO), Electronic Commerce or Internet Order (IO), Telephone Order (TO) or Pre-authorized Order (PO),

Merchant Will:

- a) Complete the Sales Draft as provided in Paragraph 7 of this Agreement and mark it "MO", "IO", "TO" or "PO", as the case may be, on the signature line of the Sales Draft, obtain the expiration date of the Bank Card and forward the expiration date of the Bank Card as part of the authorization request.
- b) Assume all responsibility for identification of the Purchaser and the validity of the Bank Card information.
- c) Obtain prior credit authorization.
- d) Not present a draft for payment until the goods are delivered or the services rendered.
- e) Assume responsibility for chargeback if the Cardholder refuses to pay for any reason.
- f) For PO transactions, not deliver goods or perform services after receiving notification that the pre-authorization is canceled or that the Bank Card covered by the pre-authorization is not to be honored.
- g) For PO transactions, retain and make available to FNBN or HMS, upon request, the customer's written request to Merchant for pre-authorization.
- h) For MO, IO and TO transactions, perform an Address Verification Service (AVS) inquiry on Purchaser and provide an order number and the appropriate "Mail Order", "Telephone Order", or "Internet Order" indicator in the electronic transaction record. Failure to do so will result in the transaction being downgraded to a Non-Qualified Transaction. (Merchant understands that performing AVS and providing an order number does not, by itself, guarantee a Qualified Transaction).
- i) For IO transactions, include the electronic commerce indicator (ECI) within the authorization record and settlement record.
- j) Regardless of the terms and conditions of any written preauthorization agreement between Merchant and Cardholder, the Sales Draft amount of any lodging or vehicle rental transaction which has been preauthorized shall include only that portion of the transaction amount, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to Cardholder, and shall not include any consequential charges. If Merchant violates this provision, it does so at its own risk and waives any right to dispute chargebacks arising therefrom. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization agreement through means other than a Bank Card transaction.

9. RECURRING TRANSACTIONS

If Merchant agrees to accept a Recurring Transaction from a Cardholder for the purchase of goods or services which are to be delivered or performed periodically, the Cardholder shall complete and deliver to Merchant a written request for such goods or services to be charged to the Cardholder's account periodically. Each of the following provisions shall apply to all Recurring Transactions:

- a) The Cardholder's written authorization must be retained for the duration of the recurring charges and provided promptly in response to a Cardholder's request for copy.
- b) Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, FNBN, HMS or any Member Bank.
- c) Merchant shall type or print legibly, on the signature line of the Sales Draft for Recurring Transactions, the words "Recurring Transaction."
- d) The Cardholder's written authorization must include the amount of the transaction, frequency of charge and the duration of time for which Cardholder's permission is granted.
- e) If the Cardholder elects to renew a Recurring Transaction, the Cardholder must complete and deliver to Merchant a new written Recurring Transaction request.
- f) Merchant must perform an AVS inquiry for at least the first transaction and then annually thereafter, if applicable.
- g) Merchant must provide both an order number and the appropriate "Recurring Transaction" indicator with the transaction.
- h) Merchant must obtain a valid authorization if a previous authorization attempt was declined.

10. MULTIPLE SALES SLIPS AND PARTIAL CONSIDERATION

Merchant shall include all items of goods and services purchased in a single transaction in one total amount on a single Sales Draft, except (i) in the case of purchases in separate departments of a multiple department store or (ii) in a partial payment, delayed delivery or advanced deposit situation described in this Paragraph 10. Merchant may only effect a transaction with only part of the amount due included on a single Sales Draft:

- a) When the balance of the amount due is paid by the Purchaser at the time of sale in cash or by check or both, or
- b) When the Purchaser executes two separate Sales Drafts in a delayed delivery sale. In such case, a deposit is made by completion of one Sales Draft and payment of the balance is tendered by completion of a second Sales Draft, the latter Sales Draft being conditioned upon delivery of merchandise or performance of services. Authorization is required for both Sales Drafts and Merchant shall note on the Sales Draft the words "deposit" or "balance," as appropriate. The Sales Draft labeled "balance" shall not be presented until the goods are delivered or services performed.

