



## Treasury Management Services

### Terms and Conditions

Thank you for choosing U.S. Bank Treasury Management Services. This document provides product information, disclosures and descriptions of the Treasury Management Services ("Services") available at U.S. Bank. Other documents may become part of our Agreement depending on the Services you select. Please read all documents carefully; they will govern the Services provided to you.

U.S. Bank National Association  
Member FDIC



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## **I. INTRODUCTION**

### **1. Definitions**

- a. "Agent" means any director, officer, employee, representative, affiliate, third-party vendor or any other person acting on behalf of the Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.
- b. "Bank" means U.S. Bank National Association and each subsidiary or affiliate of U.S. Bank that provides Services to Customer.
- c. "Business Day" means any day on which a majority of Bank's offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if Bank's offices are in fact open.
- c.1. "County" means the Customer. The term County is used at various times in this Agreement.
- d. "Customer" means the business entity and any parent company, subsidiary or affiliate for whom Bank provides a Service.
- e. "ELAVON" means ELAVON Information Systems, Inc. and any subsidiary or affiliate of ELAVON that provides merchant processing services to Customer.

### **2. Other Agreements, Laws and Regulations**

In addition to these terms and conditions (collectively referred to herein as the "Agreement"), the Services are provided to the Customer subject to the following other agreements, laws, and regulations, which are hereby incorporated into and made part of this Agreement:

- a. Bank's written response to Customer's Request for Proposal (the "Response to RFP" included as **Exhibit B** to this Agreement). In the case of a conflict between this Agreement and the Response to RFP, the Response to RFP supersedes the other terms of this Agreement, and controls. In the case of a conflict between the Terms of Use described in Section III.2 hereof, and the Response to RFP, the Response to RFP supersedes the Terms of Use, and controls;
- b.
- c. the **ELAVON Terms of Service and Merchant Operating Guide**;
- d. the **set-up materials, user guides, and any supplement thereto required by Bank to implement a specific Service (referred to in the Agreement as the "Implementation Documents")**;

e. the most current Treasury Management Services fees provided to Customer as stipulated within **Exhibit A**, Pricing Proposal, and **Exhibit B**, Response to RFP hereto. In the case of a conflict between the most current Treasury Management Services fee and **Exhibit A** and **Exhibit B**, **Exhibit A** and **Exhibit B** supersede, and control;

f. the provisions of the Deposit Account Agreement and accompanying disclosures and fee schedules, all of which are attached hereto and collectively referred to as **Exhibit C**, which govern standard deposit accounts and other depository services, as modified by **Exhibit A** and **Exhibit B** hereto. In the case of conflict between the Deposit Account Agreement and accompanying disclosures and fee schedules, **Exhibit C**, and **Exhibit A** and **Exhibit B**, **Exhibit A** and **Exhibit B** supersede and control. In the case of conflict between the Deposit Account Agreement and accompanying disclosures and fee schedules, **Exhibit C**, and these Treasury Management Services Terms and Conditions, these Treasury Management Services Terms and Conditions exclusive of **Exhibit C** control;

g. the Uniform Commercial Code, enacted in the State of Colorado as Title 4 of the Colorado Revised Statutes, as amended;

h. any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (the "NACHA Rules"), the National Checking Clearinghouse Association Rules (the "NCHA Rules"), and the rules promulgated by the Electronic Check Clearing House Organization (the "ECCHO Rules"); and

i. federal, state, and local laws and regulations applicable to Bank or Customer, including, without limitation, Regulation CC promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Section 229.1, *et seq.* ("Regulation CC"), all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations promulgated by the Office of Foreign Assets Control ("OFAC").

### **3. Change of Terms/Amendments to Agreement**

Bank may change the terms of this Agreement, except for changes to **Exhibit A** or **Exhibit B**, at any time upon reasonable written or electronic notice to Customer or by any other method permitted by law. Any and all amendments to this Agreement must be in writing and executed by Bank and Customer. Bank may not make any unilateral change to **Exhibit A** or **Exhibit B** during the life of the Agreement, and Bank may not make any change to the Agreement that varies or conflicts with **Exhibit A** or **Exhibit B**.

### **4. No Third Party Beneficiaries/Third Party Claims**

Services provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement. Customer will not hold Bank liable for the potential losses to Customer

that are detailed below under Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10. To the extent not prohibited by law - including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-110; and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10. Nothing in this Agreement shall be deemed a waiver of Customer's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or federal common law. This provision does not suggest that Customer shall be liable to any third party for losses related to Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10., and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

### **5. Disclaimer of Warranties**

**NOTICE: BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY, EITHER TO CUSTOMER OR TO ANY OTHER PARTY, WITH RESPECT TO THE SERVICES PROVIDED BY BANK OR ITS AGENTS OR WITH RESPECT TO SOFTWARE PRODUCTS PROVIDED OR MADE AVAILABLE TO THE CUSTOMER FOR ITS USE BY BANK IN CONNECTION WITH THIS AGREEMENT AND ANY SERVICE.**

## **II. TERMS APPLICABLE TO ALL TREASURY MANAGEMENT SERVICES**

### **1. Services**

Bank may provide Services that are not specifically included in the Services section of this Agreement. By accepting and using any Service, Customer agrees that the Service will be governed by this Agreement and any other conditions communicated to Customer by Bank. Certain Services included in this Agreement may not be available or may not be provided in certain market areas. Nothing in the section shall abrogate **Exhibit A** or **Exhibit B**. Any and all services that Customer receives from Bank shall be governed by **Exhibit A** and **Exhibit B**, notwithstanding any provision to the contrary in this Agreement. Customer shall not be bound by the terms and conditions of the specific services sections to the extent Customer is not using such service(s).

### **2. Proprietary Information**

Customer acknowledges that this Agreement, all related documentation and computer programs and systems used in providing Services, and all information related thereto constitute proprietary property of Bank that is of great commercial value. Customer agrees that it shall not acquire any proprietary interest or rights therein as a result of its use of the Services and shall keep all such proprietary information strictly confidential.

### **3. Representations and Warranties**

Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it

is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid, and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or performed by it has been obtained.

#### **4. Financial Review**

Bank's willingness to provide Services to Customer is dependent on the Customer's financial condition. Customer's financial condition is subject to review by Bank from time to time, and such reviews must be satisfactory to Bank in its sole discretion and opinion. Customer shall, upon request, provide to Bank any such information as Bank may require to perform any such review. Customer's failure to meet such standards or provide such information or assistance when requested shall constitute a breach of this Agreement and shall permit Bank to cease providing Services upon written notice to Customer.

#### **5. Fees**

Unless otherwise agreed by Bank in writing, Customer shall pay Bank the fees, charges and assessments set forth for the Services provided in accordance with **Exhibit A** of this Treasury Management Terms and Conditions. The designated prices reflected in **Exhibit A** for each service shall be fixed for six (6) years, and are deemed accepted by Customer upon provision of the service to Customer. If Customer contracts for additional services from Bank that are not listed in **Exhibit A** and the prices of the additional services exceed the maximum contract liability stated in Section II, 5-A, Customer and Bank will negotiate an Addendum to this Agreement. Customer shall receive from the Bank a non-cash, Earnings Credit Bonus of TEN THOUSAND DOLLARS (\$10,000). The Earnings Credit Bonus may be applied to the County's current banking fees in increments of THREE-THOUSAND THREE HUNDRED THIRTY-THREE (\$3,333) per year for three (3) years or be used to offset any additional fees incurred by the County for implementing new banking services. Fees for services used by Customer shall be directly invoiced to the Customer, and may not be debited against any of the Customer's accounts at the Bank. The applicable earnings credit rate shall be a minimum of forty (40) basis points or the current Average Federal Funds Rate for the life of this Agreement, as stated in **Exhibit B** Response to RFP, page 54. Customer's earned credit could exceed total charges in a given month; however, the County may choose to be invoiced on a quarterly basis, allowing quarterly average collected balances to be used for the calculation of Earnings Credits, as documented in **Exhibit B**, page 54. Carryforward of Earnings Credits is limited to one (1) fiscal quarter year and Federal law prohibits Bank from paying excess earnings credit to Customer. If Customer's earnings credit is insufficient to offset the amount due hereunder, Customer agrees to pay such amount to Bank upon demand. Customer authorizes Bank to invoice Customer for any and all fees, expenses or other charges owed by Customer to Bank under this Agreement. If either Customer or Bank exercises its right to terminate this Agreement prior to the termination date stated in Paragraph II.5-B, on a prorata

basis, Customer will forgoe any remaining balance of the Earnings Credit Bonus. Thus, if this Agreement is terminated half way through the three (3) year term, County will not be eligible for half of the \$10,000 Earnings Credit Bonus.

#### **5-A. Maximum Contract Liability**

This Agreement is a three (3) year contract. The parties shall have the option of extending this Agreement under the same terms, conditions, and pricing for three (3) additional one (1) year terms. Any other provisions of this Agreement notwithstanding, for the services listed in **Exhibit A**, in no event shall the County be liable for payment under this Agreement for any amount in excess of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) over the three (3) year term of this Agreement. This figure takes into account the \$10,000.00 Earnings Credit Bonus, and contains a fifteen percent (15%) cushion for an increased level of usage during the term of this Agreement. The County is not under obligation to make any future apportionment or allocation to this Agreement. If the parties extend this Agreement for either one, two, or three additional 1-year terms, the County's maximum additional liability shall be EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000.00) for each additional one-year term. If the level of usage increases more than fifteen percent (15%), an increased level of usage would require additional fees. If the additional fees exceed the maximum contract liability stated above, Customer and Bank will negotiate an Addendum to this Agreement. Any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

#### **5-B. Term**

It is mutually agreed by the parties that the term of this Agreement shall commence as of 12:01 a.m. on March 9, 2014 and terminate at 12:00 a.m. on March 9, 2017. The parties shall have the option of extending this Agreement under the same terms, conditions, and pricing for three additional one (1) year terms.

#### **5-C. Insurance**

The Bank shall be required to maintain the insurance requirements provided in **Exhibit D**, attached hereto and incorporated herein by reference. The Bank shall provide evidence that such requirements have been met and shall provide updated information to the County in the event any changes are made to the Bank's insurance coverage during the term of this Agreement

#### **6. Deposit Accounts**

Most treasury management services require that Customer maintain one or more deposit accounts with Bank. All checks, wire transfers, ACH payments and other items deposited into such accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against the account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer's accounts. Bank will first attempt to recover such amounts from the account associated with the debt. If the available balance of such account is insufficient to compensate Bank, Customer authorizes Bank to charge any account Customer



maintains with Bank for any amount remaining due under this Section. Funds maintained in Customer's deposit accounts shall be collateralized in accordance with C.R.S. §§ 11-105-106 through 110.

### **7. Security Interest**

Nothing in this Agreement, as amended, shall be construed as a waiver of Bank's common law rights, unless expressly so stated.

### **8. Information Sharing**

Customer agrees that Bank may share information: (a) with Bank's affiliates (i.e. entities related to Bank by common control or ownership) that offer financial products and other services, including those identified in this Agreement and with our administrative or service units that perform these functions; (b) with non-affiliated entities that provide support services to Bank or that assist Bank in providing financial products and services to Customer; and (c) to credit rating agencies or other entities as permitted by law.

### **9. Authorized Signers and Users**

Customer shall appoint certain Authorized Signer(s) in the U.S. Bank Treasury Management Service Agreement or in such other format as may be agreed by Bank. Customer agrees that Authorized Signers shall be authorized to act on behalf of Customer in all actions taken under this Agreement and may enter into all transactions contemplated in this Agreement, including, without limitation, selecting Services for the benefit of Customer, appointing Agents to act on behalf of Customer in the delivery of Services, signing additional documentation that may be necessary to implement Services and giving Customer's instructions with regard to any Service, including, without limitation, wire transfers, ACH transfers and other electronic or paper transfers from or to any account Customer maintains with Bank. The Authorized Signer(s) designated in the U.S. Bank Treasury Management Service Agreement shall appoint Agents to use the Services provided for the benefit of Customer ("Authorized Users"). Authorized Users may act on behalf of Customer for a particular Service in accordance with the relevant Implementation Documents or other document(s) establishing the Authorized Users' responsibilities. Customer may revoke the authority of or change the Authorized Signers or Authorized Users at any time upon prior written notice and execution of additional documentation required by Bank. Such change or revocation shall not be binding upon Bank until it has received the required written notice and has had a reasonable opportunity to act thereon. In any event, Bank may act on instructions that it believes in good faith were provided by an Authorized Signer or Authorized User, or anyone who Bank believes in good faith to be an Authorized Signer or Authorized User.

### **10. Check Samples, Forms Approval and Service Implementation**

Bank reserves the right to approve the form of Customer's checks, drafts, deposit slips, and similar documentation. Prior to initiating a new account or Service, or at any other necessary time, Customer agrees to provide all information and conduct any test that Bank may reasonably request, including, without limitation, Implementation Documents,

signature cards, test tapes, transmissions, corporate resolutions and other documents. Bank may also request samples of Customer's checks, drafts, deposit slips and similar items to ensure, in Bank's sole discretion, whether such items meet Bank's quality control and processing standards. In the event that Bank determines that any item or test does not meet its specifications, Bank will so advise Customer. Customer acknowledges that Services will not commence or continue until such time as an approved item or test is provided to Bank and determined by Bank to be satisfactory. Customer shall be responsible for initial product installation, and Bank will provide telephone or on-site installation support.

## **11. Security Procedures**

**a. Introduction.** Bank and Customer shall agree to one or more security procedures that must be used by Bank and Customer in connection with certain Service(s). Customer agrees that such security procedures are commercially reasonable. Customer agrees to be bound by any payment order, transaction, or service change order that is acted upon by Bank in accordance with such security procedure. Customer understands that the security procedures are not for the purpose of detecting errors in the transmission or content of information controlled by Customer. If Customer selects certain security procedures to use in connection with a Service and those security procedures provide less protection against unauthorized transactions or activity than other security procedures offered by Bank in connection with such Service, the security procedures selected by Customer shall be deemed commercially reasonable to the same extent as the security procedures offered by Bank that provide greater protection. Bank reserves the right to issue new security procedures and/or to cancel or change any security procedures from time to time. Bank reserves the right to change any or all of the security procedures or codes by giving verbal or written notice to the Customer.

**b. Access.** Customer shall be solely responsible for designating individuals authorized to access Services. Access to Services will be controlled through the use of Customer IDs, user IDs, passwords, private keys, or other security devices. Customer is solely responsible for maintaining its own internal security and agrees to use the utmost care in selecting any company or individual given access to use one or more of the Services. Customer shall not disclose any information regarding the Services that an unauthorized user would find helpful to obtain access to all or part of any Service.

**c. Confidentiality.** Customer and Bank represent, warrant, and mutually agree that all confidential information concerning the other party or parties that comes into its possession in connection with any of the Services, including, without limitation, security procedures or any security codes, keys, personal identification numbers, digital certificates/signatures, or template numbers ("Codes"), will be maintained in strictest confidence and shall not be used or divulged to any other party except as may be necessary or advisable for the due performance of any of the Services or as required by applicable law. Bank shall maintain physical, electronic, and procedural safeguards to keep Customer's confidential information secure. Customer is solely responsible for the procedures to assure the internal confidentiality of its own security

procedures, security devices and codes and assumes all risk of accidental disclosure or inadvertent use of any security device by any party whatsoever, whether such disclosure or use is on account of Customer's negligent or deliberate acts or otherwise. If Customer or its Agents have reason to believe that any security procedures or Codes have or may become known by unauthorized persons (whether or not employed by Customer), Customer shall immediately notify Bank by telephone and confirm such verbal notification in writing to Bank within 24 hours. Bank will replace the security procedures and Codes in accordance with Bank's security procedures. Customer shall be solely responsible for funds transfer instructions and other communications initiated before Bank received Customer's notice and had a reasonable time to act on such notice. Bank reserves the right to change any or all of the security procedures or codes by giving verbal or written notice to the Customer. Customer's obligation to maintain the confidentiality of all security procedures shall survive the termination of any Service or this Agreement.

**d. Verbal and/or Written Instructions.** For some Services, Bank may choose to honor Customer's request to give Bank verbal or written instructions regarding the Services. Customer agrees that Bank may in good faith rely on such verbal or written instructions that purport to come from an authorized Agent of the Customer without independent verification by Bank.

## **12. Unsecured Electronic Transmissions and Instructions**

Bank shall transmit to Customer information related to Services via secure electronic transmissions. If Customer elects to send or receive instructions or reports from Bank via unsecured electronic means, including, without limitation, facsimile transmission, voice mail, unsecured e-mail, pager or other unsecured electronic or telephonic methods ("Electronic Transmission"), Customer acknowledges that such Electronic Transmissions are an inherently insecure communication method due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or e-mail address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by the Customer. Should Customer elect to send or receive unsecured Electronic Transmissions to or from Bank, Customer assumes all risks, and Bank shall not be liable for any loss, that results from the nonreceipt, disclosure, alteration, or unauthorized access of any such unsecured Electronic Transmission.

## **13. Telephone Recording**

Customer acknowledges, agrees, and consents on behalf of itself, and its Agents, that Bank may monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Bank's discretion, and Bank shall have no liability for failing to do so.

## **14. Computer Equipment and Software**

Many Services require the use of computer hardware and software or other equipment. Customer is solely responsible for maintaining its computer and equipment in good

working order, with the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support the Bank's security procedures. Customer agrees to install upgrades and other system enhancements within a reasonable time of being requested to do so by Bank. License Agreements for necessary software shall either be embedded in the software or separately documented. Customer agrees to comply with all applicable software license agreements, whether or not such agreements have been executed by Customer. Customer has no rights or ownership in any software provided by or through Bank and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software. Customer shall return all software and, if it receives any user manuals, user manuals associated with any software upon request. Bank makes no representations or warranties with respect to any equipment or software provided by Bank.

#### **15. Transactions on Non-Business Days/Cutoff Times**

Transactions, deposits, payment orders, entries, or other requests by Customer received by Bank on a non-Business Day or after established cutoff deadlines may be treated by Bank as received on the next business day. Bank may change any cutoff time or other deadline at any time. Bank will notify Customer of any changes at least three (3) business days in advance.

