

**PAYETTE CITY COUNCIL  
Resolution 2010-04**

**A RESOLUTION PURSUANT TO TITLE 13 OF  
THE PAYETTE MUNICIPAL CODE  
SETTING WATER & SEWER FEES**

WHEREAS, the City of Payette, Idaho ("City") is a municipal corporation operating under the laws of the State of Idaho and is authorized to fix rates and charges and take such other actions incidental to the construction, management and operation of a municipal water system and a municipal sewer system pursuant to Title 50, Chapter 10, Idaho Code; and

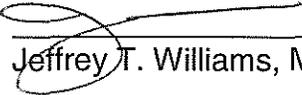
WHEREAS, pursuant to the authority granted in the Payette Municipal Code, Title 13, the following fees are hereby adopted as convenience fees for the payment of utility accounts

Fee for the payment of utility accounts with a credit or debit card:	4% of the transaction
Electronic Check Processing:	\$4.00 per check

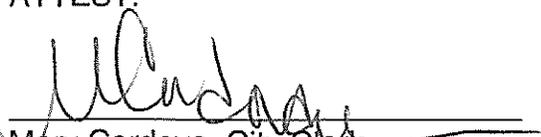
NOW, THEREFORE, BE IT RESOLVED, upon motion duly made and seconded, this resolution shall be in full force and effect commencing April 6, 2010.

APPROVED and SIGNED this 5<sup>th</sup> day of April, 2010.

City of Payette, Idaho

  
\_\_\_\_\_  
Jeffrey T. Williams, Mayor

ATTEST:

  
\_\_\_\_\_  
Mary Cordova, City Clerk



# CITY OF PAYETTE, IDAHO

## AGENDA STATEMENT

**To:** Honorable Mayor & Members of the Payette City Council  
**From:** Jennifer Kelley, Deputy Treasurer/HR *JJK*  
**Date:** 4/2/2010  
**Re:** Credit/Debit Card and Electronic Check Fees

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**BACKGROUND & JUSTIFICATION:** The many requests for acceptance of credit and debit cards and the desire to accommodate our customers, has been an on-going issue for staff. In the past, traditional credit/debit card fees far outweighed any benefit to our customers or the City. The fees are costly, unpredictable and not a fiscally responsible option for municipalities. A program, Revenue Neutral, recently available to government entities only, allows those fees to be absorbed by the individual user rather than by all users. The user pays a small percentage of the transaction and that is passed on to the processor. The City does not retain, nor pay any of the processor fees. Program implementation includes on-line bill pay, payment by phone, electronic statements and over the counter transactions. The Administration and Finance Committee sent a favorable recommendation to the Council and this body also reviewed the proposal during a work session.

**FISCAL IMPACT:** Set-up costs total \$1,800 with monthly maintenance fees of \$80 payable from water and sewer funds. All processing fees will be passed onto the customer equal to a percentage of the transaction. The City does not retain any of those fees, but having the money "instantly" will reduce staff processing time and the issues of dealing with non-sufficient fund items.

**RECOMMENDATION:** After careful consideration and listening to our citizens and customers, City Staff strongly recommends program acceptance and implementation.



**TRANSACTION PROCESSING AGREEMENT**

This Transaction Processing Agreement (“Agreement”) is effective as of \_\_\_\_\_(the “Effective Date”) by and between No Late Payments, LLC (“Company”) and \_\_\_\_\_ City of Payette \_\_\_\_\_(the “Government entity”).

**RECITALS:**

- A. Company is in the business of, among other things, providing for the processing of electronic payment transactions including transactions for governmental entities. Government Entity is in the State of Idaho.
- B. Government Entity has the statutory authority to accept credit card or electronic payment transactions for taxes, court fines, utility payments, building permit fees, or similar payments imposed by department or bureau (“Agency”) of the Government Entity. Government Entity desires to provide for the acceptance of payment by credit card or other electronic transactions.

IN CONSIDERATION OF THE ABOVE, the parties agree as follows:

1.0 Program.

1.1 Services. Company will provide payment processing services (the “Service”) relating to (see “Recitals: Section B”) through credit card or other electronic payment transactions (each a “Transaction”). The Services are more particularly described in the Agreement and on Schedule 1, as the same may be amended from time to time.

1.2 Hardware and Software. Company shall provide the Government Entity with the number and type of hand held devices or other hardware as described on Schedule 1 (the “Hardware”) and certain proprietary software identified by Company (the “Software”) for the operation of the Hardware for the initiation and processing of Transactions under this Agreement and that are required for this program. Government Entity shall provide all other hardware, software or services necessary for the Program including, without limitation, internet access or wireless access for the Hardware. Upon termination of this Agreement, Company has the right to turn off the use of the proprietary software and at the Company’s sole discretion has the right to charge the Government Entity for the cost of repair or maintenance of the proprietary Software if such repair is caused by the improper use of the Hardware or Software by an Agency or Government Entity.