11. RECOVERY OF CARDS

Merchant will use its best efforts to recover any Bank Card and return it to FNBN and HMS if:

- a) The Cardholder's account number is listed on the latest Combined Visa and MasterCard Electronic Warning Bulletin.
- b) Merchant is directed by FNBN's and HMS's authorization cen-

ter or any Member Bank to retain it.

c) Merchant has reasonable grounds to believe the Bank Card is counterfeit, fraudulent or stolen.

Reasonable and peaceful means are to be used in retrieving any such card. Nothing in this Paragraph 11 or elsewhere in this Agreement shall be construed to create a duty of physical confrontation or risk of harm in order to retrieve a Bank Card. Merchant agrees not to commit any breach of the peace or to cause any injury to persons and/or property, and hereby indemnifies FNBN and HMS against any claim or injury arising as a result of any attempt to retain a Bank Card.

12. PRESENTMENT, ACCEPTANCE AND PAYMENT OF SALES DRAFTS

Merchant shall present each Sales Draft to FNBN and HMS within one (1) business day after the date of the transaction, except that Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed and Merchant has otherwise performed all of its principal obligations to the Purchaser in connection with the transaction. Merchant may not present directly or indirectly any draft which was not originated as a result of an act between the Purchaser and Merchant. Upon such delivery to FNBN and HMS of a Sales Draft and subject to the provisions of any warranties of Merchant hereunder and of any chargeback rights, FNBN and HMS will give Merchant provisional credit for the face amount of such Sales Draft. Such credit may be given by credit to Merchant's Account. A service charge, based on the rate specified in Paragraph 25, and any applicable additional fees provided for in this Agreement will be imposed on the daily total of Sales Drafts and Credit Vouchers presented by Merchant to FNBN and HMS. Merchant hereby authorizes FNBN and HMS to charge the Account for all such amounts. If FNBN and HMS reasonably believe that a chargeback or credit is likely with respect to any transaction or Sales Draft FNBN or HMS have accepted, FNBN and HMS may withhold payments due Merchant under this Agreement until such time that:

- a) FNBN and HMS are charged back by the issuing bank. In such event, FNBN and HMS shall retain the funds.
- b) The period of time by which the Cardholder may dispute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or
- c) FNBN and HMS determine that a chargeback on the Sales Draft will not occur.

Merchant is required to close any open batches with at least a daily frequency (except on days when Merchant's place of business may be closed); Merchant may close batches more frequently if desired. Merchant understands that transactions are not transmitted to FNBN and HMS until the Merchant closes the batch. Furthermore, Merchant acknowledges that open batches of transactions that are not properly closed and transmitted to FNBN and HMS within forty-five (45) days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant shall indemnify and hold FNBN and HMS harmless for any and all loss sustained by Merchant for said purged transactions. It is Merchant's responsibility to close, balance, and reconcile batches daily, and to detect discrepancies between transactions processed

by FNBN and HMS and transactions supposedly submitted by Merchant. Merchant understands that minor discrepancies do occur in the normal course of business and that FNBN and HMS will use their best efforts to correct discrepancies once notified by Merchant. It is the Merchant's responsibility to monitor and reconcile its Settlement Account vigilantly in order to detect discrepancies in a timely manner. Merchant understands that FNBN and HMS have no ability to detect discrepancies. Merchant agrees that, upon termination of this Agreement, FNBN and HMS may withhold payments to Merchant for such period of time necessary to establish a reserve to cover any chargebacks, credits and/or uncollected discounts or fees.