#### **16. Customer-initiated Transactions and Instructions**

Bank will honor Customer's transactions and instructions (including adjustments, amendments and cancellations) only when Customer has complied with this Agreement and related policies and procedures specifically referred to in Section 1.2 hereof. Bank will be under no obligation to honor, either in whole or in part, any transaction or instruction that:

- a. exceeds Customer's collected or available funds on deposit with Bank;
- b. Bank has reason to believe may not be authorized by Customer;
- c. involves funds subject to a hold, dispute, or legal process preventing their withdrawal;
- d. violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority; or
- e. Bank has reasonable cause not to honor, for the protection of either Bank or Customer.

#### **17. Inconsistent Name and Account Number**

If Customer or third party acting at the Customer's instruction initiates a fund transfer instruction or payment order ("Payment Order") to Bank that describes the person to receive the proceeds of such Payment Order (the "Beneficiary"), the Beneficiary's bank, or an intermediary bank by name and an account or other identifying number, Bank and

subsequent parties to the Payment Order may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Customer's obligation to pay the amount of the Payment Order to Bank is not excused in such circumstances.

#### **18. Intercompany Services/Authority to Transfer or Commingle Funds**

In the event that Customer requests the Bank to provide Services to a parent company, subsidiary, affiliate, or other commonly owned Company, Customer agrees that it shall be jointly and severally liable for such Company's obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by the Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the account holder of each account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven (7) years after termination of the Service, adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with that account holder's bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw, or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing, unless nullified by Customer in written form and shall be deemed to be repeated upon Bank's effecting each transfer and commingling of funds authorized hereunder.

#### **19. Customer Records**

This Agreement and the performance of Services by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules (including the NACHA Rules, NCHA Rules, and ECCHO Rules), or by contract regarding the maintenance of records or from employing adequate audit, accounting, and review practices as are customarily followed by similar businesses. Customer shall retain and provide to Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file or entry for thirty (30) days following receipt by Bank of the deposit, file, entry, transmission, or other order affecting an account. The Bank shall maintain the ability to retrieve, within its regular business records, images of all check payment and deposited items, wire and ACH instructions and payments, statements, reports, confirmations, adjustments, charges correspondence, and other transactions and make available to the Customer upon reasonable demand in accordance with Bank's record retention policies and applicable law.

#### **20. Account Communications and Review Period**

Customer agrees to regularly and promptly review and verify all statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges,

and other transactions ("Account Communications"). Customer may elect to receive Account Communications electronically, including without limitation, delivery by posting to a password protected website. Customer acknowledges that Account Communications provided by Bank through electronic delivery is deemed to constitute good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses the Account Information. Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Customer ("Review Period"), notify Bank of any error or discrepancy between Customer's records and any Bank notice or statement, or any transaction or transfer Customer believes was not authorized. If Customer fails to notify Bank of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction. In accordance with NACHA rules, Customer must report an unauthorized ACH debit entry to the Customer's account by the established deadline on the business day following the settlement date of the unauthorized entry. Otherwise, Customer's sole recourse is to the originator of the transaction.

## **21. Limitation of Bank's Liability for Services**

Customer acknowledges that Bank's fees for Services are very small in relation to the amounts of transfers initiated through these Services and consequently Bank's willingness to provide such Services is based on the liability limitations contained in this Agreement. Bank's liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own negligence or willful misconduct. Bank will not, under any circumstances, be liable for any special, incidental, indirect, consequential, punitive or similar losses or damages, whether or not the likelihood of such losses or damages was known by either party at the time Customer first obtains Services from Bank or at the time any instruction or order is given to a Bank pursuant to any Service, and whether such losses or damages arise from tort, contract, or otherwise. Bank's maximum liability for any loss of interest shall be calculated using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. Notwithstanding the foregoing, Bank shall not be liable for any losses or damages caused, in whole or in part, by the action or inaction of Customer, or the commissioners, officials, officers, directors, agents, and employees of Customer, if such action or inaction constitutes negligence or a breach of this Agreement. Bank shall not be liable for any damage, cost, loss, liability, or delay caused by accident, strike, fire, flood, war, riot, terrorist act, equipment breakdown, electrical or mechanical failure, acts of nature, any cause which is attributable to a third party, or any other cause or event that was beyond Bank's reasonable control.

### **21-A. Limitation on Bank's Liability**

Customer will not hold Bank liable for the potential losses to Customer that are detailed below under Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10. To the extent not prohibited by law -- including

Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* - Bank will not be liable to third parties for losses related to Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10. Nothing in this Agreement shall be deemed a waiver of Customer's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or federal common law. This provision does not suggest that Customer shall be liable to any third party for losses related to Sections II.22.e, III.3, IV.D.8.c, IV.D.16, IV.E.12, IV.E.19, IV.F.8.b, IV.J.2, IV.K.2.b, IV.N.13, IV.O.5, IV.O.10, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

#### **21-B. Independent Contractor**

Bank is an independent contractor. Notwithstanding any provision of this Agreement, all personnel assigned by Bank to perform work under this Agreement shall be and remain at all times, employees of Bank for all purposes. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS THROUGH THE COUNTY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

#### **21-C. Illegal Aliens**

If the Bank has any employees or subcontractors, the Bank shall comply with C.R.S. §§ 8-17.5-101 and 8-17.5-102 regarding Illegal Aliens - Public Contracts for Services, and this Agreement. By execution of this Agreement, the Bank certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Bank will participate in either the federal E-Verify Program, jointly administered by the U.S. Department of Homeland Security and the U.S. Social Security Administration, (the "E-Verify Program") or the Colorado Department of Labor and Employment Employment Verification Program established pursuant to C.R.S. § 8-17.5-102(5)(c) (the "Department Program") in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Agreement.

- A. The Bank shall not:
  - (i) Knowingly employ or contract with an illegal alien to perform work under this Bank; or
  - (ii) Enter into a contract with a subcontractor that fails to certify to the Bank that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- B. The Bank has confirmed the employment eligibility of all employees who are newly hired for employment to perform Work under this Agreement through participation in either the E-Verify Program or Department Program.
- C. The Bank shall not use either the E-Verify Program or Department

Program to undertake pre-employment screening of job applicants while this Agreement is in effect.

- D. If the Bank obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Bank shall:
  - (i) Notify the subcontractor and the County within three days that the Bank has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - (ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the preceding sub-subparagraph of this subparagraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Bank shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- E. The Bank shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).
- F. If the Bank violates this provision of this Agreement, the County may terminate this Agreement for a breach of contract. If the Agreement is so terminated, the Bank shall be liable for actual and consequential damages to the County as required by law.
- G. The County will notify the Office of the Secretary of State if the Bank violates this provision of this Agreement and the County terminates the Agreement for such breach.

**21-D. No Waiver of Governmental Immunity Act**

The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through 119, or otherwise available to the County.

**21-E. Political Contributions Prohibited.** Pursuant to Section 15 of Article XXVIII of the Colorado Constitution, there is a presumption of impropriety between contributions to any campaign and sole source government contracts. Therefore, Bank agrees, for the duration of this Agreement and for two (2) years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on



behalf of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions. Further, pursuant to Section 16 of Article XXVIII of the Colorado Constitution, the Bank shall promptly prepare and deliver to the executive director of the Colorado Department of Personnel, a true and correct "Government Contract Summary" for this Agreement in a form acceptable to that office.

## **22. Dispute Resolution**

**a. Governing Law.** This Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of Colorado.

**b. Jury Trial Waiver.** To the fullest extent permitted by law, Bank and Customer hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with these Services or this Agreement. Bank and Customer represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.

**c. Jurisdiction and Venue.** Bank and Customer consent to the jurisdiction of the courts of the State of Colorado, waive any argument that such venue is inconvenient, and agree to bring litigation commenced in connection with this Agreement in either the District Court of Douglas County or the United States District Court, District of Colorado. Bank and Customer expressly waive the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

**d. Collection Costs.** There is no Section II.22.d., "Collection Costs."

**e. Adverse Claims.** If Bank receives a court order or writ of execution requiring it to place a hold on one of Customer's accounts or requiring Bank to pay monies out of one of Customer's accounts to a third party, or receives a garnishment or levy that requires Bank to place a hold on one of Customer's accounts or to pay monies out of one of Customer's accounts to a third party, and Bank reasonably believes that it will not be protected if the court order, writ of execution, garnishment, or levy is ignored, Customer agrees that Bank may place a hold on the account up to the amount of the claim stated in the court order, writ of execution, garnishment, or levy. Bank may not place a hold on an account in excess of the amount stated in the court order, writ of execution, garnishment, or levy. Any such hold will remain in place only so long as reasonably necessary to resolve the claim stated in the court order, writ of execution, garnishment, or levy, or employ legal remedies to allow a court to decide such claim. Customer shall have the right to intervene in the legal action that relates to the court order, writ of execution, garnishment, or levy. Assuming compliance with this Section, Bank shall have no liability for dishonored transactions due to the hold.

## **23. Necessary Third Party Service Providers**

**a. Third Party Networks.** Some Services are provided by Bank through access to a third party network such as SWIFT, ACH, and the Federal Reserve. Such Services are dependent upon the availability of the third party network on conditions acceptable

to Bank. Bank reserves the right to discontinue the Service or provide the Service through an alternative third party network

**b. Third Party Vendors.** Some Services and/or computer equipment and software are provided to Customer by a third party vendor selected by Customer who is unaffiliated with Bank. In those cases, the third party vendor is acting as Customer's Agent rather than an agent of Bank, and Customer agrees to be bound with such third party's acts and omissions. Bank does not warrant and shall not be responsible for Services provided by unaffiliated third party vendors. Customer authorizes Bank to disclose to any third party vendor information concerning Customer to the extent required to deliver the requested Service.

#### **24. Notices**

All written notices to Bank shall be delivered or mailed to the address designated by Bank. Notices sent to Customer shall be delivered or mailed to Customer's current lead account address or other known address if deemed more appropriate by Bank under the circumstances. Notices may be delivered to some Customers in electronic format, including posting to Bank's website, if requested or appropriate.

#### **25. Severability**

To the extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of any such provision or the remaining provisions of this Agreement.

#### **26. Waiver**

A waiver by Bank or Customer of any term or provision shall not be construed as a waiver of such term or provision at any other time, or of any other term or provision.

#### **27. Assignment**

In addition to Section II.23. above, Bank may at any time assign or delegate its rights and duties under this Agreement upon the notice and written consent of Customer, which shall not be unreasonably withheld. Customer may not assign or transfer its rights or obligations hereunder to any other person or entity without Bank's written consent, whose consent shall not be unreasonably withheld.

#### **28. Termination**

Any Services may be terminated, with or without cause, by the Bank upon sixty (60) days' prior written notice to the Customer and Services terminated, with or without cause, by the Customer with thirty (30) days' prior written notice to the Bank. Bank may also terminate or suspend any Services without notice to Customer if any of the following occurs: (a) Customer becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (b) a material adverse change occurs in Customer's business or financial

condition; (c) Bank has reason to believe that Customer has engaged in fraudulent or illegal activity; (d) Customer fails to maintain balances in accounts sufficient to cover overdrafts; (e) Customer violates the terms of this Agreement, any Service Terms and Conditions or any financing arrangement with Bank; (f) Customer fails to provide financial information reasonably requested by Bank; (g) Bank determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules; or (h) Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Customer. Notwithstanding any termination, the terms of this Agreement and the Service Terms and Conditions shall apply to all transactions which have been initiated prior to termination.

### **III. TERMS APPLICABLE TO ALL INTERNET-BASED SERVICES**

#### **1. Introduction**

Bank offers a number of Treasury Management Services over the Internet. If requested by Customer and agreed to by Bank, Bank will grant Customer access to one or more of Bank's Internet Services in the manner established by Bank. Customer agrees that its use of Treasury Management Services from time to time offered by Bank via the Internet (collectively, the "Internet Services") shall be governed by:

- (i) this Section and all other relevant sections of this Agreement, including, without limitation, sections governing the specific Treasury Management Services that are offered online;
- (ii) the other agreements, laws and regulations described in Section I.2. of this Agreement; and
- (iii) the applicable Terms of Use, as defined in Section III.2. below.

#### **2. Terms of Use**

Bank may post terms or rules of Use ("Terms of Use") governing Customer's use of the Internet Services on Bank's website(s) for accessing such Services. Such Terms of Use shall supplement and amend the terms set forth in this Section. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern, provide that no Term of Use may vary or conflict with any provision of **Exhibit B** or any price shown in **Exhibit A**. Customer's initial use of an Internet Service shall constitute an acceptance of the Terms of Use posted on the website. Bank may change the Terms of Use for any Internet Service at any time by posting notice of such change via an alert or message on a broadcast or message page of the website ("Broadcast Message"). All changes shall have an effective date. Customer's use of the Internet Service after the effective date of any such change shall constitute an acceptance of the revised Terms of Use by Customer. Customer is responsible for establishing an internal procedure for reviewing the Broadcast Message page on a regular basis to obtain timely notice of changes to the Terms of Use. In the event that a specific Internet Service does not have Broadcast Message capability, Customer will be

notified of any changes in accordance with Section II. 24. hereof. Neither Bank nor Customer will contest the validity, enforceability, or admissibility of hard copy printouts of the Terms of Use for any website or notices of changes to such Terms of Use provided in accordance with this Section. Copies of such Terms of Use or notices, if introduced as evidence in tangible form in any judicial or administrative proceeding, will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form.

### **3. Security**

Customer agrees to use the Internet Services in accordance with the security procedures established by Bank. Without limiting the foregoing, Customer shall at all times use a web browser that supports the level of encryption used by Bank as part of its security procedures. Due to emerging technologies and ensuing changes in security practices, Bank reserves the right to supplement or change its security procedures from time to time upon reasonable notice to Customer. Customer acknowledges and agrees that, notwithstanding anything to the contrary set forth in the Agreement, in matters of security, reasonable notice may be less than a day's notice or even, in some cases, notice after the fact. Bank reserves the right to reject any transaction or service request that is not made in accordance with its security procedures. Customer shall designate one or more System Administrator(s). The System Administrator shall be responsible for setting up Internet Services and for establishing internal security procedures related to such Internet Services, including, without limitation, accepting delivery of software, system-wide configuration of Bank accounts, establishing authority levels, establishing authorization requirements, and distributing and re-setting IDs, passwords and other internal security devices related to the Internet Services. Customer's designation of the System Administrator may be amended or revoked from time to time upon notice to Bank. Bank shall have a reasonable time to act on any such notice.

Customer is responsible for maintaining the security and confidentiality of all IDs, passwords and other security devices issued to or by Customer (collectively, "Customer's Internal Security Devices"). Customer shall not permit unauthorized individuals to use Customer's Internal Security Devices to access any website. Customer is responsible for the actions of any individuals using Customer's Internal Security Devices to access any website. Customer shall promptly notify Bank if Customer has actual knowledge that the security of any website has been compromised. Customer will not hold Bank liable for any loss suffered by Customer as a result of Customer's breach of Section III.3. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Section III.3. This provision does not suggest that Customer shall be liable to any third party for losses related to Section III.3, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

### **4. Other Customer Responsibilities**

**a. Equipment and Software.** Customer is responsible for obtaining (from Bank, in

some instances), installing and maintaining the computer and communications equipment (including, without limitation, personal computers and modems), software, web browsers, Internet access and communications services necessary to access and use the Internet Services in accordance with this Agreement.

**b. Use of Internet Services.** Customer shall use its access to Internet Services and websites operated by or on behalf of Bank only to conduct its business with Bank and agrees to limit access to those Agents who require access to Internet Services.

**c. Antivirus Protection.** Customer agrees to run antivirus software before transmitting data to or through any website. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for the Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis and in no event less often than once every month.

#### **5. Disclaimer of Warranties**

NOTICE: THE BANK SHALL PROVIDE A SECURE WEBSITE TO THE CUSTOMER. BANK PROVIDES ALL INTERNET SERVICES ON AN "AS IS," "AS AVAILABLE" BASIS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE INTERNET SERVICES OR THE CONTENT OR SECURITY OF ANY WEBSITE. BANK DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BANK DOES NOT WARRANT THAT THE OPERATION OF ANY WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO ITS OPERATIONS WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF ANY WEBSITE AND ASSUMES THE RISK OF SUCH OCCURRENCES.

#### **IV. TERMS APPLICABLE TO SPECIFIC TREASURY MANAGEMENT SERVICES**

The following are additional terms and conditions applicable to specific Treasury Management Services offered by Bank. Bank may change the number or type of Services offered at any time, provided that it remains in compliance with **Exhibit B**.

#### **A. E-PAYMENT SERVICE**

Customer may select the E-Payment Service that would allow its customers ("Payers") to make convenient payments to Customer through the Internet, an Integrated Voice Response (IVR) system, or a 'live' call center. Customer agrees that this Service shall be governed by this Section and all other relevant sections of this Agreement.

##### **1. Internet**

**a. Customer Payment Site.** "Customer Payment Site" means the interactive Internet payment site hosted by Bank where Payers may make payments to Customer over the Internet. Bank will configure, implement, host and support the Customer Payment

Site.

**b. Customer License.** Bank shall have the right and license to use Customer's name, trademarks, service marks, copyrights and logos and other textual information in connection with the Customer Payment Site solely for the purposes contemplated herein.

**c. Administrative Terminal.** "Administrative Terminal" means the interactive Internet site hosted by Bank where Customer may access reports, initiate payments on behalf of Payers, or initiate refunds. Bank will configure, implement, host, and support the Administrative Terminal. Customer shall be solely responsible for setting up Authorized Users, access entitlements and internal controls within the Administrative Terminal.

**d. Links.** Customer shall provide and maintain a secure link on its website to the Customer Payment Site. Customer shall be responsible for ensuring that the link to the Customer Payment Site takes Payer to the appropriate area within the Customer Payment Site. Customer shall be responsible for providing the agreed-upon data concerning Payer in a manner that meets Bank's encryption or security methods during the exchange. Customer and Bank agree to use industry-standard security procedures and technology to ensure the security of the Customer's website and the Customer Payment Site and to prevent data theft or unauthorized access.

**e. Payer Authentication.** Depending on the applicable payment processing channel, Customer shall be responsible for verifying the identity of each Payer prior to the time Payer is linked to the Customer Payment Site. Customer agrees that Payers shall not be granted access to the Customer Payment Site link until Customer has verified the identity of each Payer using a commercially reasonable fraud detection system. For every Payer that accesses the Customer Payment System, Bank may rely on Customer to have completed such verification.