1.3 Convenience Fee. Government Entity shall require “Agency” to collect a Convenience Fee (the “Convenience Fee”) for each Transaction in an amount established by Company and agreed to by Government Entity. The Convenience Fee can be changed with Company and Government Entity agreement from time to time.





The initial Convenience Fee is as shown on Schedule 1. Company will cause the Software to automatically process and to require approval of the Consumer Convenience Fee at the time the Transaction is approved and, in the absence of approval of the Consumer Convenience Fee, to terminate the Transaction.

1.4 Collection Account. Company shall establish and maintain a deposit account with an insured depository organization (the "Collection Account"). All Transaction proceeds, Consumer Convenience Fees and Agency Bank fees shall be deposited in to the Collection Account. The Collection Account may, in Company's discretion, be interest or non-interest bearing. Company shall transfer from the Collection Account to a deposit account designated by Government Entity (the "Government Entity Account") an amount equal to the collected funds in the Collection Account attributable to Transactions less the Consumer Convenience Fee within one business day after receiving the funds in the Collection Account. All amounts in the Collection Account not due Government Entity shall remain the sole property of Company.

1.5 Training. Company will train employees selected by Government Entity. Training to include the installation and operation of all related Hardware and Software required to complete agreed upon Transactions. Training shall occur at the designated locations authorized by Government Entity.

1.6 Credit Card, Clearinghouse and Similar Rules. Government Entity and Company shall cooperate in complying with all rules and regulations of credit card associations, NACHA, automated clearinghouse, Check21 associations and similar organizations applicable to credit card transactions, electronic transaction processing or similar transaction processing or otherwise governing the acceptance or processing of Transactions.

1.7 Chargeback. Government Entity is solely responsible for any Transaction that is charged back by a Customer or otherwise rejected under credit card rules and regulations or other electronic processing rules and regulations (the "Chargebacks"). Company may, in its discretion, setoff the Chargeback against amounts due Government Entity from the Collection Account, including, without limitation any reserve balance maintained in the Account. Company will promptly provide Government Entity written notice of the Chargeback and setoff, if any, against the Collection Account. The Government Entity's liability for Chargebacks shall survive the termination of this Agreement. Upon termination of this Agreement, Company may reserve a collected balance in the Collection Account for a period of 60 calendar days following the date of termination and setoff Chargebacks against such reserve amount. Maintenance of the reserve balance shall not limit or otherwise impair Government Entity's obligation for Chargebacks.



1.8 Chargeback Procedures.

1.8.1 Upon notice of chargeback from Company, Government Entity must present supporting documents including but not limited to signed sales receipts, copies of ticket, fines, invoices or any other supporting documentation that substantiates and defines Cardholders indebtedness to Government Entity and their agreement to paying using their Credit/Debit Card.

1.8.2 Government Entity must present to Company via either fax or email all requested documents by Company within 2 business days from Company's request. Failure to produce requested documents within the time period will result in an assumption of chargeback liability by Government Entity.

1.8.3 Communication to Company must be addressed to Company via either email at [manager@nolatepayments.com](mailto:manager@nolatepayments.com) or fax (208) 498-1667.

1.8.4 Government Entity must provide to Company corresponding email, fax number and responsible party for all chargeback communications.

1.8.5 Communication to all persons referred to in Sections 1.8.3 and 1.8.4 may be amended from time to time as deemed necessary by either party.

Term and Termination.

1.9 Term. The term of this Agreement commences on the Effective Date and terminates on the 1st anniversary of the Effective Date (the "Initial Term"). The Initial Term shall renew for an additional renewal term of one year, commencing on the anniversary of the Effective Date occurring in calendar year (each a "Renewal Date") and terminating on the anniversary of the Effective Date (each a "Renewal Term"). The Initial Term and the Renewal Terms, if any, are referred to collectively as the "Term". Either party may terminate this Agreement to be effective on the expiration of the Initial Term or on any Renewal Date by providing written notice to the other party on or before the sixtieth (60<sup>th</sup>) calendar day preceding the next Renewal Date.

1.10 Early Termination by Government Entity. Government Entity may terminate this Agreement upon (a) 30 calendar days written notice to Company following Company's failure to perform any material term of this Agreement when and as required to be performed by Company or the failure of a Company representation and warranty to be materially true and correct, unless Company shall have cured such failure to the reasonable satisfaction of Government Entity on or before the expiration of the notice period or (b) upon the imposition of a receivership, conservatorship or involuntary liquidation of Company or the institution of any proceedings in insolvency or bankruptcy, whether voluntary or involuntary.