13. SECURITY RESERVE

In addition to the chargeback rights granted to FNBN and HMS by Merchant, Merchant hereby authorizes FNBN to establish a security reserve account (the "Reserve Account"), with or without prior notice to Merchant, at any time prior to, at, or after termination of this Agreement, to ensure FNBN's recovery of any liabilities, of whatever nature, owed it or reasonably anticipated to be owed it by Merchant pursuant to this Agreement. FNBN may establish a Reserve Account whenever FNBN or HMS, in their sole discretion, believes recovery of such liabilities may be in jeopardy. **MERCHANT HEREBY GRANTS TO FNBN A POSSESSORY SECURITY INTEREST IN ANY RESERVE ACCOUNT SO ESTABLISHED.** FNBN may enforce its security interest in the Reserve Account without notice or demand by debiting therefrom any liability found to be owing to FNBN and HMS by Merchant. FNBN's and HMS's right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. FNBN's rights with respect to the Reserve Account, including its security interest therein, shall survive the termination of this Agreement. The Reserve Account may be held by FNBN until the later of (i) up to six (6) months after the later of: (i) the date of the last transaction or chargeback, or (ii) the expiration date of the chargeback liability arising from the Merchant's product or service pursuant to this Agreement and/or Visa and MasterCard rules and regulations and/or applicable law. FNBN and HMS may charge Merchant a monthly fee for maintenance of said Reserve Account, if established. Merchant agrees that FNBN may also enforce its security interest against an established Reserve Account of Merchant if Merchant exceeds the approved monthly processing limit and/or approved average ticket amount set forth on the Merchant Bankcard Application, in addition to assessing Merchant an overlimit fee.

14. CHARGEBACKS

FNBN and HMS shall have the right to charge back to Merchant's Account the full amount of any Sales Draft, if, but not limited to, any of the following occur:

- a) The Sales Draft or any material information on the Sales Draft, such as, without limitation, the account number and/or expiration date of the Bank Card, Merchant description, transaction amount or date, is illegible or incomplete or is not delivered to FNBN and HMS within the required time limits.
- b) The Cardholder's account number was listed on the then current

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Electronic Combined Warning Bulletin and Merchant did not reject the transaction or receive prior authorization for the transaction.

c) Except in the case of an MO, IO, TO, or PO Transaction described in Paragraph 8, the Sales Draft does not contain the imprint of a Bank Card that was valid, effective and unexpired on the transaction date; or the signature of the Purchaser.

d) The transaction was one for which prior credit authorization was not obtained or improperly obtained, or a valid authorization number is not correctly and legibly printed on the Sales Draft.

e) The Sales Draft is a duplicate of an item previously submitted or is one of two or more Sales Drafts generated in a single transaction in violation of Paragraph 10.

f) The Purchaser disputes the execution of the Sales Draft, the sale, delivery, quality or performance of the merchandise or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Purchaser's account.

g) The price of the merchandise or services shown on the Sales Draft differs from the amount shown on the copy of the Sales Draft delivered to the Purchaser at the time of the transaction.

h) FNBN and HMS reasonably determine that Merchant has violated any term, condition, covenant, warranty or other provision of this Agreement in connection with the Sales Draft or the transaction to which it relates.

i) FNBN and HMS reasonably determine that the Sales Draft is fraudulent or that the related transaction is not a bona fide transaction in Merchant's ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including, without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees.

j) The Sales Draft or Credit Voucher was not received by FNBN and HMS in a timely manner. Merchant may not deliver to FNBN and HMS Sales Drafts which have been previously delivered and charged back to Merchant.

15. AUTHORIZATION

Merchant shall obtain authorization before completing any sale transaction. In the event that the Point of Sale device or software fails, Merchant must obtain authorization through a voice back-up and, for Card Present Transactions, manually imprint the Bank Card. If the Purchaser presents an unsigned card, Merchant shall request a "Code 10" authorization which indicates a suspicious transaction. If Merchant normally obtains authorization through the use of processing software or a Point of Sale Terminal, Merchant shall call FNBN's and HMS's authorization center and request a "Code 10" authorization. Merchant shall request a "Code 10" authorization when there is substantial belief that the Bank Card may be counterfeit or stolen or the transaction is in some manner suspicious. Obtaining an authorization will not validate a transaction that would otherwise be invalid and therefore does not guarantee that a Sales Draft will not be charged back to Merchant. Authorization must be obtained from FNBN's and HMS's authorization center or from an authorizing agent acceptable to FNBN and HMS and Merchant.