## **2. Compliance with laws and regulations**

Customer agrees to comply with all applicable laws, rules and regulations, including without limitation, those issued by: (i) the National Automated Clearing House Association; (ii) any governmental entity, including (without limitation) the requirements contained in the Electronic Fund Transfer Act, Regulation E, and the Electronic Signatures in Global and National Commerce Act; and (iii) any other entity or association that issues or sponsors a payment device, including (without limitation) the requirements of the Payment Card Industry (PCI) Data Security Standard and any credit card association, including Visa and MasterCard. Customer further agrees to comply with all payment network regulations for ATM debit networks.

## **3. Integrated Voice Response (IVR)**

To make an automated payment via a touch-tone phone, Payers may access the IVR system by calling a toll-free number provided by Bank or Customer. Customer shall have previously forwarded a one-time file of existing Payers ("pre-registration file") to

Bank. In order to make a payment via the IVR system, Payers are required to input information that matches their user information in the pre-registration file.

#### **4. Call Center**

If this option is selected by Customer, Payers may make a payment by phone by calling a 24-hour call center and speaking to 'live' Bank personnel. Bank shall authenticate a Payer's identity in the manner specified by Customer, and agreed to by Bank, in the Implementation Documents. Customer acknowledges and agrees that the authentication of the Payer's identity in such manner shall constitute a commercially reasonable fraud detection system and Bank shall have no liability for all payments so authenticated.

#### **5. Payer Authorization**

If payment is made via the Internet, Payer will be prompted to authorize the payment and print a confirmation once Payer has reviewed the payment data and input the information necessary to complete the payment. If payment is made via the IVR or call center, the confirmation number will be read to Payer. Bank is not responsible for the detection of errors made by Payer or Customer and may rely on the information submitted or communicated by Payer or Customer.

#### **6. Payment Processing**

Payments shall be processed in the manner mutually agreed to between Bank and Customer, which may include ACH debit entries, debit cards, credit cards or other payment processing methods. Customer shall at all times be considered the originator of Payer's payment. Depending on the applicable payment processing channel, payment processing may also be subject to the terms of any other agreement between Bank and Customer and between Customer and the payment transaction processor supported by Bank. Payments may be initiated through the Customer Payment Site, IVR system or Administrative Terminal. Bank will notify Customer of the payments that were initiated through the Administrative Terminal or by delivering a file as set forth in the Implementation Documents. Customer acknowledges and agrees that all payments are subject to adjustment, return, reversal and/or chargeback in accordance with the rules governing the applicable payment processing channel.

#### **7. Recurring Payments**

The E-Payment Service provides Customer with the ability to offer Payers the option of making fixed or variable recurring payments. If permitted by applicable regulations, Payers have the ability to initiate a payment that recurs semi-weekly, weekly, semi-monthly, monthly or quarterly. Payers must be pre-registered in order to initiate variable recurring payments.

#### **8. Fees**

In addition to Bank's standard fees, Customer agrees to pay additional fees and expenses for implementation of the E-Payment Service or other additional services, if any, as may from time to time be disclosed to Customer by Bank. Customer also agrees to pay the applicable fees and expenses charged by the payment transaction

processor supported by Bank, as set forth in Customer's agreement with such processor.

### **9. Convenience Fee**

a. If permitted by applicable regulations, the E-Payment Service offers a flexible convenience fee option that allows Customer or Bank to define and collect a convenience fee to be charged to Payers in connection with the payment transaction. Payers are provided with the opportunity to stop the payment process if they do not wish to pay the convenience fee.

b. If Customer desires to collect the convenience fee, Customer shall be responsible for ensuring that convenience fee assessments comply with the relevant laws, rules and regulations.

c. If agreed to by Bank and Customer, Bank may collect and retain the convenience fee. Customer agrees that Bank may, in its sole discretion, set, adjust, manage and collect the convenience fee as a means to wholly or partially offset Bank fees that may otherwise have been incurred by Customer. Bank's willingness to collect the convenience fee shall be based on Customer's projected payment volume, average ticket, type of transactions, or other considerations such as changes to interchange fees and assessments.

If the actual payment volume, average ticket or other considerations fail to meet Customer's stated projections or do not completely offset Bank fees, Customer agrees that Bank may, in its sole discretion, require Customer to wholly or partially reimburse Bank for any resulting shortfall in Bank fees.

### **10. Transaction Controls**

Customer agrees to notify Bank of any material change or anticipated material change in daily dollar activity or type of transaction processing, and obtain Bank's consent to such change. Bank may, in its sole discretion, immediately upon written notice to Customer, place a maximum dollar limit on the E-Payment transactions or require Customer to provide reasonable security for Bank's continued handling of such transactions.

## **B. BILL CONSOLIDATOR PAYMENT SERVICES**

Bill Consolidator Payment Services provides Customer with the ability to receive consumer payments electronically from its consumer customers that are initiated via the consumers' personal computer home banking application or other Internet bill payment providers, including consumer credit counseling agencies. Customer agrees that this Service shall be governed by this Section and all other relevant sections of this Agreement.

### **1. Network**

"Network" means the MasterCard Remote Payment and Presentment Service ("RPPS"), a division of MasterCard International, Inc. and/or Visa ePay, a division of Visa International ("ePay"). Bank receives payments and remittance data via the Network. Bank will credit payments to Customer's account and electronically transmit the remittance data to Customer in Bank's standard or other mutually acceptable format for



loading to Customer's accounts receivable system.

## **2. Customer's Responsibilities**

Customer shall provide Bank with all data and specifications necessary for the Network to process payments and for Bank to transmit the remittance data to Customer. Customer agrees to conduct tests that Bank may deem necessary to ensure Customer and Bank are able to process the remittance data. The purchase, installation, testing, and maintenance of any and all equipment used to receive and process information from Bank is the responsibility of Customer. As soon as possible, and in any event, no later than 48 hours after Bank transmits the remittance data to Customer, Customer agrees to process all such data and inform Bank of any incorrect, unidentifiable or unprocessable information (collectively, "Returns").

## **3. Bank's Responsibilities**

Bank shall develop a program to process and transmit remittance data received from the Network in Customer's preferred file format. Bank shall transmit Returns to the Network when Customer provides Bank with the Return information. Bank will credit Customer's account in an amount equal to the payments received and debit Customer's account in an amount equal to any Returns and, if applicable, any Reversals (defined below).

## **4. Reliance on Network**

Customer acknowledges that Bank's ability to process payments and remittances are dependent upon the continued use and support of the Network and third party computers housing the Network and its associated communications network. In the event that access to the Network or its computer communications system is terminated or suspended for any reason, Bank shall not be liable to Customer for any disruptions or failure to provide any part of this Service. Bank assumes no responsibility for the accuracy, timeliness or the completeness of data delivered from the Network to Bank.

## **5. Optional Reversal Transactions**

Reversals are Network-initiated debit messages from payment originators informing of the cancellation of previous transactions. Customer may set debit caps on Reversals to limit the daily debit amount a payment originator may send through the Network. If Customer instructs Bank to accept Reversals, Customer hereby authorizes Bank to debit Customer's account for the amount of the Reversals.

## **6. Optional Biller Stop Payment**

Biller Stop Payment allows Customer to provide Bank with instructions regarding payments that Customer does not want posted to its account. If Customer instructs Bank to stop a payment from posting to its account, Customer hereby authorizes Bank to return the payment through the Network. Payments that are stopped will not be included in Customer's settlement transaction or the remittance data provided to Customer.

## **C. INFORMATION REPORTING AND TRANSACTION SERVICES**

Information reporting and transaction services may be provided by Bank to Customer through SinglePoint® or other applications or systems as may be introduced by Bank ("System(s)"). The System may also be used by Customer to automate many of the Services offered by Bank and also may provide access to other Bank systems that initiate transactions. Customer agrees that such use of the System shall be governed by this Section and all other relevant sections of this Agreement.

### **1. Introduction**

If requested by Customer and agreed to by Bank, Bank will grant access to Bank's System(s) in the manner agreed to by Bank. Customer agrees to be bound by any terms of use and license agreements associated with these Systems.

### **2. Information Reporting**

Bank is authorized to store, process, transmit and make available through Bank's agencies and Systems and through third party data processing providers ("Providers") information regarding accounts designated by Customer. Bank or Providers will transmit to Customer information regarding its account(s) and/or other financial data through the System on a periodic basis. Customer may elect to receive data through one or more delivery mechanisms, including, without limitation, the Internet, computer dial-up, telephonic delivery, facsimile, CD-Rom or unsecured e-mail. Section II.12. shall apply in the event Customer elects to receive unsecured reports via an Electronic Transmission. Balance and related information for Customer's accounts(s) held at other financial institutions may be made available by these financial institutions or Providers that input information into Bank's System. Bank will use reasonable care in submitting data into the System, but assumes no responsibility for the accuracy or timeliness of the account information and other financial data supplied by other financial institutions or Providers. Bank will make every reasonable effort to deliver information by the mutually agreed upon time, but does not guarantee a specific delivery time. Accordingly, Bank's responsibility to Customer with respect to the delivery of information shall be to deliver such work as close to the agreed time as may be reasonably practicable.

### **3. Transaction Services**

Customer may use SinglePoint® or other similar System to access treasury management transaction services offered by Bank for which Customer has enrolled. Depending on the type of product offered by Bank, access to the transaction services may include, but are not limited to: ACH, ACH positive pay, wire transfer payments, book transfers, stop payments, positive pay, reverse positive pay, image access and system administration. Customer agrees that use of the System for transaction services shall be governed by this Section IV.C. and all other sections of this Agreement that are applicable to the product or service being accessed.

### **4. Security Procedures/System Administrator**

Customer agrees to operate the System in accordance with the procedures established by Bank. Bank reserves the right to reject any transaction or service request that is not made in accordance with these procedures. Customer agrees to designate one or more System Administrator(s). The System Administrator is responsible for setting up

Services available through the System and for establishing internal security procedures related to such Services, including, without limitation, system-wide configuration of Bank accounts, assigning users, establishing authority levels, establishing authorization requirements, distributing and re-setting passwords and other internal security devices related to the Services. Designation of the System Administrator may be amended or revoked from time to time upon notice to Bank. Bank shall have a reasonable time to act on any such notice. Customer is solely responsible for maintaining a secure work environment to ensure against use of the System by unauthorized individuals. Security procedures to be followed by Customer include, without limitation, informing Agents that any passwords should not be shared with anyone and to secure physical access to the terminals used for services when an Agent has logged on to the system or otherwise.

## **5. Manuals**

Bank will provide Customer with a manual(s) in paper or electronic format that will set forth the applicable System's policies and procedures with which Customer agrees to comply. Bank may, without prior notification, make amendments to any manual. Bank owns or has obtained all proprietary rights to the manuals and Customer agrees not to duplicate, distribute or otherwise copy Bank's manuals without Bank's prior written consent. Any manual will at all times remain the property of Bank and Bank reserves the right to request Customer to return all printed copies of such manual within thirty (30) days of termination of this Service.

## **6. Customer Responsibilities**

Customer will purchase (from Bank, in some cases) and provide all equipment and software necessary to use the applicable System in accordance with this Agreement. Bank shall have no responsibility and makes no warranties for such equipment or software. Customer agrees to use the System solely to conduct its business with Bank and agrees to limit access to those Agents who require access to the System. Customer agrees that in addition to other limitations to Bank's liability elsewhere in this Agreement, Bank shall not be liable for any loss or damage arising directly or indirectly from the following:

- a. any inaccuracy or incompleteness in the input of an order or instruction from the Customer;
- b. any failure by Customer to obtain a confirmation of an order or instruction; or
- c. any cancellation or attempted cancellation by Customer of an order or instruction.

## **7. Accuracy and Timeliness of Information**

Bank will use reasonable efforts to provide the information requested through the Services in a prompt fashion, but shall not be liable for temporary failure to provide timely information. In such event, Customer shall be responsible for carrying out banking business through alternative delivery channels. If Bank fails to provide timely information, Bank shall waive related Bank fees if Customer makes reasonable efforts through Bank to carry out banking business through alternative delivery channels, but is

unsuccessful in doing so. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's system prior to being made available pursuant to the Services. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

### **8. International Information Reporting**

If requested by Customer and agreed to by Bank, Bank may provide incoming international information reporting through Providers or via SWIFT, which shall be governed by the terms of this Section IV.C., other applicable sections of this Agreement, and other applicable agreements or law. Bank shall receive the international information reporting data through Providers or via SWIFT from Customer's account-servicing Bank ("Servicing Bank") and shall display such data to Customer using SinglePoint® or other similar System. If Customer makes a request to Bank for an off-schedule international information report from the Servicing Bank, Customer agrees that Bank shall have no liability if the Servicing Bank does not support the off-schedule request or does not respond to the request in a timely manner.

## **D. ELECTRONIC DEPOSIT SERVICES**

Electronic Deposit Services provide Customer with the option of making electronic deposits using the ECLD services or the OED services, or other similar products or systems as may be introduced by Bank. Customer agrees that the Electronic Deposit Services shall be governed by this Section IV.D. and other relevant sections of this Agreement.

### **1. Processing Options**

Customer shall at all times maintain an account with Bank and may select one of the following processing options as part of the Electronic Deposit Services:

**a. Check Image/MICR Data/Substitute Check Collection:** Customer captures checks or check information received from its Payor Customers into Check Images and/or MICR Data, and transmits the same to Bank for processing and collection. Bank will seek to collect such Check Images and/or MICR Data through the check collection system by presenting or exchanging Check Images and/or MICR Data, or using Check Images and/or MICR Data to create a Substitute Check, a Demand Draft or a Photo-In-Lieu ("PIL") for collection.

**b. ACH Processing and Check Image/MICR Data/Substitute Check Collection:** Customer captures checks or check information received from its Payor Customers into Check Images and/or MICR Data, and transmits the same to Bank for processing and collection. Checks that are eligible to be used as source documents to originate ARC Entries, POP Entries, or BOC Entries are processed through the ACH system. The remaining checks are sent for collection as described above in the Check Image/MICR Data/Substitute Check Collection processing option.

## **2. Definitions**

- a.** "ACH Entry" means an ARC, POP or BOC debit entry originated to debit funds from a Payor Customer's account at a financial institution in accordance with the Operating Rules of the National Automated Clearing House Association ("NACHA").
- b.** "Check Image" means an electronic image of an original paper check or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system.
- c.** "Check Image Metadata" means information about the Check Image, as well as pointers to the actual image data (also known as image tags).
- d.** "Customer System" means the computer hardware, software and web-based applications located at Customer's site that is used by Customer to prepare Electronic Deposits and to access the OED services or ECLD services. For OED services, the Customer System shall comprise of a scanner and other hardware, software and web-based applications, all of which may be supplied by Bank.
- e.** "ECLD system" means Bank's Electronic Cash Letter Deposit computer systems and databases that Customer may access in order to obtain the ECLD services.
- f.** "ECLD services" means the Electronic Cash Letter Deposit services that allow organizations that receive check remittance payments by mail or dropbox to deposit all payments electronically at Bank, as further described in the User Manual.
- g.** "Electronic Deposit" means electronic information (including Check Images, Check Image Metadata, MICR Data, dollar amount or ACH Entry information), obtained from capturing information from an original paper check and related remittance documentation, that is transmitted to Bank for deposit, processing and collection.
- h.** "Electronic Deposit Services" means the ECLD services or OED services or other similar products or systems offered by Bank and selected by Customer.
- i.** "MICR Data" means information from the Magnetic Ink Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.
- j.** "OED system" means Bank's On-Site Electronic Deposit Service computer systems and databases that Customer may access in order to obtain the OED services.
- k.** "OED services" means the On-Site Electronic Deposit Services that allows organizations that receive check remittance payments by mail or in a walk-up or drop box environment to deposit all payments electronically at Bank, as further described in the User Manual.
- l.** "Payor Customers" means clients and/or customers of Customer that submits

original paper checks or check information to Customer for payment obligations owed to Customer.

m. "Photo-In-Lieu" or "PIL" means a photocopy of an original paper check, other than a Substitute Check, created from a Check Image.

n. "Remotely-Created Demand Draft" or "Demand Draft" means a paper item, other than a Substitute Check or PIL, that (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.

o. "Substitute Check" means a paper check document that meets the definition of a "substitute check" in the Check Collection for the 21st Century Act as implemented by Regulation CC of the Federal Reserve Board.

p. "Transaction Data" means any information obtained from Payor Customer's checks, Check Images, remittance slips or information entered by Customer into the Customer System, including without limitation MICR Data, check amount, Payor Customer address or check number.

### **3. Customer Authorizations and Notifications**

Customer shall adhere to any and all applicable clearinghouse, local, state, or federal laws, rules or regulations, including but not limited to, obtaining all necessary consents and authorizations from, and/or providing all necessary disclosures and notifications to, its Payor Customers concerning the creation and use of the Payor Customers' checks or any other use of Transaction Data by Customer or Bank, and the conversion of Payor Customers' checks or check information to ACH Entries and/or Check Images (including subsequent Substitute Checks, Demand Drafts or PILs created from such Check Images). Customer is solely responsible for ascertaining the content, method, and frequency of any required authorizations and notifications.

### **4. Determination of Items Eligible for Electronic Deposit**

a. Only original paper checks that qualify as a source document may be converted to an ARC Entry, POP Entry or BOC Entry under NACHA Rules. Customer is responsible for maintaining current information in the OED system or ECLD system on those Payors of Customer who have opted-out of ARC Entry conversion. If Customer has selected a processing option that uses ACH Entries to collect payments from Payors of Customer, Bank will apply certain automated internal edits and screens to the MICR Data and/or Check Images submitted by Customer to determine whether the original paper check is a source document that qualifies for conversion to an ACH Entry. Customer acknowledges and agrees that Customer is the Originator of such ACH Entries under NACHA Rules regardless of whether Customer or Bank initiates the ACH Entry into the payment system. Bank shall have no liability to Customer or any other person in the event that a Payor of Customer has opted-out of conversion and Customer failed to maintain Payor of Customer information in the OED system or ECLD system and check or check information is processed or converted by Bank to

an ACH Entry and such check or check information was not eligible for any reason for processing as, or conversion to, such an item.

**b.** Only a draft, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check Image. Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images under the Electronic Deposit Services, and Customer must deposit these original paper checks with Bank for collection: (i) checks, including travelers checks, that are drawn on banks located outside of the United States, (ii) checks payable in a medium other than U.S. dollars, (iii) non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC), (iv) promissory notes and similar obligations, such as savings bonds, and (v) any other class of checks or drafts as identified by Bank to Customer from time to time.