1.11 Company Early Termination.

1.11.1 Company may terminate this Agreement upon written notice to Government Entity (a) upon 30 calendar days written notice to Government



Entity following Government Entity's failure to perform any material term of this Agreement when and as required to be performed by Government Entity, or the failure of a Company representation and warranty to be materially true and correct, unless Government Entity shall have cured such failure to the reasonable satisfaction of Company on or before the expiration of the notice period or (b) the acceptance by Government Entity of services of similar kind and nature to the Services from any person other than Company (except for those services of similar kind or nature that are being received by Government Entity prior to the date of this Agreement) or (c) upon the imposition of a receivership, conservatorship or involuntary liquidation of Government Entity or the institution of any proceedings in insolvency or bankruptcy, whether voluntary or involuntary.

1.12 Early Termination. Notwithstanding any other provision of this Agreement, either Government Entity or Company may terminate this Agreement upon written notice to the other party and without further obligation to the other party upon the reasonable determination that the further performance of this Agreement by either Company or Government Entity violates, conflicts with or is prohibited by (a) any credit card or electronic processing regulations or rules, member agreements or rules or similar agreements, regulations or rules applicable to the acceptance or processing of the Transactions or (b) any law or regulation applicable to Company or Government Entity or the processing of the Transactions.

## 2.0 Representations and Warranties.

2.1 Representations and Warranties of Government Entity. Government Entity represents and warrants to Company that this Agreement and the Program are authorized by, and do not conflict with, any statute, regulation or other law governing the activities of Government Entity or "Agency" including, without limitation, any law relating to the collection of court fines or similar payments generally, or the deposit or control of Government Entity funds, or the letting of public contracts by competitive bidding or other process. Government Entity further represents and warrants to Company that this Agreement, when executed in the manner provided below, is the valid and binding obligation of the Government Entity enforceable in accordance with its terms.

2.2 Representations and Warranties of Company. Company represents and warrants to Government Entity that (a) to the best knowledge of Company after due inquiry with the Compliance Department of the processor, Elavon, this Agreement and the Program are authorized by, and do not conflict with, the Rules and Regulations of Visa or MasterCard, or other law governing the proposed financial transactions (excluding, however, any statutes, regulations or other laws governing Government Entity or any Agency) and (b) this Agreement, when executed in the manner provided below, is the duly authorized agreement of Company, and is the valid and binding obligation of Company enforceable in accordance with its terms. This obligation shall continue with any change in the processor or platform, as referenced in Schedule 1.



3.0 Exclusivity.

3.1 Exclusivity. Government Entity agrees to accord Company the exclusive right to provide services substantially similar to the Services contemplated by this Agreement. Provided, however, to the extent Government Entity is receiving services that are substantially similar prior to the date of this Agreement, it may continue to receive those services without being in violation of this provision.

4.0 Liability and Limitations

4.1 Limitation on Warranties. THE WARRANTIES EXPRESSED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO FURTHER OR ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY DISCLAIMED. ALL WARRANTIES EXPRESSED HEREIN ARE SOLELY TO GOVERNMENT ENTITY AND ARE NOT INTENDED FOR, AND SHALL NOT BE RELIED UPON BY, ANY OTHER PERSON OR ENTITY.

4.2 Limitation on Damages. **Neither party shall be liable to the other for indirect, incidental, special, punitive or consequential damages arising out of this Agreement or the failure in performance of either party.**

4.3 Force Majeure. A party shall be excused for performance of, and excused for liability for the failure in performance of, any term or obligation of this Agreement if, and to the extent, such failure in performance is substantially caused by an intervening or supervening event or condition beyond the reasonable control of such party, including acts of God, disruption of third party services, governmental demands or orders, failures of equipment not caused by the negligence of such party and similar acts, events or conditions customarily known and referred to as "force majeure". A party's failure in performance shall be excused under this Agreement for so long as such party reasonably and diligently pursues cure of such failure or the relief of the force majeure and the resumption of performance under this Agreement.

5.0 Privacy and Confidentiality.

5.1 Covered Information. Company acknowledge that it may receive, view or otherwise have access to proprietary or confidential information of Government Entity or Agency or of a payor, including, nonpublic personal information, in connection with delivery of the Services (collectively, including the Information and the Items defined above, the "Covered Information"). Company shall not copy, disclose or use, for any purpose, any of the Covered Information without the prior written consent of Government Entity, which Government Entity may grant or withhold in its sole discretion, except (a) as reasonably necessary for the provision of the Services in accordance with industry standards and (b) in accordance with governing law. Company shall take all reasonable actions necessary for the preservation of the





confidentiality and privacy of the Covered Information. Company will promptly notify Government Entity of the disclosure or use of the Covered Information by Company in contravention of this Agreement, whether such use or disclosure is intentional or inadvertent.