16. RETURN MERCHANDISE AND ADJUSTMENTS: CREDIT VOUCHERS

Merchant understands that every Credit Voucher issued will be subject on a daily basis to a transaction fee and discount fee and there will be no refund of any fees or charges associated with the original transaction. Merchant shall submit all Credit Vouchers to FNBN and HMS within one (1) calendar day after the credit transaction date. Merchant shall sign and date each Credit Voucher and include thereon a brief description of the goods returned, services terminated or canceled or refunded or adjustment made, together with the amount of credit in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each Credit Voucher, the embossed data from the Bank Card. Merchant shall deliver to the Cardholder a true and completed copy of the Credit Voucher. No Credit Voucher amount shall exceed the amount of the originating Sales Voucher. If Merchant maintains a policy of permitting refunds, exchanges, returns or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases using a Bank Card. Merchant may restrict its refund or return policy as to any Bank Card transaction, provided that Merchant discloses its policy at the time of the transaction by printing an appropriate notice (such as "No Refunds or Exchanges") on all copies of the Sales Drafts in close proximity to the space provided for the Customer's signature. Merchant understands that regardless of proper disclosure of refund policy restrictions, such restrictions are unenforceable if Cardholder initiates a dispute under appropriate Federal, State or Local laws. If Merchant accepts any goods for return, or any services are terminated or canceled, or Merchant allows any price adjustment on a sale which was originally consummated using a Bank Card, then Merchant must effect such refund using a Credit Voucher with the same Bank Card account used on the original Sales Draft. Merchant may not effect credit to a Purchaser using cash or check. In conjunction with each Credit Voucher submitted to FNBN and HMS, Merchant shall have sufficient funds available in Merchant's Settlement Account or sufficient Sales Drafts in the same batch, to cover the total amount of Credit Vouchers plus any related fees. Merchant understands that a batch consisting solely of Credit Vouchers, or a batch where the total amount of Credit Vouchers exceeds the total amount of Sales Drafts, will result in a debit to its Settlement Account.

17. DISCLOSURE AND STORAGE OF CARDHOLDER INFORMATION

Merchant shall not, without the Cardholder's prior express consent in writing, sell, purchase, provide or otherwise disclose Cardholder's account information or other Cardholder personal information to any third party other than Merchant's agents and processing organizers for the purpose of assisting Merchant in its business or as required by law, or otherwise use any such information. Merchant and any agent or processing organizer of Merchant must keep all systems and media containing Cardholder account or transaction information (whether physical or electronic including, but not limited to, account numbers, card imprints and Cardholder's information) in a secure manner such as will, to the extent commercially reasonably possible, prevent access by or disclosure to anyone other than Merchant's authorized personnel, FNBN, HMS or

agent. Merchant shall store in an area limited to selected personnel, and, prior to discarding shall destroy in a manner rendering data unreadable, all material containing Cardholder account numbers or Bank Card imprints, including but not limited to Sales Drafts and Credit Vouchers and Carbons. If engaged in Electronic Commerce, Merchant shall comply with the cardholder information security requirements outlined in Visa's Cardholder Information Security Program (CISP) available at www.visa.com.

18. RESTRICTIONS ON CASH PAYMENTS OR DEPOSITS

- a) Merchant shall not accept any cash payment from a Purchaser for merchandise or services if any part of such cash payment is included on a Sales Draft resulting from the use of a Bank Card.
- b) No cash advance or withdrawal may be made by Merchant to a Purchaser.
- c) Merchant shall not accept cash or other monetary instrument from a Purchaser and subsequently prepare and deposit a Credit Voucher for the purpose of effecting a credit to the Purchaser's Bank Card account.

19. GENERAL

Merchant Will:

- a) Preserve all records pertaining to a Bank Card transaction, Sales Draft or Credit Voucher as may be required by law, and in no event less than three (3) years from the date thereof, sorted in such manner as to be able to produce any such documents to FNBN and HMS upon request as set forth below, and permit FNBN and HMS to examine, verify and copy the same at any reasonable time.
- b) Fully comply with all requirements of applicable consumer credit laws and regulations, as may pertain to Merchant, and with all laws and MasterCard and Visa regulations applicable to each Bank Card transaction.
- c) Execute, file and record such statements, notices and certificates as FNBN and HMS may reasonably request to preserve and protect FNBN's and HMS's interests.
- d) Provide FNBN and HMS a copy of any requested Sales Draft, Credit Voucher or other transaction memorandum no later than three (3) calendar days from the date of request.