## **5. Capture of Checks and Check Information**

**a.** Depending on the processing options selected by Customer, Customer shall be responsible for accurately capturing an image of each paper check, the MICR Data and the correct dollar amount of the check into the Customer System. In the event the condition of a paper check precludes a complete automated read, Customer shall be responsible for visually inspecting the check and repairing the MICR Data, if necessary. Customer shall be responsible for the inspection of all Check Images to ensure the legibility of the Check Image (including without limitation the dollar amount and signature of the drawer), for the repair of any MICR Data, and for ensuring that any and all information on a paper check is accurately captured and legible in the resulting Check Image and/or MICR Data and otherwise complies with any Check Image or MICR Data quality standards and guidelines that may be established by ANSI, ECCHO Rules, the Federal Reserve, other applicable regulatory agency or clearinghouse or that Bank may provide to Customer from time to time. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks, and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

**b.** Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image or MICR Data prior to processing an Electronic Deposit. Bank may, in its sole discretion, reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentment standards, but Bank shall have no obligation to reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data. If Bank requires that Customer comply with certain formatting standards or other guidelines when submitting Electronic Deposits and Customer declines to implement, or comply with, such standards or guidelines, Customer acknowledges that Bank shall not be liable for any error or loss that results from Bank processing such Electronic Deposit or from Bank's re-formatting or conversion of the Electronic Deposit prior to processing.

c. Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit: (i) for which Customer has not provided Bank with full and correct MICR Data and dollar amount from the original paper check; (ii) for which Customer has not provided an accurate and legible image of the original paper check, (iii) for which Customer has failed to comply with formatting standards or other guidelines required by Bank; or (iv) which would violate this Agreement, the User Manual or any other written agreement between Customer and Bank.

## **6. Upload of Electronic Deposit to Bank**

a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily cut-off time established by Bank from time to time for the receipt of Electronic Deposits. Any Electronic Deposit transmission received by Bank after its daily cut-off time shall be deemed to have been received by Bank at the opening of its next banking day. Performance of the Electronic Deposit Services may be affected by external factors such as communication networks latency. Customer is responsible for the transmission of the Electronic Deposit until the OED system or the ECLD system reports a successful acknowledgement of receipt of the transmission.

b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with Section IV.D.6.a. above. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

c. Bank will process Electronic Deposit transmission received from Customer either via ACH Processing, or via Check Image/Substitute Check Collection, according to the processing options selected by Customer.

## **7. Collection of Check Images and MICR Data**

Notwithstanding anything to the contrary in this Agreement, Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image and/or MICR Data deposited by Customer. Without limiting the generality of the preceding sentence, Bank may, at its option: (i) present or transfer the Check Image or MICR Data to the paying bank, a Federal Reserve Bank, image share/exchange network, or other collecting bank; (ii) create a Substitute Check, a Demand Draft or a PIL from the Check Image and/or MICR Data and collect such item, or (iii) request that Customer provide to Bank the original paper check from which the Check Image and/or MICR Data was created and then collect the original paper check.

## **8. Returns**

a. Customer agrees that Bank may charge the account of Customer for any and all



returned items and ACH Entries, including a returned Check Image, a returned Substitute Check or a returned Demand Draft or PIL that relates to the original paper check.

**b.** Bank will provide Customer with a report of Check Images, paper items (which may include Substitute Checks, Demand Drafts or PILs) and ACH Entries that are returned. If Bank receives a Check Image as a return, Bank may provide Customer with: (i) a report of returned Check Images, (ii) a fax notification of returned Check Images, or (iii) Substitute Checks or other copies created from the returned Check Images. Bank is not obligated to produce a Substitute Check from a returned Check Image.

**c.** If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Section IV.D.8.c. This provision does not suggest that Customer shall be liable to any third party for losses related to Section IV.D.8.c, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

## **9. Representation of Returns**

**a.** If Customer identifies to Bank a returned ACH Entry as being returned because the original paper check was ineligible as a source document for the ACH Entry, Bank shall use reasonable efforts to collect the check related to the ACH Entry by creating, in Bank's sole discretion, a Substitute Check, a Demand Draft or a PIL from the image of the original paper check. Customer represents and warrants to Bank that Customer has obtained all necessary and appropriate authorizations from its Payor Customers for Bank to create, and present for payment to Payor Customer's financial institution, any such Substitute Check, Demand Draft or PIL.

**b.** In the event Bank, in its sole discretion, determines that it requires the original paper check for representment in order to collect a returned Check Image, ACH Entry, Substitute Check, Demand Draft or PIL, Customer shall be responsible for providing to Bank the original paper check, or if the original paper check has been destroyed, for obtaining a replacement check from the Payor Customer.

**c.** If Customer elects to use Bank's ACH Return Exception process, a process by which Customer may review, repair and resubmit select ACH returns, Customer shall be solely responsible for transactions that are reinitiated based on this process and shall comply with all applicable laws, rules and regulations governing such transactions, including but not limited to the NACHA Rules and Regulation E.

## **10. Storage of Check Images**

Bank shall store Check Images, MICR Data and ACH Entry information on the OED system or ECLD system, and shall make Check Images, MICR Data or ACH Entry

information available to Customer according to the User Manuals and fee schedule set forth in **Exhibit A**. If the Electronic Deposit Services are terminated, Customer may obtain an FTP transmission or any other available format of Check Images, MICR Data or ACH Entry information processed using the Electronic Deposit Services, at the price outlined in the fee schedule, as set forth in **Exhibit A**.

#### **11. Items or Images Received for Deposit**

Bank reserves the right to reject any deposit (as an Electronic Deposit or otherwise) for any reason, including but not limited to, rejection of a Substitute Check that was created by another financial institution, Customer, Payor Customers or any other person.

#### **12. No Authorization to Create Substitute Checks**

Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the OED system or ECLD system, or otherwise transmitted to Customer, to print a Substitute Check for any reason.

#### **13. Retention and Destruction of Original Paper Checks**

Customer shall destroy the original paper check as soon as is reasonable and shall comply with all requirements under the NACHA rules for BOC and ARC Entries to employ commercially reasonable methods to securely store the source document until destruction. At Bank's request, Customer shall provide the original paper check to Bank if the original paper check has not been destroyed by Customer and Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit.

#### **14. Remittance Documentation**

For OED services, Customer may use the Customer System to scan and read remittance documents associated with check payment. Bank disclaims any and all responsibility and/or liability associated with this use of the Customer System.

#### **15. Representations and Warranties**

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make any representation or warranty that would have applied had Customer deposited the original paper check. In addition Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the Electronic Deposit or Check Image, or a Substitute Check, Demand Draft, PIL, or ACH Entry created from that Check Image or MICR Data.

#### **16. Customer Responsibility**

With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Bank shall not be liable to Customer for losses arising directly or indirectly: (a)

from Customer's breach of a representation or warranty as set forth in section 15 above, (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry; or (d) for any loss caused by Bank's acceptance or creation of a Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry instead of presentment of the original paper check; or (e) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section IV.D.16 shall survive termination of the Agreement. Bank will be liable if any ineligible paper check, draft, or warrant is converted to ACH.

#### **17. Limited Use**

Customer may use the Electronic Deposit Services, the User Manual, and the OED system or ECLD system for business use for as long as Bank in its sole discretion provides the Electronic Deposit Services to Customer. Customer shall return to Bank any Customer System software upon termination of the OED services.

#### **18. Rules Applicable to Collection of Checks**

Customer acknowledges and agrees that a Check Image, MICR Data, Substitute Check, Demand Draft or PIL may, in the sole discretion of Bank, be collected through one or more check clearinghouses, one or more Federal Reserve Banks, or an agreement with another financial institution or image share/exchange network. In such cases, the Check Image, MICR Data, Substitute Check, Demand Draft or PIL is subject to the rules of that clearinghouse, Federal Reserve Bank, or image share/exchange network or financial institution agreement.

#### **19. Accuracy and Timeliness of Electronic Deposit Services**

Bank will use reasonable efforts to provide the Electronic Deposit Services in a prompt fashion, but shall not be liable for temporary failure to provide the Electronic Deposit Services in a timely manner. In such event, Customer shall be responsible for carrying out banking business through alternative channels. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's deposit or payments system prior to being made available pursuant to the Electronic Deposit Services. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

#### **20. User Manual**

Bank will provide Customer with one or more user manuals ("User Manual") in paper or electronic format that will set forth the OED services' or ECLD services' policies and procedures with which Customer agrees to comply. Bank may, without prior notification, make amendments to any User Manual. Bank owns or has obtained all proprietary rights to the User Manual and Customer agrees not to duplicate, distribute or otherwise copy the User Manual without Bank's prior written consent. The User Manual will at all times remain the property of Bank, and Bank reserves the right to request Customer to

return all printed copies of the User Manual within thirty (30) days of termination of the Electronic Deposit Services.

## **21. Security Procedures**

Customer shall comply with all security procedures for the Electronic Deposit Services that are established by Bank or set forth in the User Manual. Customer is solely responsible for (i) maintaining its own internal security procedures, (ii) safeguarding the security and confidentiality of Transaction Data, Check Images and other information that is either printed from, stored on, or downloaded to, the Customer System, OED system, ECLD system, or Customer's other computer/data systems or portable media; and (iii) preventing errors or unauthorized access to the Customer System, the OED system or ECLD system.

## **E. ACH SERVICES**

### **1. Introduction**

If requested by Customer and agreed to by Bank, Customer (or its Agent or third party vendor) may initiate credit or debit Automated Clearing House (ACH) transactions ("Entries") for payments ("Credit Entries") and/or collections ("Debit Entries") on ACH Business Days to its accounts or the accounts of others ("Receivers") in accordance with Bank's security procedures and this Agreement. Bank will act as an Originating Depository Financial Institution with respect to such entries. Bank may process Entries directly, through one or more clearinghouses, or through the mechanism selected by Bank. Customer's rights and obligations with respect to such Entries are governed by applicable law and the rules of the National Automated Clearing House Association ("NACHA"), as amended from time to time. Customer acknowledges that it shall be bound by NACHA Rules and agrees not to initiate any Entry in violation of the NACHA rules or applicable federal, state or international law, regulation or clearinghouse rules, including, without limitation, Regulation E of the Board of Governors of the Federal Reserve System, regulations promulgated by the Office of Foreign Assets Control, rules of the Canadian Payments Association and the Mexican Interbanking Electronic Payment System (SPEI), and Operating Circular 4 of the Federal Reserve Bank (collectively referred to herein as the "Rules"). Customer acknowledges that the Bank will notify Customer of any material changes to the NACHA rules that affect the Services that Customer is currently using. Notification shall be in sufficient detail reasonably to allow Customer to comply with such changes to the NACHA rules and reasonably to adjust its business practices to such changes.

### **2. Entry Origination/Processing Dates/Deadlines**

Customer may initiate Entries in the manner and format agreed to by Bank. ACH files transmitted to Bank shall be in an unbalanced file format. Customer agrees that all ACH Entries (regardless of SEC Code) that involve the exchange or transmission of banking information via unsecured electronic networks shall be encrypted or transmitted via a secure session, using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology. Bank will establish a deadline for the receipt of Entries from Customer ("Deadline"). Bank may establish different Deadlines for Entries depending on the method of delivery employed by

Customer and all such Deadlines are subject to change. Bank must receive Customer's Entries at or prior to the Deadline for the Entries to be processed on the ACH Business Day of receipt. Entries received after the Deadline will be processed on the next ACH Business Day. Entries with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made.

### **3. Content**

In submitting any Entry, Customer shall be responsible for providing all information required by Bank. Customer bears sole and exclusive responsibility to verify that the information set forth in Entries submitted to Bank is authentic, accurate and conforms to the Rules. The Services hereunder are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to an Entry which is inaccurate, incomplete or otherwise incorrect.

### **4. Prenotification**

To the extent required by NACHA Rules, Customer shall send a prenotification that it intends to initiate an Entry to a particular account in accordance with the procedures set forth in the Rules or by Bank. The prenotification can be returned or result in a Notification of Change ("NOC"). If the prenotification is returned, Customer shall research the problem and make any necessary corrections before transmitting another Entry. If the prenotification results in a NOC, Customer shall make the required change prior to initiating another Entry, or issue a Refused NOC. NOC Manager is an optional service that allows Bank to track Customer's NOC on Customer's behalf. If Customer selects this option, Bank shall only manage the changes to the routing, transit and account numbers.

### **5. Entry Limits and Payment**

Customer shall at all times maintain a settlement account with Bank for the purpose of funding Customer's Entries ("Account"). The total dollar amount of Entries initiated by Customer through Bank under all ACH Services and pending on a given day shall not exceed the lesser of collected or available balances in the Account or an exposure limit should one be established by Bank ("Exposure Limit"). Establishment of an Exposure Limit should not be interpreted or construed by Customer as a commitment or agreement to provide any credit or loans to a Customer and is subject to modification or termination at any time by Bank. Customer agrees that it will not initiate Entries in excess of its Exposure Limit without the written consent of Bank. Customer shall pay Bank for all Entries and authorizes Bank to charge its Account or any other account with Bank in the amount of such Entries. Bank shall have the right to reject Entries initiated by Customer without notice if Bank has reason to believe that there will be insufficient available funds on the relevant settlement date. Customer will receive funds for any Debit Entry on the ACH settlement date. Bank shall credit the Account in any amount payable to the Customer, subject to Bank's right to make adjustments in accordance with this Agreement. Bank may establish, monitor and periodically review Customer's

Exposure Limit and Customer's compliance thereof, and may, in Bank's sole discretion, cease processing Entries based on such review.

## **6. Data Breach Notification**

Customer may have gathered personal or financial information of its customers for the purpose of initiating ACH transactions. Such information may include, without limitation, the customer's bank account number together with the bank routing number, or the customer's name together with the customer's social security number or tax identification number. Customer agrees to immediately report to Bank any loss, theft or unauthorized access of such information ("data breach") by or from Customer, its Agent, or third party service provider, if circumstances indicate that the misuse of such information has occurred or is reasonably possible. Customer acknowledges that Bank may have an obligation to report any data breaches to NACHA and other affected parties, and agrees to establish appropriate procedures to prevent, detect, investigate and report data breaches.

## **7. ACH Secured Funds Entries**

Bank will notify Customer within a reasonable amount of time, in advance, if it intends to require Customer to prefund ACH transactions. Bank may require Customer to prefund ACH transactions only if Bank reasonably determines that Customer lacks adequate capitalization to meet its expenditure requirements. After such reasonable notification, Bank may require Customer to prefund all Credit Entries that Customer desires to initiate. Customer acknowledges and agrees that such funds are held solely for the benefit of Bank and that Customer will not be entitled to earn any interest thereon. Upon initiation of such Credit Entries, Bank is authorized to immediately charge the Account (in the total amount of such Entries). If ACH Secured Funds is used to initiate Debit Entries, funds will be credited to the Account on the settlement date of the transaction. However, such funds shall not be available for withdrawal from the Account for two business days after the settlement date.

## **8. File Confirmation System**

Customer shall at all times comply with applicable file confirmation procedures established by Bank and any security procedures established by Bank or Customer. Such procedures are solely for the purpose of verifying the origination of Entries by Customer or Bank's receipt of the ACH file and/or batch (but not for errors in transmission or content).

**a. Control Totals.** If Customer elects to provide Bank with the total dollar value of ACH Entries and any other necessary information ("Control Totals"), Customer must telephone Bank's Interactive Voice Response Unit ("IVR") each time it originates ACH Entries. After Bank receives Customer's ACH file, Bank will compare the information in the file to the Control Totals. If the information matches the Control Totals, Bank will process the ACH file. Bank will not process a file if it does not receive conforming Control Totals on or before the established file delivery deadline on the Business Day it receives the file. Bank will notify Customer if the Control Totals do not match the information in the file, or if Bank receives a file without receiving Control Totals or vice

versa.

**b. Confirmation of Receipt.** If Customer elects not to provide Bank with Control Totals but elects to receive a confirmation, Bank shall provide Customer with a confirmation that Bank received Customer's ACH file and/or batch. After Customer receives the confirmation, Customer will compare the confirmation information to Customer's ACH transmission information. If the information does not match, Customer shall notify Bank before Bank's established deadline, failing which, Bank shall process Customer's ACH file and/or batch. Customer acknowledges that the confirmation is for the sole purpose of verifying Bank's receipt of the file and does not signify any validation of data. Customer bears sole responsibility for any inaccurate or incomplete information provided to Bank if Customer fails to notify Bank prior to Bank's processing of Customer's file.

### **9. Rejected and Returned Entries, Unauthorized Entries**

Bank may reject any Entry that is not initiated in accordance with this Agreement. In the event that an Entry is rejected, or returned by an ACH processor, for any reason whatsoever, it shall be Customer's responsibility to reinitiate the Entry. Bank will give Customer or its designated Agent notice of any rejected or returned Entry in the manner agreed to by the parties. Bank is authorized to debit/credit the Account for Entries that are returned to Bank. Unless the return is caused by Bank's failure to properly execute an Entry, Bank has no obligation to pay Customer interest on the amount of any returned Entry debited from the Account. A Receiver may, in some cases, have the right to have an unauthorized or erroneous Debit Entry credited to its account. Customer agrees that Bank may deduct the amount owing to the Receiver from Customer's Account upon Bank's receipt of proper notice from the Receiver's bank. Bank may charge back against Customer any Debit Entry that is returned or reversed by the Receiving Depository Financial Institution.

### **10. ACH Redeposit Service**

If requested by Customer and agreed to by Bank, Bank will reinitiate (maximum of two times) each Debit Entry returned for insufficient or uncollected funds.

### **11. Amendment of Entries**

Customer does not have the right to delete or amend any Entry after it has been received by Bank unless Customer has requested, and Bank has agreed to provide ACH Adjustment Services. If such services are provided, Customer may initiate an amendment to ACH Entries after receipt by Bank. Customer may initiate such amendments via internet or fax in accordance with the terms of this Agreement and all communications must be received by Bank prior to the established deadlines in order to be effective.

**a. Internet Option.** If Customer has selected the Internet Option, Customer may use the Internet to transmit information to Bank for the purpose of amending ACH files. Customer agrees to comply with any applicable software agreement, user guide and any established security procedures.

**b. Fax Option.** If Customer has selected the Fax Option, Customer may amend ACH files in accordance with this Agreement by sending instructions to Bank to delete Entries via facsimile. Bank will notify the Customer of the telephone numbers for facsimile and verbal instructions. Bank may from time to time change such telephone numbers or the form of instructions upon notification to the Customer. Customer acknowledges that the Internet Option may be substantially more secure than the Fax Option. Customer agrees to be bound by any instructions, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures.