5.2 Compliance with Law. Company acknowledges that the Covered Information, and Company's possession of the Covered Information, are subject to obligations of confidentiality and privacy under governing law and regulation including, without limitation, obligations imposed under federal financial privacy laws and regulations. Company agrees to fully cooperate with Government Entity in the preservation of the confidentiality and privacy of the Covered Information and in Government Entity's compliance with the confidentiality and privacy obligations under governing law and regulations.

6.0 Indemnification. Government Entity and Company each agree to defend, indemnify and hold the other harmless from any and all claims, loss, cost and expense, including court costs and attorneys fees, arising out of or related to the failure of any representation or warranty of the indemnifying party to be materially true and correct on and after the Effective Time to and including the date of termination of this Agreement. The party receiving the defense and indemnification may, but is not obligated to do so, retain separate counsel at its sole cost and expense, and may participate in defense of such claim. The parties shall cooperate in the defense of any such claim, including providing to the other party on request any information and documentation in their possession which is reasonably necessary to defend such claim and providing reasonable access to all books, records and personnel in their possession or under their control which would have a bearing on the defense of such claim. The party providing the defense and indemnification shall have the right to compromise or settle such claim on behalf of the indemnified party, but will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the written consent of the indemnified party, which consent shall not be unreasonably withheld. Notwithstanding any other provision herein, a party shall only be liable for the pro rata share of the total damages awarded in favor of a claimant that is attributable to the wrongful acts or omissions of that party or its employees.

7.0 Miscellaneous Provisions.

7.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

7.2 Amendment and Waiver. The parties agree to execute such further documents and instruments and take such further actions as may be reasonably necessary or convenient to effectuate the intention of this Agreement. This Agreement may not be amended except by an instrument in writing signed by the parties. Either party hereto may (a) extend the time for the performance of any of the obligations or other acts of any other parties or (b) waive compliance with any provision of this Agreement or with any conditions to its own obligations. Such waiver shall be effective only if made in writing, shall be limited only to the specific provision or





condition so waived and shall not be interpreted to provide for or require the waiver of the same or any other provision or condition at any time.

7.3 Entire Agreement. This Agreement represents the entire agreement of the parties hereto and supersedes any prior agreements or negotiations of the parties, whether oral or written.

7.4 Further Assurances. The parties agree to execute such further documents and instruments and take such further actions as may be reasonably necessary or convenient to effectuate the intention of this Agreement.

7.5 Time. Time is of the essence of this Agreement.

NO LATE PAYMENTS, LLC

By: \_\_\_\_\_  
Mark Flory

Its: Managing Member

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

I the above signed have at the date of the signing of this agreement the authority under Federal, State and local law/statute to enter into this agreement/contract.

City of Payette

(Government Entity)

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

Its: \_\_\_\_\_

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

I the above signed have at the date of the signing of this agreement the authority under Federal, State and local law/statute to enter into this agreement/contract.





For any questions regarding this contact, please contact us at:

No Late Payments  
16 12<sup>th</sup> Ave S, Suite 111  
Nampa, ID 83651  
208-498-1666 (voice)  
208-498-1667 (fax)  
[manager@nolatepayments.com](mailto:manager@nolatepayments.com)

Contracts, Compliance, Administrative: Wylie Griffith 208-871-2335  
[wgriffith@nxtran.com](mailto:wgriffith@nxtran.com)

Project Management, Reporting, Implementation: Mark Flory 208-867-0377  
[mflory@nxtran.com](mailto:mflory@nxtran.com)

System Administration, Security, PCI DSS: Dan Harrington 208-869-2235  
[dharrington@nxtran.com](mailto:dharrington@nxtran.com)





**SCHEDULE 1**

Services: Credit Card & Electronic Check Processing Services

Convenience Fee:

Consumer Convenience fee paid by Credit Card: 4%

Consumer Convenience fee paid by Electronic Check: \$4.00

Hardware, Software and Internet Applications:

\*No hardware, software or Internet applications are provided. \*

\*All will be provided by third party vendor.\*

NO LATE PAYMENTS, LLC

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

Mark Flory

Its: Managing Member

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

I the above signed have at the date of the signing of this agreement the authority under Federal, State and local law/statute to enter into this agreement/contract.

City of Payette

(Government Entity)

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

Its: \_\_\_\_\_

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

I the above signed have at the date of the signing of this agreement the authority under Federal, State and local law/statute to enter into this agreement/contract.