Merchant Will Not change its type of business as indicated on the Merchant Bankcard Application without the express written consent of FNBN and HMS.

Notices: Any notice, request, demand or other communication required or permitted to be given hereunder must be given in writing by depositing such notice in the United States Mail, first class postage prepaid (i) if to FNBN and/or HMS, to P.O. Box 1479, Eureka, CA 95502, and (ii) if to Merchant, to the address stated on the attached Merchant Bankcard Application, or to such other address as is communicated to the other party pursuant to this subparagraph. Merchant has the responsibility of assuring that its address in FNBN's and HMS's records is current and accurate. Notice may be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant to FNBN and HMS, the original of any such communication shall be mailed to FNBN and HMS on the date of the electronic transmission and it shall not be deemed served until the United States Mail copy is received and confirmed by FNBN and HMS. If FNBN and HMS give notice by facsimile or other electronic communication to Merchant, service

is deemed to have been duly given on the day of transmission.

Construction/Severability: The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement, nor shall this Agreement be deemed to have originated with any party. If any part of this Agreement is held unenforceable or invalid or prohibited by law, that part shall be deemed stricken herefrom and this Agreement shall be read and interpreted as though said part did not exist.

Waiver: Neither the failure nor any delay on the part of FNBN and HMS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

EFFECTIVE DATE: MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT IDENTIFICATION NUMBER HAS BEEN ISSUED. ANY ALTERATION, STRIKEOVER OR MODIFICATION TO THE PREPRINTED TEXT OR LINE ENTRIES ON THIS AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER AND, AT BANK'S SOLE DISCRETION, MAY RENDER THIS AGREEMENT INVALID.

20. ENTIRE AGREEMENT/AMENDMENT

This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated herein by reference, constitute the entire agreement between Merchant and FNBN and HMS. This Agreement may be amended by FNBN and HMS by written notice to Merchant of not less than ten (10) days prior to the effective date of such amendment, except for service fee or other fee increases which may only be made upon thirty (30) days notice. In each case acceptance thereof by Merchant will be effected either in writing or by Merchant's failure to give FNBN and HMS written objection thereto prior to the effective date of the amendment. Unless otherwise stated in the amendment notice, amendments not relating to fee increases shall apply to both previous and future transactions submitted by Merchant; amendments relating to fee increases shall apply only to future transactions.

21. TERM AND TERMINATION

The initial term of this Agreement shall be for one (1) calendar year, commencing from the date of execution by HMS and FNBN (hereinafter referred to as the "Anniversary Date"), and shall automatically renew thereafter on each subsequent Anniversary Date unless sooner terminated in accordance with the provisions of this Agreement. This Agreement may be terminated by either party at any time for any reason upon written notice; provided, however, that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to any Sales Draft which is ac-

tually delivered to FNBN and HMS by Merchant and not returned to Merchant prior to FNBN's and HMS's extending credit therefor. The right of Merchant to make sales as specified in this Agreement and to use advertising displays, Sales Drafts, Credit Vouchers and other items and materials developed for use under this Agreement shall cease upon termination of this Agreement. Merchant expressly acknowledges that a Terminated Merchant File ("TMF or Match System") is maintained by MasterCard containing the business name and names and identification of principals of merchants which have been terminated for one or more of the reasons specified in Visa or MasterCard operating regulations. Examples would be, but are not limited to, processing transactions for a business not indicated on the Merchant Bankcard Application, fraud, counterfeit drafts, unauthorized transactions, excessive chargebacks and retrieval requests, laundering, or where a high security risk exists. Merchant acknowledges that should FNBN or HMS suspect any of the above, FNBN may establish a Security Reserve in accordance with Paragraph 13. Merchant acknowledges that FNBN is required to report the business name of Merchant and the names and identification of its principals to the TMF or Match System when Merchant is terminated because of one or more of the reasons specified in Visa or MasterCard Regulations. Furthermore, if Merchant fails to fulfill its obligations arising from this Agreement, FNBN may submit a derogatory report on Merchant and its principals to a consumer and/or business credit reporting agency. Merchant expressly agrees and consents to such reporting by FNBN.