## **12. Customer Representations; Limitations of Liability**

Customer represents and warrants to Bank that each Entry complies with the terms of this Agreement and NACHA Rules, does not breach any warranty of Customer or Bank contained in this Agreement and NACHA Rules, complies with applicable state and federal laws, including, without limitation, the Electronic Funds Transfer Act, Regulation E and regulations promulgated by the Office of Foreign Assets Control, is accurate, timely, and authorized and that any Debit Entry is for a sum that on its settlement date is due and owing from the Receiver to Customer or is a correction of a previously transmitted erroneous Credit Entry. With respect to each ACH Entry (regardless of SEC Code), Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law and NACHA Rules to any person, Receiving Depository Financial Institution, or any other transferee. Receiver authorizations shall expressly authorize Bank to transmit corrective entries to Receiver's accounts to correct a prior Entry and shall authorize Customer to release to Bank all information concerning its Receivers that is required by Bank to recover such Entries. Customer shall immediately cease initiating Entries upon receiving actual or constructive notice of the termination or revocation of the Receiver's authorization. Customer will retain each authorization received by Customer for such period of time as may be required by the Rules or applicable law and shall provide Bank with copies of such authorizations upon request. Customer will not hold Bank liable for any loss suffered by Customer as a result of Customer's breach of Section IV.E.12. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* - - Bank will not be liable to third parties for losses related to Section IV.E.12. This provision does not suggest that Customer shall be liable to any third party for losses related to Section IV.E.12, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

## **13. Re-presented Check Entries**

NACHA Rules allow Customer to initiate an ACH Entry to collect certain checks that have been returned unpaid for insufficient or uncollected funds ("RCK Entry"). In the event that Customer initiates an RCK Entry to Bank for check collection purposes, Customer agrees that such RCK Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the RCK Entry on its behalf.



- a. Each check is eligible under NACHA Rules to be collected via an RCK Entry.
- b. Customer has no knowledge of any insolvency and it has good legal title to the returned item.
- c. All signatures on the returned item are authentic and authorized, and the returned item is without alteration, not subject to claims or defenses, and will not be presented to the paying bank.
- d. The RCK Entry accurately reflects the item and any information encoded after issue in magnetic ink is correct. (RCK Entries cannot be used for collection fees.)
- e. Any restrictive endorsement placed on the item is void or ineffective.
- f. Customer has provided clear and conspicuous notice of its electronic check representment policy in advance of receiving the item to which the RCK Entry relates.
- g. The Customer will provide to Bank immediately upon request a copy of the front and back of the returned item, provided that the request is made within seven (7) years of the settlement date of the RCK Entry.

#### **14. Internet-Initiated Entries**

NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver's account pursuant to an authorization obtained from the Receiver via the Internet ("WEB Entry"). In the event that Customer initiates a WEB Entry to Bank, Customer agrees that such WEB Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the WEB Entry on its behalf:

- a. Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry.
- b. Customer has employed commercially reasonable methods of authentication to verify the identity of the Receiver.
- c. Customer has taken commercially reasonable steps to verify that routing numbers are valid.
- d. Customer has established a secure Internet session prior to the key entry by the Receiver of any banking information and through the transmission of the data to Customer. Currently, 128-bit RC4 encryption technology is the standard for financial transactions and is considered commercially reasonable. If technological advancements drive the commercially reasonable standard to change, Customer agrees to comply with the new standard.
- e. Customer has and will conduct an annual audit to ensure that the financial

information that Customer obtains from Receivers is protected by security practices that include adequate levels of: (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use, and (3) network security to ensure secure capture, storage and distribution of financial information. Customer will provide proof of Customer's security audits to Bank upon request. Any such information provided to Bank shall be kept confidential. Bank may cease processing Entries for Customer if Bank in its sole discretion determines that Customer's security procedures are inadequate.

### **15. Telephone-Initiated Entries**

NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver's account pursuant to the Receiver's oral authorization and banking information obtained via the telephone ("TEL Entry"). In the event that Customer initiates a TEL Entry to Bank, Customer agrees that such TEL Entry will comply with all provisions of this Agreement and applicable Rules, and makes the following additional representations and warranties regardless of which entity initiates the TEL Entry on its behalf:

**a. Receiver Authorization.** Customer shall obtain the Receiver's explicit authorization prior to initiating a Debit Entry to the Receiver's account. In the event that Customer obtains the Receiver's authorization verbally, Customer will either tape record the Receiver's oral authorization or provide, in advance of the settlement date of the Entry, written notice to the Receiver that confirms the oral authorization. Customer agrees that, at a minimum, the following specific information is disclosed to, and acknowledged by, the Receiver during the telephone call:

(i) the date on or after which the Receiver's account will be debited.

(ii) the amount of the Debit Entry to the Receiver's account;

(iii) the Receiver's name;

(iv) a telephone number that is available to the Receiver and answered during normal business hours for customer inquiries;

(v) the date of the Receiver's oral authorization; and

(vi) a statement that the authorization obtained from the Receiver will be used to originate an ACH debit to the Receiver's account.

Customer shall retain either the original or a duplicate tape recording of the Receiver's oral authorization or a copy of the written notice confirming the Receiver's oral authorization for two years from the date of the authorization, and shall immediately provide same to Bank upon request.

If Customer chooses to provide the Receiver with written notice confirming the

Receiver's oral authorization, Customer will disclose to the Receiver during the telephone call the method by which such notice will be provided.

**b. Security Procedures.** In addition to all other representations and warranties contained herein, Customer also represents and warrants the following each time it delivers a TEL Entry to the Bank that it has (a) utilized a commercially reasonable security procedure to verify the identity of the Receiver, including name, address and telephone number; and (b) further that Customer has established commercially reasonable procedures to verify the accuracy of the Receiving Depository Financial Institution's ABA routing and transit number.

#### **16. Accounts Receivable and Back Office Conversion Entries**

NACHA Rules allow Customer to utilize ACH to collect consumer check payments received via U.S. mail or at a drop box location ("ARC Entry"). NACHA Rules also enable Customer to convert during back office processing checks presented either at the point of purchase or a manned bill payment location ("BOC Entry"). In the event that Customer initiates an ARC or BOC Entry to Bank, Customer agrees that such ARC or BOC Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the ARC or BOC Entry on its behalf:

**a.** Prior to the receipt of each check, Customer has provided clear and conspicuous notice to the Receiver: (i) that receipt of the check is authorization for a payment as a check transaction or for a one-time ACH debit to the Receiver's account; and (ii) of Customer's phone number for inquiries regarding BOC Entries..

**b.** Customer has established reasonable policies and practices for enabling a Receiver to opt-out of check conversion for a specific checking account.

**c.** Each check is eligible as a source document under NACHA Rules to be collected via an ARC or BOC Entry.

**d.** The amount of the entry, the routing number, the account number, and the check serial number are in accordance with the source document.

**e.** The source document to which the ARC or BOC Entry relates will not be presented for payment.

**f.** Customer has established policies and procedures to destroy the source document as soon as is reasonable and shall use commercially reasonable methods to securely store the source document until such destruction.

**g.** Customer shall use commercially reasonable methods to securely store the banking information relating to the ARC or BOC Entry.

**h.** Customer shall retain a reproducible and legible image, microfilm or copy of the

front of the Receiver's source document for two years from the settlement date of each ARC or BOC Entry, and shall immediately provide same to Bank upon request.

i. For BOC Entries, Customer has employed commercially reasonable procedures to verify the identity of each Receiver of BOC Entries.

j. For BOC Entries, Customer maintains a working telephone number that is answered during Customer's normal business hours for Receiver inquiries regarding BOC transactions.

### **17. Point of Purchase (POP) Entries**

NACHA Rules allow Customer to initiate a Debit Entry to a Receiver's account for in-person purchases made by check at the point-of-purchase ("POP Entry"). In the event that Customer initiates a POP Entry to Bank, Customer agrees that such POP Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the POP Entry on its behalf:

a. Customer has posted a notice in a prominent and conspicuous location at the point-of-purchase and provided Receiver with a written notice of same: (i) that when a check is provided as payment, it is authorization for payment as a check transaction or for a one-time ACH debit to the Receiver's account; and (ii) that funds may be withdrawn from the Receiver's account the same day payment is made.

b. Each check is eligible under NACHA Rules to be collected via a POP Entry and the Receiver has not opted out of check conversion.

c. Customer has returned the voided source document to the Receiver after capturing the necessary check information and the source document was not previously negotiated, voided, or provided by the Receiver for use in any prior POP Entry.

d. Customer has obtained the Receiver's authorization and provided a copy of same to Receiver, which: (i) is in writing and signed or similarly authenticated by the Receiver; (ii) is readily identifiable as an ACH debit authorization; (iii) clearly and conspicuously states its terms; and (iv) states that the check will not be processed.

### **18. Third Party Vendors**

If Customer initiates Entries through a third party vendor or processor ("Vendor"), Vendor is the agent of Customer and not of Bank. If Customer uses a Vendor, Customer shall be deemed to have authorized Bank to follow the instructions of such Vendor to the same extent and under the same conditions as would apply if the instructions came direct from Customer and Customer shall be responsible for insuring that such Vendor fully complies with the Rules and this Agreement. Bank is not responsible for the acts or omissions of Vendor and Customer agrees to be liable for and hold Bank harmless from, any losses caused by the acts or omissions of the Customer's Vendor.

## **19. Third Party Sender**

If Customer is transmitting Entries as a third party vendor or processor on behalf of originators ("Third Party Sender"), Customer agrees to be bound by the applicable terms provided in this Section IV.E. and NACHA Rules. Customer warrants to Bank that the originator has agreed to assume the responsibilities of an Originator under NACHA Rules and that ACH Entries shall not be initiated in violation of laws of the United States. Customer represents that it has executed an ACH agreement with each Originator and that the agreement binds the Originator to the NACHA Rules. Customer shall provide Bank with the list of Originators, copies of the agreements, and other information deemed reasonably necessary to identify the Originators within two (2) banking days of Bank's request. Bank reserves the right to review the list of Originators for which Customer is transmitting the Entries and to reject any in Bank's sole discretion. Customer will not hold Bank liable for the potential losses to Customer arising directly or indirectly from the failure of the Originator to perform its obligations as an Originator under NACHA Rules. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-110; and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to this Section IV.E.19. Nothing in this Agreement shall be deemed a waiver of Customer's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or federal common law. This provision does not suggest that Customer shall be liable to any third party for losses related to this Section IV.E.19, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the NACHA Rules. Customer shall cooperate fully and respond within five (5) banking days to any inquiry from Bank relating to potential NACHA Rule inquiries or violations.

## **20. PC ACH-Direct**

**a. Services and Software.** If requested by Customer and agreed to by Bank, Bank will grant Customer a non-exclusive, revocable and non-assignable license to use the PC ACH program for the purpose of initiating ACH Entries in accordance with this Agreement. Customer will, at its own expense, obtain, install and at all times maintain in good working order all equipment necessary for this service. Bank may furnish to Customer updates to the PC ACH program. Customer agrees to install such upgrades as necessary to maintain the Service.

**b. License.** Customer acknowledges that the PC ACH program is an original, confidential, valuable and proprietary product that has been licensed to Bank with the right to be sub-licensed to Customer. Customer's use of the program shall be consistent with the terms of this Agreement. Customer has no rights of ownership to the PC ACH program and may not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, the program. Customer agrees to confine knowledge and access to the program only to its designated employee users who require such knowledge and access in the ordinary course and scope of their employment with Customer. Upon request, Customer shall return all

software and user manuals associated with this Service promptly upon termination.

**c. Encryption.** By default, Bank sets up Customer with encryption technology to ensure the security of data retrieved from, and sent to, Bank. If Customer elects to disable encryption, Customer assumes all risks associated with the transmission of unencrypted data to and from Bank.

## **21. Cash Concentration/Deposit Reporting Services**

Customer may request Bank to provide deposit reporting services based on information provided by the Customer or its designated Agent. Information will be delivered to Bank at the time and location established by Bank. Bank has no responsibility for the accuracy of any information provided by Customer. Customer may authorize Bank to initiate Credit or Debit Entries to accounts designated by Customer at other financial institutions. Bank will initiate such Entries in accordance with agreed procedures. Customer agrees to authorize Receiving Depository Financial Institutions to honor such transactions.

## **22. ACH Positive Pay Service**

ACH Positive Pay Service assists Customer in detecting fraud by electronically matching incoming ACH transactions to authorizations that Customer can create and manage online. If ACH Positive Pay Service is selected by Customer, Customer shall designate the account(s) maintained at Bank that are to be used with the ACH Positive Pay Service ("Account"). Customer shall create authorizations for incoming ACH Credit and/or Debit Entries that it desires to post to the Account. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. Bank will allow incoming ACH Entries that match Customer's authorizations to post to Customer's Account. Incoming ACH transactions that do not match Customer's authorizations will be treated as exception items, and Customer agrees to monitor, review and make payment decisions on the exception items prior to Bank's established deadline. If Customer's requested default setup is for Bank to pay all exception items, then such exception items shall post to Customer's Account unless Customer has instructed Bank to return one or more exception items prior to the established deadline. If Customer's requested default setup is for Bank to return all exception items, then Bank is authorized to return all exception items unless Customer instructs bank to pay one or more exception items prior to the established deadline. Bank shall have no responsibility for any liability, loss or damage resulting from: (i) payment in accordance with this Section of any exception item that is unauthorized; (ii) the return of any exception item to the Originator in accordance with this Section; or (iii) Customer's failure to meet Bank's established deadlines.

## **F. WIRE TRANSFER SERVICES**

### **1. Introduction**

**a. Governing Law.** Bank sends outgoing and receives incoming wire transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider in accordance with Section II.23.a.). All funds transfers are governed by this Agreement, Subpart B of Regulation J of the Federal

Reserve Board, OFAC regulations, and all other applicable federal, state and local laws and regulations. Customer agrees not to initiate or receive a wire transfer payment order in violation of applicable federal, state or local law.

**b. Authorized Users.** Customer will designate to Bank in the form required by Bank those individuals authorized to instruct Bank regarding wire transfer services including without limitation, individuals authorized to initiate payment orders and select advice methods, confirmation methods, and any or all authorizations and instructions that may be requested by Bank. Bank may rely on any such authorization until it has been revoked in writing by Customer. Bank shall have a reasonable time to process any revocation received pursuant to this Section.

## **2. Security Procedures**

Customer and Bank shall agree to use security procedures as established by Bank. Customer acknowledges and agrees that it has been informed of and understands Bank's security procedures. Customer agrees that any agreed security procedures shall be deemed commercially reasonable. Customer understands that the security procedures are not for the purpose of detecting errors in the transmission or content of a payment order controlled by Customer. Customer agrees to be bound by any payment order sent in the name of Customer that is processed by Bank in compliance with the agreed security procedures whether or not authorized. If Bank in good faith believes that changes in security procedures are immediately necessary to reduce the risk of an unauthorized funds transfer, Bank may initiate such changes immediately and give notice to Customer as soon as practicable. Customer and its Authorized Users and other Agents shall maintain the highest possible level of confidentiality with regard to security codes, test code procedures, other security devices and other aspects of these procedures and will take all steps necessary to prevent access to them by unauthorized persons.

## **3. Inconsistent Names and Account Numbers**

Bank and any other party executing or receiving a payment order, including the beneficiary's bank, may rely on the number in the payment order that identifies the beneficiary and on any numbers that identify the beneficiary's bank and any intermediate financial institutions identified in the payment order, even if such numbers do not correspond to the name of the beneficiary or the financial institution. Bank and any other receiving financial institution have no obligation to determine whether a name and number identify the same person or institution. Customer acknowledges that payment of a payment order initiated by Customer might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. With respect to incoming wire transfers that do not include an account number recognizable to Bank, Bank may return the wire transfer to the sending financial institution without incurring any liability to Customer.

## **4. Routing/Time Deadlines**

Bank may use means and routes that Bank thinks in its own discretion are suitable for each outgoing wire transfer. Bank will establish from time to time a specific time of day

after which Bank will not accept an incoming payment order to be processed on the day of receipt. Payment orders received after Bank's established deadline or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank's wire department is not open will be considered received on the next Business Day.

## **5. Recordation**

Customer authorizes Bank in its discretion to record electronically or otherwise any telephone instructions and other conversations originated by Customer to Bank and by Bank to Customer.

## **6. Payment Orders**

**a. Communication.** Customer may communicate a payment order to Bank by the means and manner agreed to between the parties.

**b. Content of Payment Orders.** Customer will supply to Bank any information Bank may reasonably request regarding any payment order initiated by Customer, including, without limitation, money amounts, affected accounts, dates of transfer, the beneficiary's name and account number, the routing number or BIC of the beneficiary's financial institution, such additional information as Bank may reasonably request and, if necessary, further evidence of any Agent's authority to transfer funds or to do any other act contemplated by this Service.

**c. Execution of Payment Orders.** Customer authorizes Bank to execute and charge Customer's account(s) with Bank for payment orders delivered to Bank in accordance with this Agreement. Bank has no obligation to execute a payment order if Customer's account to be charged has insufficient collected and available funds to cover the order.

**d. Processing Payment Orders.** The order in which Bank processes wire transfer payment orders is determined solely by Bank. Customer does not have the right to reverse, adjust or revoke any payment order after it has been received by Bank, provided, however, that Bank will make a reasonable effort to act on such a request by Customer. With respect to a payment order already transmitted to the beneficiary's financial institution, Bank shall, at Customer's request, request the financial institution to return funds previously transferred. Customer understands that the receiving institution is under no legal obligation to comply with this request.

**e. Rejection of Payment Orders.** Bank may reject a payment order from Customer if such payment order is not initiated in accordance with the applicable security procedure, if there is any inconsistency between a payment order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such payment order satisfactory to Bank, if there are insufficient collected funds in Customer's specified account to fund the payment order, or if Bank has other reasonable grounds not to honor the payment order. Bank will notify Customer by telephone that it has rejected a payment order. Bank may also reject an incoming payment order if it has reasonable grounds to do so.



**f. Standing Payment Orders.** If requested by Customer and agreed to by Bank, Customer may initiate a standing payment order, which is one where the Customer pre-programs the beneficiary, the beneficiary's financial institution, and the accounts to be debited and credited and such information remains constant for subsequent payment orders. Customer shall provide Bank with the necessary information to execute the standing payment order, including, without limitation, the dollar amount to be transferred or the desired peg balance, the frequency of the order and the day of week or month when the payment order is to be executed. Customer may terminate a standing payment order at any time upon receipt by Bank of a written notice. Bank shall have a reasonable time to act on such notice.

**g. Mainframe Batch Wire Transfers**

**(i) Service Specifications.** If requested by Customer and agreed to by Bank, Customer may initiate payment orders from its mainframe computer to Bank's mainframe computer, subject to the provisions of this Agreement. Customer will comply with interface specifications established by Bank, including, without limitation, file formats and means of data transmission (the "Specifications"). Bank may furnish Customer with modifications to the Specifications and Customer shall implement such modifications as soon as reasonably practicable.

**(ii) Wire Transfer Software, Confidentiality.** Customer shall be solely responsible for creating the computer programs to implement the Specifications ("Wire Transfer Software"). Customer shall maintain the confidentiality of the Specifications and the Wire Transfer Software and permit access solely to those responsible for supporting the Wire Transfer Software or authorized to initiate Payment Orders. Customer shall implement passwords and other security devices commensurate with the highest level of security afforded by Customer to other computer programs and confidential information of Customer.

**7. Confirmation of Outgoing Wire Transfers**

**a. Confirmation Method.** Customer and Bank shall agree to the method of confirming payment orders received from Customer. Customer shall designate Authorized Users to confirm payment orders. Bank recommends a minimum of three potential Authorized Users to confirm payment orders and that Authorized Users serve as an initiator or a confirmer, but not both. Notwithstanding Bank's recommendation, if Customer permits an Authorized User to act as both initiator and confirmer, Customer hereby authorizes Bank to process a wire initiated and confirmed by such Authorized User. Customer may add, change or delete the Authorized Users in accordance with Section II.9. of this Agreement. In the event the designated Authorized Users with authority to confirm are not available to confirm a payment order, Customer agrees that Bank may, at its discretion, elect to process the payment order initiated by an Authorized User. Customer agrees to be bound by any such payment order processed by Bank.

**b. Waiver of Confirmation.** Bank advises Customer not to waive confirmation. If Customer, however, chooses to waive confirmation, Customer agrees to be liable for all outgoing payment orders, except those payment orders where (1) Customer is able to conclusively prove that the unauthorized transfer could not have been prevented by the use of confirmation procedures; (2) Bank is unable to produce any evidence that the unauthorized transfer could have been prevented by the use of confirmation procedures; and (3) Customer is not otherwise liable for the transfer under this Agreement, or applicable law. Customer acknowledges that not using confirmation procedures substantially increases the Customer's risk of liability for an unauthorized wire transfer.

**c. Confirmation of Wire Transfers Initiated through electronic Bank applications.** The confirmation of payment orders initiated by Customer through electronic Bank applications shall be verified and approved by Customer prior to their transmission to Bank. All payment orders shall be initiated and confirmed in accordance with the security procedures established for the relevant application.

## **8. Advices**

**a. Advice Method.** Customer will select the type of advice it wishes to receive after Bank sends an outgoing wire transfer or receives an incoming wire transfer. If Customer selects telephonic advices, Customer will designate person(s) to be contacted and telephone numbers to be used for advice purposes. Bank shall not be required to make more than one attempt to reach Customer's designated location by telephone. If Bank is able to reach the Customer's designated location, but not Customer's designated Agent, Bank may leave a message containing the information to be conveyed.

**b. Advices by Facsimile.** If Customer selects advices by facsimile ("fax"), Customer shall exercise extreme care in maintaining its own security in the receipt of fax advices. Customer acknowledges that the information to be received by fax may include confidential information, including, without limitation, names, amounts, phone numbers, originating account information, and the text of incoming wires. Customer further acknowledges that it alone assumes full responsibility for maintenance of its internal security procedures to keep such information confidential. Customer will not hold Bank liable for any loss suffered by Customer as a result of Customer's breach of Section IV.F.8.b. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Section IV.F.8.b. This provision does not suggest that Customer shall be liable to any third party for losses related to Section IV.F.8.b, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

**c. Waiver of Advice.** Customer may waive its right under the Uniform Commercial Code to receive advices by so indicating on the applicable Implementation Documents.

## **9. International Wire Transfers**

Wire Transfers across country borders are customarily done by Bank through a correspondent. Any fee, commission or charges assessed by the correspondent shall be passed on to the Customer or deducted from the wire transfer amount by the correspondent. Payment to a foreign country is subject to the laws of the foreign country involved. Bank assumes no liability for delays, non-delivery or other events resulting from causes beyond Bank's control. In refunding unexecuted payment orders, Bank shall be liable to Customer only to the extent it receives payment from the correspondent financial institution processing the transfer. Cancellation of a transfer involving other than domestic currency is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any canceled payment order to Bank at the then current applicable foreign currency buy rate.

## **10. Reverse Wire Transfers**

**a. Authorized Debits.** If requested by Customer and agreed to by Bank, Customer authorizes Bank to debit Customer's account(s) with Bank upon receipt of a Fedwire drawdown request, and to send funds to the Requesting Bank. Each transfer will be done on the Business Day Bank receives the incoming request from the Requesting Bank if the request is received within a reasonable time to determine whether Customer's Account has sufficient available funds and to obtain access to the Federal Reserve network prior to the close of business.

**b. Reverse Wire Funding.** Customer agrees not to transmit any reverse wire request in excess of available collected balances on deposit in the designated account(s). Bank may reject any reverse wire request in excess of the collected and available balance. Requesting Bank will be notified if the request is rejected by Bank.

**c. Wire Transfer Numbers.** Customer's obligation to pay Bank the amount of the funds transfer in the event that the Fedwire message does not identify the same account or financial institution is not excused in such circumstances. When names and numbers are inconsistent, the numbers shall control. With respect to incoming wire transfers that do not indicate an account number recognizable to Bank, Bank may return the wire transfer to the sending financial institution without incurring any liability. Customer does not have the right to reverse, adjust, or revoke any Fedwire message after it is received by Bank; however, Bank will use reasonable efforts to act on such a request by Customer to reverse, adjust or revoke such message before Bank has sent the outgoing wire transfer. With respect to an outgoing wire transfer already transmitted by Bank, Bank shall, at Customer's request, request the receiving financial institution to return funds previously transferred. Customer understands and agrees that the receiving financial institution may or may not comply with any such request.

**d. Authorizations.** Customer's authorization for reverse wire requests shall remain in effect until Customer gives written notice to Bank. Bank will have a reasonable time to act on any written notice received from Customer.

**e. Limitation on Bank's Liability.** In consideration of Bank's compliance with this authorization, Customer agrees that Bank's treatment of any charge, and Bank's rights with respect to it, shall be the same as if the entry were initiated personally by Customer. Bank shall have no liability if any charge is dishonored.

#### **11. Additional Limits on Bank's Liability**

Bank is responsible only for performing the Services described in this Section IV. F. Bank shall not be responsible for the acts or omission of Customer, any Federal Reserve Bank or other financial institution.

### **G. DATA TRANSLATION SERVICES**

#### **1. Introduction**

Bank may provide electronic data integration, custom formatting, or data translation ("Data Translation Services") to electronically streamline the exchange of payments, remittance and other information between Customer and Bank and between Customer and its trading partners. If requested by Customer and agreed to by Bank, Bank will provide Data Translation Services in accordance with this Agreement and other procedures provided to the Customer. Customer agrees that Data Translation Services shall be governed by this Section and all other relevant sections of this Agreement.

#### **2. Scope of Services**

Data Translation Services may be used by Customer to initiate and receive payments sent through payment systems such as wire transfers, ACH and checks and to provide and receive business communications such as remittance reporting, invoices, confirmations, orders, or other information in Customer's preferred format. At all times during the maintenance of Data Translation Services, Customer will maintain an analyzed demand deposit account with Bank.

#### **3. Accuracy and Timeliness of Information**

Bank will use reasonable efforts to provide Data Translation Services in a prompt fashion, but shall not be liable for temporary failure to provide timely information. Bank assumes no responsibility for any delays, or for inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's systems prior to being made available pursuant to Data Translation Services or with respect to payments and related information sent by Customer's trading partners or other financial institutions that are made available through Data Translation Services.

#### **4. Entry Origination/Processing Dates/Deadlines**

Customer may from time to time deliver to Bank requests to format information for payments and/or other data translation via the agreed upon means (collectively, "Data Translation Request(s)"). All Data Translation Requests shall conform to the content, format, deadlines and other specifications that may be established by Bank in this Agreement and related documentation, or communicated to Customer. Bank may establish different deadlines for Data Translation Requests depending on the method of delivery employed by Customer and all such deadlines are subject to change. Bank must receive Customer's Data Translation Requests at or prior to the deadline

established for processing on the business day of receipt. Data Translation Requests received after the deadline will be processed on the next business day. Customer will be notified if a Data Translation Request is rejected in accordance with procedures established by Bank. Customer represents and warrants that all information in each Data Translation Request delivered to Bank by Customer shall be accurate, timely, authorized and will otherwise comply with all applicable laws, rules and regulations.

### **5. Content**

Data Translation Requests are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to a Data Translation Request which is inaccurate, incomplete or otherwise incorrect. Customer shall retain data on file adequate to permit Customer to remake each request for at least ten (10) business days following the date a file is sent to Bank, and shall provide such data to Bank on request. Customer acknowledges that Bank has no obligation to maintain back-up copies of requests or other information delivered by Customer to Bank.

### **6. Payment Order Requests**

Customer agrees that its requests to initiate payment orders utilizing Data Translation Services ("Payment Order Requests") shall be governed by this Section, the sections of this Agreement governing the applicable payment mechanism, and all other applicable laws, rules and regulations governing the relevant payment mechanism. Except as may be provided elsewhere in this Section or Agreement, Customer may not amend or revoke Payment Order Requests after they have been received by Bank. Customer acknowledges that the rules of NACHA and other electronic funds transfer systems as well as paper check processing systems may make any credit provisional until the financial institution crediting the account of the beneficiary specified in a Payment Order Request receives final settlement and that if the financial institution does not receive final settlement, it is entitled to a refund and Customer shall be deemed not to have paid the beneficiary. Payment Order Requests with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made. Customer is solely responsible for initiating Payment Order Requests sufficiently in advance to meet Customer's contractual obligations to its vendors and/or customers. Bank shall not be responsible for any late payment or finance charges that may result from Customer's failure to allow sufficient lead-time to make a Payment Order Request. Customer authorizes Bank to execute all Payment Order Requests, and settle to the Customer's account all Payment Order Requests, delivered to Bank in compliance with the terms of this Agreement, including the security procedures. Customer authorizes Bank to use whatever means Bank, in good faith, deems reasonable under the circumstances to execute each Payment Order Request, including selection of a funds transfer system, routing, and means of transmission. If Customer issues any payment order request pursuant to this Section IV.G.6., Customer authorizes Bank, without prior notice, to debit Customer's account for any other amount payable under Section IV.G. of this Agreement and to credit the account for any amount payable to Customer.

## **7. Check Payment Requests**

Customer may from time to time request that Bank print checks and related remittance information ("Check Payment Request(s)") and distribute such checks and information. Customer shall designate the account(s) from which Bank is to make payment ("Payment Account") and shall maintain a sufficient balance in the Payment Account to fund its Check Payment Requests. To mitigate against fraud, Bank may require that Customer utilize positive pay services in conjunction with the Payment Account. Customer agrees that checks drawn in a manner consistent with a Check Payment Request shall be duly authorized to the same extent as a check drawn and signed by Customer and is properly payable by Bank. Customer authorizes Bank to deduct the Payment Account in the amount of the Check Payment Request. If there are insufficient funds in the Payment Account to make a Check Payment Request, Bank may in its sole discretion either refuse to make the payment or make it and overdraw the Payment Account. In either event, Customer shall incur fees as disclosed by Bank in the account agreement and related fee schedules and other disclosures. Customer has no right to reverse, adjust or revoke any Check Payment Request after it has been received by Bank. Bank will, however, make reasonable efforts to act on such a request by Customer.

## **8. Security Procedures**

Customer shall comply with all security procedures, including any applicable file confirmation procedures, established by Bank for Data Translation Services. Customer agrees that all Data Translation Requests that involve the exchange or transmission of banking information shall only use secure transmission options supported by Bank. For some Services, such as ACH, Customer and Bank may establish alternative, comparable security procedures for accessing such Services when Data Translation Services are utilized. Customer is solely responsible for maintaining its own internal security procedures to prevent errors or unauthorized access to Customer's computer systems by unauthorized employees, vendors or customers. Bank has no responsibility for the security procedures employed by Customer's trading partners.

**a. File Confirmation Procedures.** File confirmation procedures utilizing Data Translation Services are solely for the purpose of verifying Bank's receipt of the Payment Order Requests but not for identifying errors in transmission or content. Where file confirmation procedures are required by Bank or selected by Customer, Customer shall provide Bank with the total items and dollar value of Payment Order Requests or any other necessary information ("Control Totals"). Customer may provide Bank with Control Totals by calling Bank's Interactive Voice Response ("IVR") or by sending a data file to Bank. After Bank receives Customer's Payment Order Requests, Bank will compare the Payment Order Requests to the Control Totals. If the Control Totals match the Payment Order Requests, Bank will process the Payment Order Requests. Bank will not process Payment Order Requests if Bank does not receive conforming Control Totals on or before the established Payment Order Requests delivery deadline on the Business Day it receives the Payment Order Requests. Bank will notify Customer if the Control Totals do not match the Payment

Order Requests, or if Bank receives Payment Order Requests without receiving Control Totals or vice versa.

## **H. COURIER SERVICES**

### **1. Introduction**

Courier Services are offered by Bank for Customers who require ground transportation for the pick-up, transportation and delivery of non-cash banking transactions to Bank locations other than a cash vault. Bank has selected a third party courier ("Courier") to provide the transportation services on Customer's behalf.

### **2. Deposit Contents**

Customer acknowledges that the Courier Services is not an armored delivery service and agrees to tender check-only deposits to the Courier. Customer agrees that it shall not deposit any currency, securities, documents or other items which cannot be reconstructed or duplicated. Any deposits of cash using this service shall be at Customer's peril and Customer agrees to assume any and all risk of loss associated with tendering cash deposits.

### **3. Courier as Agent of Customer**

Customer acknowledges and agrees that the Courier is the agent of Customer and not of Bank. Until Bank actually receives a delivery in accordance with Section IV.H.7. below, Bank assumes no risk of loss or theft by third parties or employees of the Customer or the Courier. Bank makes no representation or warranty regarding, and assumes no responsibility with respect to, any services performed or promised by the Courier. The Courier maintains ultimate responsibility for scheduling, movement and routing.

### **4. Packaging**

Customer agrees to tender deposits to the Courier using an undamaged and properly fastened bag. Customer shall prepare deposit slips in duplicate, containing the total dollar amount of the deposits, and the account or accounts of Customer at Bank to which the checks shall be deposited. Customer agrees to place the original deposit ticket in the bag, and to retain the duplicate ticket.

### **5. Reconstruction**

Customer agrees to maintain a complete and accurate reconstructible deposit listing of each deposit given to the Courier. Customer agrees to reasonably and promptly cooperate with Bank and/or the Courier in the notification, identification and replacement of any damaged, lost or destroyed deposit items. Such cooperation shall include reasonable requests by Customer to the makers of the checks to issue duplicates for the damaged, lost or destroyed items. Customer shall notify Bank of any damaged, lost or destroyed items no later than sixty (60) days following the day the items were delivered to the Courier. Bank shall have no obligation to research any damaged, lost or destroyed items if Customer fails to notify Bank within the prescribed time.

## **6. Processing**

Bank is authorized to open the bag and to process the contents in accordance with Bank's normal procedures and any applicable availability schedules. All deposits shall be subject to verification and adjustment by Bank. Bank's verification shall be deemed correct and binding upon Customer absent an error on the manifest. If Bank discovers a discrepancy between the contents of the bag and the deposit ticket, Customer hereby authorizes Bank to process and deposit the contents, and to complete an adjustment ticket, which will be mailed or delivered to Customer.

## **7. Actual Receipt Required**

Bank is not liable for any losses, damage or destruction of items that occur while in the custody of the Courier. Bank shall not be considered as an insurer of any deposits placed with the Courier until such time the deposits are received and acknowledged by Bank. Deposits delivered to the Courier are not considered received by Bank until they are actually delivered to Bank's processing center.

## **8. Delivery of Deposits**

Deposits delivered by the Courier after Bank's deadline for the receipt of deposits, may, at Bank's discretion, be held and credited to the Customer's account the next business day. Courier service deliveries on Saturdays, Sundays and on days recognized as bank holidays (when available), shall be held and credited to the Customer's account the next business day.

## **I. CASH VAULT SERVICES**

### **1. U.S. Currency**

The Terms "cash", "coin" and "currency" as used herein shall refer to coin and currency of the United States. Customer shall not deposit coin or currency of any other country.

### **2. Account**

All deposits of currency, coin, checks and food coupons will be credited to, and all withdrawals of currency, coin and checks will be debited against, Customer's deposit account at Bank (the "Account") which Customer has designated as being covered by the Services described herein.

### **3. Deposits**

a. Customer shall supply and maintain clear disposable plastic bags used for deposits. Plastic bags shall be sealed according to manufacturers' instructions. Customer will prepare deposits in good order as follows: (i) currency and food coupons will be batched separately with each accompanied by a deposit ticket fully completed by Customer; (ii) currency and food coupons will be banded with 100 notes of the same denomination whenever possible; (iii) food coupon deposits must include Agricultural Department Redemption Certificates; (iv) deposits will be delivered by Customer's certified armored carrier to the secured facility specified by Bank; and (v) to receive same date credit, deposits must be made prior to the daily cut-off time established by Bank from time to time, and any deposits received by Bank after its daily cut-off time may be considered to have been received on the next banking day.



**b.** Bank will process Customer's deposits as follows: (i) deposits will be receipted and conditional (subject to verification) credit assigned based on the amount identified on the deposit ticket; (ii) deposit tickets that are missing, blank or do not contain legible "declared balances are subject to delayed ledger credit of one banking day; and (iii) coins, currency and food coupons will be counted and Bank's count will be the valid and controlling count.