22. MERCHANT INDEMNITY

Merchant will indemnify, protect, defend and hold FNBN and HMS, their affiliates and/or subsidiaries and all of their or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands, actions, expenses, damages, liability, and/or causes of action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:

- a) Any breach of this Agreement or of any warranty or representation made to FNBN and HMS by Merchant;
- b) Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees,

agents or other representatives;

- c) Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard and/or Visa rule or regulation; or
- d) Any claim for injury, direct or indirect, to persons or property from any alleged or actual tort or breach of the peace in connection with Merchant's attempted and/or actual recovery of any Bank Card.

The indemnifications provided for in this Paragraph 22 shall survive any termination of this Agreement.

23. ASSIGNMENT

Merchant may not assign any rights or duties created by this Agreement without FNBN's and HMS's express prior written consent. A transfer of control of majority interest in Merchant's commercial enterprise shall be deemed to be such an assignment. Changes, by way of example only, in business name, business telephone and/or address, or any banking information, alone shall not be deemed to be an assignment but shall be submitted, in writing, to FNBN and HMS by Merchant within ten (10) business days of any such change. FNBN may assign this Agreement at any time upon written notification to Merchant.

24. AUTHORIZATION FOR ACH

Merchant hereby authorizes FNBN and HMS to initiate debit and credit entries to Merchant's depository account number set forth on the Merchant BankCard Application and which is shown on the voided check provided to FNBN and HMS therewith (and as that number may be changed, to any new account provided to FNBN and HMS). Merchant acknowledges that all transaction settlements are provisional subject to (i) the Cardholder's rights under the rules and regulations of Visa and/or MasterCard, (ii) applicable federal, state and local law relating to disputing Bank Card transactions, and (iii) FNBN's and HMS's rights under this Agreement. This authority shall remain in full force and effect until FNBN and HMS has received written notification from Merchant of its revocation in such time and manner as to afford FNBN and HMS a reasonable opportunity to act upon it.

**ADDENDUM TO HUMBOLDT MERCHANT SERVICES
AGREEMENT WITH WILLIAMSON COUNTY ("Governmental Entities")**

This addendum is incorporated into and made a part of Merchant Bankcard Application and Agreement with Humboldt Merchant Services, an affiliate of the First National Bank of Nevada. In the event of any conflict between the terms and provisions of this Addendum, or any portion thereof, and the terms and provisions of any other part or portion of the Agreement, this Addendum shall control.

I

With respect to Article 22, Indemnification, Additional Costs in Humboldt Merchant Services Merchant Agreement and its Additional Terms and Conditions, it is hereby agreed and understood that a county of Texas cannot constitutionally (Art. III, Sec. 52, Texas Constitution) nor by case law T. & N. O. R. R. Co. v. Galveston Co., 169 S.W. 2d 713, Commission of Appeals, Section A (1943), no writ history, Galveston H. & S. A. Ry. Co. et al. v. Uvalde Co., 406 S.W. 2d 185 (1966), Tex. reh. den) hold harmless and identify any individual, association, corporation or any other political entity (except the U.S. government by virtue of U.S. Constitution, Article VI, subdivision 2, the "Federal supremacy division").

It is further agreed and understood that Governmental Entities will be responsible for and liable for only the intentional and negligent acts/omissions of their officials, employees, agents, servants, or assigns only and shall hold harmless and indemnify FNB and HMS for any of such acts/omissions of Municipality's officials, employees, agents, servants or assigns.

II

With respect to article 26, Governing Law, it is agreed and understood that the venue for any lawsuits shall be in the Governmental Entities own state and county and not California.

III

Nothing herein shall be construed as creating any personal liability on the part of any official, employer, agent, servant or assign of Governmental Entities.

The Agreement and this Addendum contains the entire Agreement between the parties relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning the Agreement shall be of no force or effect excepting a subsequent modification in writing signed by all parties hereto.