**c.** If there is a currency and coin variance of more than TEN DOLLARS (\$10.00) from the declared balance on Customer's deposit ticket, Bank shall adjust Customer's currency and coin deposits through a separate debit or credit to Customer's account. Any such adjustment shall not be reflected on Customer's deposit ticket. Deposit tickets containing a declared total that includes check deposits, may require a separate and additional adjustment for any variances to Customer's check deposits. If there is a currency and coin variance of TEN DOLLARS (\$10.00) or less from the declared balance on Customer's deposit ticket, Bank shall not make any adjustment to Customer's currency and coin deposits, and shall credit Customer's account based on Customer's declared balance. Bank will notify Customer promptly by telephone of any deposit for which Bank's count varies from Customer's count by ONE HUNDRED DOLLARS (\$100.00) or more. Upon request, Bank will provide Customer with any available information which may assist Customer in reconciliation of the difference.

**d.** Deposited items will be deemed received on the day of delivery if Bank receives the deposit prior to Bank's established deadlines. Deposits will be processed in accordance with normal Bank procedure and any applicable availability schedules. All deposits made by Customer shall be subject to verification and adjustment by Bank. Bank's verification shall be deemed correct and binding upon Customer for all purposes, absent an error on the manifest.

**e.** If Customer chooses to pre-encode its checks or other items for deposit, Customer agrees to comply with the pre-encoded deposit procedures and specifications as may be established and revised by Bank. Customer shall be responsible for any of its encoding errors. Bank may treat certain deposits as unencoded deposits if there is an unacceptable rate of encoding errors.

#### **4. Withdrawals**

**a.** Bank may provide Customer with United States currency and coin in designated denominations from time to time as requested by Customer through the Bank's automated ordering system ("Cash Orders"). Customer must comply with all of Bank's policies and procedures regarding the placement and delivery of Cash Orders, including, without limitation, the maintenance of a designated password. Customer shall be responsible for maintaining the confidentiality of Customer's password and restricting access to the system to authorized Agents. All Cash Orders will be charged to the account designated by Customer and must be picked up by Customer's Agent or sent by registered mail to a street address. Only armored couriers may pick up Cash Orders directly from a cash vault operated by Bank. Customer shall be

responsible for any Cash Order after receipt thereof by the Agent. Bank may specify a daily Cash Order limit and Customer agrees that it will not initiate a Cash Order in excess of the designated limit. In no event shall Customer initiate a Cash Order in excess of the immediately available funds in the designated account.

**b.** Customer may order currency and coin from Bank as follows:

- (i) The preferred order for currency is in standard full strap quantities only.
- (ii) Coin may be ordered in standard full box units (50 rolls), individual rolls or loose standard bags only.
- (iii) A charge for the face value of the monies ordered will be made to the Account on the day the order is processed by Bank.
- (iv) Orders for coin and currency may be placed no later than the cut-off time established by Bank from time to time for delivery on the next banking day. Depending on Customer's location, select cash vault sites may require a minimum two-day lead time for coin and currency orders.
- (v) Bank must be notified of any discrepancies pertaining to currency or coin orders within two banking days of receipt by Customer of such currency or coin. Customer must return documentation to back-up outages such as strap, coin, wrapper and/or box.

## **5. Processing Days**

Bank will provide processing on all days Monday through Friday, except for holidays on which Bank is closed.

## **6. Carrier Service**

Any carrier service utilized to deliver or secure coin, currency or other property to or from Bank will act as the agent of Customer and not of Bank. Customer and carrier shall agree upon the delivery days and times. Customer will bear the entire risk of loss of coins, currency or other property of Customer when in the custody or control of Customer's carrier service.

## **7. Representations**

Customer represents and warrants to Bank that (a) all funds deposited with Bank will be the proceeds of, and all funds ordered and withdrawn from Bank will be intended for use in, Customer's lawful activities and (b) all of Customer's transactions hereunder will be conducted solely on Customer's behalf and not on behalf of any other person or entity.

## **8. Regulatory Compliance**

Customer shall provide Bank immediately upon request with any information, and otherwise shall cooperate with Bank in every way necessary in order to enable Bank to fulfill its obligations with respect to the reporting of transactions in coin and currency or

any other regulatory requirement.

## **9. Agents**

Bank from time to time may use any third party or agent to receive Customer's deposits, to deliver Customer's coin and currency orders, or to perform any other services of Bank hereunder. Bank will provide Customer with all necessary instructions for contact with such third party or agent. Bank's use of such a third party or agent shall not relieve Bank of its obligations hereunder.

## **J. U.S. BANK EASYTAX<sup>SM</sup>**

### **1. Authorization; Enrollment**

If the EasyTax Service is requested by Customer and agreed to by Bank, Bank will electronically enroll Customer in the Electronic Federal Tax Payment System (EFTPS) if Customer desires to make federal tax payments via EFTPS. Electronic enrollment will allow Bank to process Customer's tax payments in compliance with EFTPS through Bank's tax payment system only. If Customer chooses to pay federal taxes by any other means, payments may not be EFTPS compliant. Customer understands that Bank's EFTPS enrollment form 8655 does not replace the EFTPS form 9779, which is sent to mandated companies by the Internal Revenue Service. Customer may also make state tax payments using EasyTax. Customer agrees that the EasyTax Service shall be governed by this Section and all other relevant sections of this Agreement.

### **2. Submission of Information**

Customer shall initiate an ACH Entry furnishing Bank with complete and accurate master file information which shall enable Bank to file tax deposits with the appropriate tax authorities in a timely manner. The Services provided by Bank hereunder shall be based solely upon the information furnished by Customer to Bank. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Customer bears sole and exclusive responsibility to verify that the information provided to Bank is complete and accurate. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to information which is inaccurate, incomplete or otherwise incorrect. The Service provided hereunder does not relieve Customer of any duty imposed on Customer by law to maintain records or from verifying and, if necessary, immediately correcting in writing all data received from Bank relating to the Service. Customer does not have the right to delete or amend any ACH Entry after it has been received by Bank unless Customer has previously requested, and Bank has agreed to provide, ACH Adjustment Services. If ACH Adjustment Services are provided, subject to certain limitations, Customer may initiate an amendment to its ACH files after receipt by Bank. Such amendment may be initiated via fax or other agreed upon notification method and all communications must be received by Bank prior to the established deadlines in order to be effective. Customer agrees to be bound by any instructions, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures. Customer will not hold Bank liable for any loss suffered by Customer as a result of Customer's breach of Section IV.J.2. To the extent not prohibited by law -- including Colorado Constitution,

Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Section IV.J.2. This provision does not suggest that Customer shall be liable to any third party for losses related to Section IV.J.2, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

### **3. Requests for Payment**

Requests for payment to tax authorities must be made in accordance with instructions which Bank shall provide Customer, which may be amended by Bank from time to time at its discretion, and will be considered complete only if actually received by Bank. All tax deposits must be initiated at least one business day before the due date, otherwise deposits may be subject to IRS or state penalties. Any request by Customer to make tax deposits hereunder shall be submitted to Bank prior to the daily cut-off time established by Bank from time to time. Any such request received by Bank after its daily cut-off time may be processed on the next banking day. In the event that an ACH Entry is rejected or returned by an ACH processor for any reason whatsoever, it shall be Customer's responsibility to reinitiate the Entry. Bank will give Customer notice of any rejected or returned ACH Entry in the usual manner agreed to by the parties. Bank shall have no liability for any delay caused by strikes, telephone failure, equipment or electrical failure, or any other condition beyond the reasonable control of Bank.

### **4. Receipt of Funds**

Funds received by Bank from Customer shall be held as a deposit liability of Bank to Customer until such time as such funds are due and paid to the appropriate tax authorities. Customer is entitled to an earnings credit value on such funds and Bank may invest such funds solely for Bank's benefit.

### **5. Account**

Customer shall maintain with Bank a commercial demand deposit account in which Customer shall maintain immediately available funds in an amount sufficient to cover all tax deposits and fees charged by Bank for the Service hereunder. Failure by Customer to maintain such funds shall relieve Bank from providing such Service, notwithstanding any request by Customer to provide the Service.

### **6. Liability**

Bank shall not be liable for any penalties assessed by the IRS or the Colorado Department of Revenue by reason of failure of Customer to make any tax payments. Bank shall be responsible to Customer to make timely and accurate payments when Customer provides full and timely payment instructions, provided that adequate funds are available in Customer's accounts at Bank. Interruption of the Service or performance hereunder for any reason shall not relieve Customer of its obligation vis-à-vis the IRS and the Colorado Department of Revenue to make any required tax deposits, and Bank shall not incur any liability to Customer for failure by Customer to make any such deposit. If Customer elects to make a tax deposit by any means other than through Bank, Bank shall not be liable for any penalties assessed by the IRS or the

Colorado Department of Revenue or interest arising from any error in due date or other calculations for deposits made within the period in which such other deposit was made. Bank may choose to provide its EasyTax Service through a third-party vendor. Bank and its third party vendor's liability to Customer is limited to correcting any error made by the Bank or third-party vendor. The sole and exclusive remedy, at law or in equity, against Bank or third party vendor is limited to money damages in an amount not to exceed the total amount paid to Bank for EasyTax fees during the twelve (12) months preceding the event giving rise to the liability. Neither Bank nor third party vendor will be liable for special, incidental, or consequential damages. Customer acknowledges that the EasyTax Service would not be available or would be available at substantially increased rates without the liability and remedy limitations set forth in this agreement.

## **7. Codes**

Customer shall keep confidential the Access and PIN codes issued to Customer in connection with the Service, and only Customer shall use such codes. If Customer suspects that any such codes have become known or otherwise accessed by unauthorized persons, Customer shall notify Bank immediately and follow up such notice with written confirmation. The occurrence of unauthorized access will not affect any deposits made in good faith by Bank before Bank has received such notification and had a reasonable time to act to prevent any unauthorized deposits.

## **K. PAPER-BASED DISBURSEMENT SERVICES**

### **1. Controlled Disbursement**

**a. Disbursement Account.** If requested by Customer and agreed to by Bank, Customer will open and maintain a demand deposit account ("Disbursement Account") and a primary funding account ("Funding Account") at Bank. The disbursing bank may be a financial institution that is a subsidiary or affiliate of Bank or Bank itself. Bank reserves the right to require customer to use Bank's positive pay service in conjunction with the use of Disbursement Account(s). Customer hereby authorizes and directs Bank to act on its behalf and as its Agent, as Bank in its sole discretion deems necessary or advisable, in performing any of the Controlled Disbursement Services and related Services.

**b. Funding Procedures.** On each Business Day, Bank shall electronically provide Customer with a report of the total aggregate amount of all presented disbursement checks and ACH transactions posted in the early morning ACH window, net of the prior day adjustment and other charges to the Disbursement Account (the "Total Clearings"). Customer agrees to maintain sufficient collected balances in the Funding Account by the established deadline to fund the Total Clearings. Bank is hereby authorized to debit the Funding Account in an amount equal to the actual or estimated Total Clearings and to transfer funds in said amount for credit to the Disbursement Account. Bank may require Customer to prefund the Disbursement Account only if it reasonably determines that Customer lacks adequate capitalization to meet its expenditure requirements. Bank will notify Customer within a reasonable amount of time, in advance, if it intends to require Customer to prefund the Disbursement Account. After such reasonable notification, Bank may convert the Disbursement

Account into a standard prepaid checking account.

**c. Adjustments.** Bank will compare the report of electronic presentments to the checks presented against the Disbursement Account. If the total dollar amount of checks electronically reported is less than the total dollar amount of checks presented, Bank will credit the Disbursement Account for the difference. Bank will add this difference to Customer's Total Clearings the next Business Day.

**d. Daily Dollar Limit.** A daily dollar limit (the "Dollar Limit") may be established from time to time by Bank with respect to the Disbursement Account in Bank's sole discretion. Bank shall have no obligation to pay disbursement checks and ACH transactions (collectively, "Items") in excess of the Dollar Limit. Bank may, at any time, either verbally or in writing (but shall not be deemed obligated to) notify Customer of any change made by Bank in the Dollar Limit. Establishment of the Dollar Limit should not be interpreted or construed by Customer as any commitment or agreement by Bank to provide any credit or loans to Customer, or as an agreement or commitment to debit the Funding Account when doing so would create a negative balance therein.

**e. Special Circumstances.** Customer acknowledges that Bank, under some circumstances beyond its control, may at times be unable to provide a report of the total amount of its Total Clearings early enough for Customer to make a complete and acceptable funding of the accounts. Customer nevertheless agrees to fund the Funding Account completely by using a reasonable estimate of the Total Clearings; however, if funding the Customer's reasonable estimate creates an underfunding, no charges will be incurred by the Customer. If funding the Customer's estimate creates an overfunding, Customer will receive the current earnings credit rate on excess funds.

**f. Action Affecting Accounts.** If Bank receives a court order or writ of execution requiring it to place a hold on one of Customer's accounts or requiring Bank to pay monies out of one of Customer's accounts to a third party, or a garnishment or levy that requires Bank to place a hold on one of Customer's accounts or to pay monies out of one of Customer's accounts to a third party, and Bank reasonably believes that it will not be protected if the court order, writ of execution, garnishment, or levy is ignored, Customer agrees that Bank may place a hold on the account up to the amount of the claim stated in the court order, writ of execution, garnishment, or levy. Any such hold will remain in place only so long as reasonably necessary to resolve the claim stated in the court order, writ of execution, garnishment, or levy, or employ legal remedies to allow a court to decide such claim. Customer shall have the right to intervene in the legal action that relates to the court order, writ of execution, garnishment, or levy. Assuming compliance with this Section, Bank shall have no liability for dishonored transactions due to the hold.

**g. Return of Items Unpaid.** Bank reserves the right, in Bank's sole discretion, to return unpaid any or all Items presented for payment against the Disbursement Account, only after contacting Customer and giving Customer a reasonable time to

adequately fund the Funding Account in the event that:

- (i) there are insufficient collected and available balances on deposit in the Funding Account by the established deadline to fund the Total Clearings;
- (ii) debits cannot be posted because the Disbursement Account or Funding Account is frozen, blocked, closed or because of any other condition; or
- (iii) any communications failure or other condition prevents Bank from monitoring Customer's Dollar Limit and/or the Items presented for payment.

h. **Stop Payment Orders.** Customer may issue stop payment orders on Items drawn on the Disbursement Account in accordance with Bank's procedures.

## 2. Drafts/Warrants

a. **Draft/Warrant Account.** If requested by Customer and agreed to by Bank, Customer shall open and maintain a demand deposit account upon which drafts or warrants shall be drawn and will be charged (the "Draft Account"). Customer shall maintain on deposit sufficient collected and available balances to cover items drawn on the Draft Account.

b. **Draft/Warrant Format.** All drafts/warrants shall contain on the face of the item the words "draft" or "warrant," and "payable through U.S. Bank." Customer will also encode all drafts/warrants in accordance with Bank specifications. Customer agrees to immediately make any changes to the format of the drafts/warrants or encoding when requested to do so by Bank and will be solely responsible for its failure or refusal to comply with Bank's specifications. Any draft/warrant drawn by Customer on the Draft Account shall be treated by Bank as a draft/warrant regardless of what appears on the face of the draft/warrant, and Customer will not hold Bank liable for Bank's treating such draft/warrant drawn by Customer on the Draft Account as a draft/warrant. To the extent not prohibited by law -- including Colorado Constitution Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Bank's treating such draft/warrant drawn by Customer on the Draft Account as a draft/warrant. This provision does not suggest that Customer shall be liable to any third party for losses related to Bank's treating such draft/warrant drawn by Customer on the Draft Account as a draft/warrant, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party.

c. **Presentment and Return.** Bank shall make drafts/warrants presented to Bank available to Customer via electronic presentment. Bank shall notify Customer by electronic means of the account number, draft number and dollar amount of all presented drafts/warrants and provide Customer with a front and back image of each draft/warrant received by Bank. Bank's delivery of the images shall constitute an electronic presentment under the Uniform Commercial Code, Federal Regulation CC

and other applicable laws. Draft/Warrant services are additionally subject to the Reverse Positive Pay terms contained elsewhere in this Agreement. Customer shall notify Bank of each draft/warrant that should be returned in the form agreed to by Bank and Customer. If Customer does not specifically decline payment of a draft/warrant by the deadline established by Bank, such draft/warrant will be finally paid by Bank. Customer acknowledges that drafts/warrants payable through Bank are considered to be drawn on Bank for purposes of the expeditious return and notice-of-nonpayment requirements of subpart C of Regulation CC of the Federal Reserve Board. If Bank agrees to return a draft/warrant following Bank's deadline, Customer agrees to be responsible for Bank's failure to return the draft/warrant in an expeditious manner as prescribed in Regulation CC. Bank shall be deemed to have made timely presentment to Customer with respect to any drafts/warrants that Bank receives at a time when it is prevented from making presentment to Customer as a result of any force majeure including, but not limited to, earthquake, flood, hurricane, tornado, volcanic eruption, severe weather event or other act of nature, war, riot, civil disturbance, strike, lockout, and disruption in telecommunications service.

**d. Examination of Drafts/Warrants.** Bank shall have no responsibility to examine drafts/warrants prior to presentment to Customer for its payment decision. Bank will take ordinary care to see that the amount of each draft/warrant as drawn is accurately posted to Customer's account. Bank will not make any attempt to verify signatures, endorsements or restrictive clauses on drafts/warrants. Bank will not examine the dates on which drafts/warrants have been drawn for undated, stale or post-dated items. Bank shall have no responsibility for any liability, loss or damage resulting from (i) a payment in accordance with this Section of any draft/warrant that is altered or unsigned or that bears the forged or unauthorized signature of Customer or (ii) return of any check to the depository bank in accordance with this Section.

**e. Encashment of Drafts/Warrants.** Unless otherwise instructed by Customer, Bank is authorized to pay its drafts or warrants issued by Customer that are presented for encashment by payees. Bank will not be liable for the encashment of any draft/warrant which contains, or is purported to contain, a forged signature of a maker or endorser, or any other unauthorized modification, as long as Bank exercises ordinary care in cashing the draft/warrant.

**f. Controlled Funding**

**(i) Funding Account; Report of Incoming Debits.** If Customer has selected a Controlled Draft/Warrant Account, Customer agrees to open and maintain a primary funding account ("Funding Account"). All drafts/warrants drawn shall be provisionally charged to Customer's Controlled Draft/Warrant Account on the Business Day of receipt by Bank and such charges shall become final and irreversible, except as to drafts/warrants that are dishonored as provided herein. Bank shall on each Business Day make reasonable efforts to electronically provide Customer with a report of the total aggregate amount of all presented drafts/warrants ("Items"), net of the prior day adjustment, and other charges to the Controlled Draft/Warrant Account (the "Total Clearings"). If for any reason Bank is



unable to provide Customer with the Total Clearings, the Total Clearings for such day shall be estimated by Customer. If Customer's estimate is less than required to meet funding requirement, the Bank will not charge overdraft fees. Any discrepancies shall be reconciled on the following Business Day.

**(ii) Funding Procedures.** Customer shall maintain on deposit in the Funding Account sufficient collected and available funds to cover drafts/warrants charged to the Controlled Draft/Warrant Account. Bank is hereby authorized to debit the Funding Account in an amount equal to the actual or estimated clearings charged against the Controlled Draft/Warrant Account. If Bank and Customer agree to other methods of funding the drafts/warrants, Customer shall be responsible for compensating Bank for any uncollected funds which may occur and Bank may require suitable approval and the establishment of daily dollar limits.

**(iii) Adjustments.** Bank will compare the report of electronic presentments to the drafts/warrants presented against the Controlled Draft/Warrant Account. If the total dollar amount of drafts/warrants electronically reported is less than the total dollar amount of drafts/warrants presented, Bank will credit the Controlled Draft/Warrant Account for the difference. Bank will add this difference to Customer's Total Clearings the next Business Day.

**(iv) Return of Items Unpaid.** Bank reserves the right, after Customer notification and a reasonable time to provide adequate funding, to return a draft/warrant unpaid in the event that: (a) there are insufficient available and collected funds in the Funding Account by the established deadline to fund the Total Clearings; or (b) debits or charges cannot be posted because the Controlled Draft/Warrant Account or Funding Account is frozen, blocked, closed or otherwise unavailable.

**(v) Account Limitations.** Customer shall not initiate or authorize an ACH debit entry or other electronic debit or payment order from the Controlled Draft/Warrant Account.

## **L. POSITIVE PAY SERVICES**

### **1. Introduction**

Positive Pay Services are offered by Bank as the most effective way to minimize loss from fraudulent check issuance or payment. If Positive Pay Services are requested by Customer and agreed to by Bank, Customer and Bank agree that in the event of an inconsistency between this Agreement and applicable law, the provisions of this Agreement shall prevail to the extent permitted. Nothing in this Agreement is intended to limit Bank's right to return an item unpaid if there are insufficient available funds in the designated account.

### **2. Format Specifications**

Customer shall comply at all times with Bank's format and data transmission standards for the Positive Pay Service. Customer agrees to issue checks, drafts, warrants or other items (collectively, "Items") in accordance with Bank's specifications

and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding. Customer shall supply Bank with sample Items for testing.

### **3. Positive Pay**

**a. Customer Responsibilities.** Customer shall designate to Bank all account(s) that are to be used with the Positive Pay Service ("Account"). Customer will provide Bank with a file of all outstanding Items prior to activation of this Service. On each day that an Item is written against the Account, Customer shall supply Bank with all required Item issue information prior to the deadline established by Bank. Such information shall include, without limitation, the account number, the issue date, the Item number and the face amount. Customer shall be responsible for the accuracy and completeness of all information provided to Bank.

**b. Bank's Responsibilities.** In reliance on the information provided by Customer, Bank shall create a master issue file for each designated Account ("Issue File"). If ARP File Confirmation service is selected by Customer, Bank shall process the Issue File and provide a confirmation to Customer that the Issue File was received and processed. Excluding valid stop payment orders and issue records voided by Customer request, all Items, including those that have been electronically converted, that match by serial number and amount to Bank's Issue File will be deemed properly payable and Bank is authorized to pay all such Items.

**c. Paid No Issues.** Each business day, Bank shall make reasonable efforts to report to Customer any Item serial numbers that do not match the Issue File ("Paid No Issue") and, if requested and available, provide the front and back images of those Items for that day's presentment; provided, however, no images shall be provided in the case of electronically converted Items. Customer agrees to review and make payment decisions on the Paid No Issue Items prior to Bank's established deadline. If Customer's requested default setup is for Bank to pay all Paid No Issue Items, then Bank is authorized to finally pay any Paid No Issue Item unless Customer has instructed Bank to return the Paid No Issue Item prior to the established deadline. If Customer's requested default setup is for Bank to return all Paid No Issue Items, then Bank is authorized to return any Paid No Issue Item unless Customer instructs bank to pay a Paid No Issue Item prior to the established deadline. Bank may rely on any instructions received from Customer that Bank reasonably believes to be genuine. Bank shall have no responsibility for any liability, loss or damage resulting from: (i) payment in accordance with this Section of any Paid No Issue Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer; (ii) the return of any Paid No Issue Item to the depository bank in accordance with this Section; or (iii) Customer's failure to meet Bank's established deadlines. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any Item, and shall not obligate Bank to return any Item if it is otherwise properly payable.

**d. Teller Positive Pay.** All positive pay accounts will interface with the Bank's teller

system unless otherwise agreed by Bank. Bank will compare Items presented for cash at a branch of the Bank with Customer's Issue File. Customer agrees that Bank may refuse to cash any Paid No Issue Item and such refusal will not be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer. Customer acknowledges that under some circumstances issuance information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following business day. Customer agrees to follow established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same day basis. In the event that Customer requests Bank not activate or temporarily deactivate teller positive pay, Customer agrees to assume all risk of loss for any Bank teller-cashed Item that would have been identified as a Paid No Issue Item prior to acceptance.

**e. Payee Positive Pay.** If Customer selects this option which is available only through SinglePoint®, Customer's Item stock shall first be tested to ensure it meets Bank's payee name readability rate. Customer shall designate to Bank all positive pay accounts that shall use Payee Positive Pay. In addition to the Item issue information provided by Customer for the positive pay service, Customer shall supply Bank with the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item with Customer's Issue File for Items presented in the back office and at the teller line. Customer acknowledges that Bank will not be able to validate payee information for electronically converted Items presented to Bank for payment. Bank may, in its sole discretion, impose variable parameters for which the payee information will not be reviewed for certain Items processed through the back office. If such parameters are imposed, Bank agrees to assume the risk of loss for an Item that would have been identified as a Paid No Issue solely on the basis of the payee information.

**f. Teller Payee Positive Pay.** If Customer selects this option, Customer shall designate to Bank all positive pay accounts that shall use Teller Payee Positive Pay. In addition to the Item issue information provided by Customer for the positive pay service, Customer shall supply Bank with the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item presented for cash at a branch of the Bank with Customer's Issue File. Customer agrees that Bank may refuse to cash any Item where the payee name is not an exact match and such refusal will not be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer. Customer acknowledges that under some circumstances issuance information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following business day.

#### **4. Reverse Positive Pay**

**a. The Paid File.** Customer shall identify all accounts subject to Reverse Positive Pay ("Account"). When an Item is presented for payment against an identified Account, Bank shall notify Customer prior to the designated time, and in no case later than the business day following the day of presentment, of the Account number, Item number and amount of the presented Item (the "Paid File") and, if requested and available, shall provide Customer with the front and back images of the Items. By electing Reverse Positive Pay, Customer assumes all fraudulent and other risks associated with teller-cashed Items unless Customer provides standing instructions to Bank to disallow encashment at the teller line.

**b. Payment Instructions.** Customer shall compare the information provided by Bank with Customer's Item issuance records. Customer shall notify Bank prior to the deadline established by Bank of Customer's decision on any reported Items that should be dishonored. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine. Bank is authorized to finally pay any Item listed on the Paid File unless the Customer instructs Bank to return the Item prior to the established deadline. Bank shall have no responsibility for any liability, loss or damage resulting from (i) a payment in accordance with this Section of any Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer or (ii) return of any Item to the depository bank in accordance with this Section. Bank reserves the right to require Customer to place a stop payment order on any Item to be returned. Any such orders will be subject to Bank's customary stop payment fee. Customer shall notify Bank by the designated deadline if the Paid File has not been received from Bank. Bank will make reasonable efforts to provide the Paid File to Customer and honor Customer's instructions. Bank's failure to provide a Paid File will not discharge Customer's obligation with regard to any Item that was otherwise properly payable at the time of presentment.

## **M. LOCKBOX SERVICES**

### **1. Lockbox Service Requirements**

Bank provides retail and wholesale Lockbox Services to assist customers in expediting receipt of their remittances. Customer will have its customers forward their payments to the location designated by Bank ("Lockbox"). Prior to initiation of any Lockbox Service, Customer must maintain a demand deposit account with Bank.

### **2. Access to Mail**

Customer authorizes Bank to pick up mail at the appropriate postal facility, to have custody of the keys or combinations and unrestricted and exclusive access to such box, and to collect the mail therein to be processed by Bank as agreed by the parties. Bank shall process remittances in accordance with its standard procedures or in accordance with prior instructions received from Customer and agreed to by Bank. Upon termination of Customer's Lockbox Service, mail received shall be forwarded for sixty (60) days following termination.

### **3. Proprietary Rights**

Bank possesses all proprietary rights to written material, including, without limitation, all

computer programs written for Bank's Lockbox processing system, portable media, listings, and other documentation originated and prepared by Bank. Customer shall not duplicate, sell, or use in any manner such programs or documentation without the prior written consent of Bank.

#### **4. Collections/Availability**

Unless otherwise agreed, while Customer receives Lockbox Services, all collected funds held in the account shall be deemed to be Customer's funds for all purposes, including adjustment, attachment, execution, garnishment and other forms of legal process. The crediting and collection of items will be handled under the same agreement as applied to other commercial deposits and shall be subject to Bank's then current funds availability schedule.

#### **5. Transmission of Information**

Bank shall transmit to Customer remittance information or other information received at the lockbox ("Lockbox Information") via secure electronic transmission. Customer acknowledges that the Lockbox Information may include consumer information that is confidential and may be subject to privacy laws and regulations, including unauthorized access or breach notification regulations. Customer further acknowledges that Bank has a duty to protect Lockbox Information and ensure that it is safely delivered to Customer and that Bank has deemed secure electronic transmissions to be the safest mechanism for delivery. If Customer elects to receive the Lockbox Information using other delivery means including paper reports, CDs, DVDs, or other portable electronic media, Customer acknowledges that such delivery means are outside the control of Bank and agrees to assume all risk, and hold Bank harmless from, any obligations, liability or losses that results from the nonreceipt, disclosure, dissemination, alteration or unauthorized access of the Lockbox Information.

#### **6. Retail Lockbox Processing**

Bank is authorized to open each envelope and remove the contents, disregarding all notations and other marks on the envelopes. Bank shall not examine checks or other items with respect to payee names, check dates and check signatures. Bank is not required to retain remittance envelopes or forward them to the Customer. Bank will disregard any restrictive notation on any check, including but not limited to "paid in full", whether preprinted or handwritten, and shall treat any such check as though such language did not appear thereon. Bank will process, endorse and deposit remittances in accordance with its standard procedures. If Bank is unable to determine the amount of a check, such check will be forwarded to Customer as non-processable. Bank will deliver miscellaneous enclosures, non-processable transactions and remittance data in accordance with the Implementation Documents. Payment coupons and envelopes submitted to Bank for processing must meet the specifications designated by Bank from time to time. All changes in coupon and return envelope design are subject to prior testing and approval by Bank. Bank may adjust the price for processing Customer's payments if changes are made to Customer's coupons and/or envelopes (including coupon scan line configuration) without such prior approval.

## **7. Wholesale Lockbox Processing**

Bank is authorized to remove and examine the contents of each envelope in accordance with Bank's wholesale lockbox servicing guidelines and shall observe the following guidelines provided in this Section. Bank shall capture, format and send remittance data to Customer via information reporting or data transmission in accordance with the Implementation Documents. Customer shall not use any form of prepaid business reply mail envelopes for its lockbox remittances and shall review any proposed envelope changes with Bank prior to use.

**a. Check Date.** Bank will not examine any checks or other items with respect to check dates.

**b. Check Amount.** If Bank is unable to determine the amount of a check, such check will be forwarded unprocessed to Customer as an exception.

**c. Payee.** Checks made payable to the acceptable payees listed in the Implementation Documents or any reasonable derivation thereof are acceptable for deposit. Checks made payable to others will be returned by Bank as exceptions.

**d. Missing Signature.** In the absence of a signature, Bank will process the check.

**e. Exceptions.** If a check is treated as an exception, it will be forwarded by Bank to Customer with the remittance data, and not deposited or otherwise reflected in the account of Customer.

**f. Correspondence.** Any correspondence, invoices and miscellaneous enclosures which are included with a payment, as well as any envelope that does not contain a check, will be returned to Customer.

**g. Notation.** Customer agrees that Bank shall disregard any notation on a check containing "paid in full" or other restrictive notation, whether preprinted or handwritten, and treat any such check as though such notation did not appear thereon.

## **N. RETAIL LOCKBOX CHECK CONVERSION SERVICES**

U.S. Bank's Retail Lockbox Check Conversion ("RLCC") services provides Customer with the services necessary to convert eligible check payments received within U.S. Bank's retail lockbox into ACH Entries or other check collection mechanisms. Customer agrees that RLCC services shall be governed by this Section and other relevant sections of this Agreement.

### **1. Processing Options**

Depending on current technological availability and the processing options selected by Customer, checks received from Payor Customers at Customer's designated U.S. Bank lockbox will be processed via ACH, original paper check presentment, or captured into Check Images and/or MICR Data. Bank may seek to collect such Check Images and/or MICR Data through the check collection system by presenting or exchanging Check

Images and/or MICR Data, or using Check Images and/or MICR Data to create a Substitute Check, a Demand Draft or a Photo-In-Lieu ("PIL") for collection.

## **2. Definitions**

a. "ACH Entry" means an ARC or other ACH check conversion debit entry originated to debit funds from a Payor Customer's account at a financial institution in accordance with the Operating Rules of the National Automated Clearing House Association ("NACHA").

b. "Check Image" means an electronic image of an original paper check or an electronic image of a Substitute Check that is created by Bank or another bank or depository institution in the check collection system.

c. "Electronic Deposit" means electronic information (including Check Images, MICR Data, dollar amount or ACH Entry information) obtained from capturing information from an original paper check and related remittance documentation.

d. "MICR Data" means information from the Magnetic Ink Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.

e. "Payor Customers" means clients and/or customers of Customer that send checks to Customer's lockbox for payment of obligations owed to Customer.

f. "Photo-In-Lieu Instrument" or "PIL" means a copy of an original paper check, other than a Substitute Check, created from a Check Image.

g. "Remotely-Created Demand Draft" or "Demand Draft" means a paper item, other than a Substitute Check or PIL, that (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.

h. "RLCC services" means the Retail Lockbox Check Conversion services as described in this Agreement.

i. "RLCC system" means Bank's retail lockbox computer systems and databases.

j. "Substitute Check" means a paper check document that meets the definition of a "substitute check" in the Check Collection for the 21<sup>st</sup> Century Act as implemented by Regulation CC of the Federal Reserve Board.

k. "Transaction Data" means any information obtained from Payor Customer's checks, Check Images, remittance slips, including without limitation, MICR Data, check amount, Payor Customer address or check number.

## **3. Customer Authorizations and Notifications**

Customer shall adhere to any and all applicable clearinghouse, local, state, or federal laws, rules or regulations, including but not limited to, obtaining all necessary consents and authorizations from, and/or providing all necessary disclosures and notifications to, its Payor Customers concerning the creation and use of the Payor Customers' checks or any other use of Transaction Data by Customer or Bank, and the conversion of Payor Customers' checks or check information to ACH Entries and/or Check Images (including subsequent Substitute Checks, Demand Drafts or PILs created from such Images). Customer is solely responsible for ascertaining the content, method, and frequency of any required authorizations and notifications.

#### **4. Determination of Items Eligible for ACH Processing**

Only original paper checks that qualify as a source document may be converted to an ACH Entry under NACHA Rules. Customer or its agent is responsible for providing and updating Bank with current information on those Payor Customers that have opted-out of ACH check conversion. Customer or its agent shall provide this opt-out information to Bank in a timely manner and in the appropriate MICR Data format that includes correct MICR line spacing and other technical details per Bank's requirements, so as to allow Bank to rely on this information prior to processing the checks. If Customer has selected a processing option that uses ACH Entries to collect payments from Payor Customers, Bank will apply certain automated internal edits and screens to determine whether the original paper check is a source document that qualifies for conversion to an ACH Entry. Customer acknowledges and agrees that Customer is the Originator of such ACH Entries under NACHA Rules regardless of whether Customer or Bank initiates the ACH Entry into the payment system. Bank shall have no liability to Customer or any other person in the event that a Payor Customer's check or check information is processed or converted by Bank to an ACH Entry, Check Image, Substitute Check, Demand Draft or PIL, and such check or check information was not eligible for any reason for processing as, or conversion to, such an item.

#### **5. Processing of Checks**

**a.** Bank shall image all checks that are mailed to Customer's lockbox and shall process checks based on the processing options selected by Customer. Bank shall send Customer a file containing information on all payments that have posted to Customer's lockbox account. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks, and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

**b.** Bank shall not be liable to Customer for (i) electronically converting checks for which Payor Customers had electronically opted-out and for which Customer or its agent did not provide Bank with timely or accurate MICR Data formatting requirements; and (ii) for failure to electronically process checks if such processing would violate this Agreement, or any other agreement between Customer and Bank.

#### **6. Collection of Checks**

Bank may in its sole discretion determine the manner in which Bank will seek to collect



a check received at Customer's lockbox. Without limiting the generality of the preceding sentence, Bank may, at its option: (i) present or transfer a Check Image or MICR Data to the paying bank, a Federal Reserve Bank, image share/exchange network, or other collecting bank; (ii) create a Substitute Check, a Demand Draft or a PIL from the Check Image and/or MICR Data and collect such item, or (iii) collect the original paper check.

## **7. Returns**

**a.** Customer agrees that Bank may charge the account of Customer for any and all returned items and ACH Entries, including a returned Check Image, a returned Substitute Check or a returned Demand Draft or PIL that relates to the original paper check.

**b.** Bank will provide Customer with a report of Check Images, paper items (which may include Substitute Checks, Demand Drafts or PILs) and ACH Entries that are returned. If Bank receives a Check Image as a return, Bank may provide Customer with: (i) a report of returned Check Images, or (ii) Substitute Checks or other copies created from the returned Check Images. Bank is not obligated to produce a Substitute Check from a returned Check Image.

**c.** If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items. Customer shall indemnify and hold Bank harmless from and against, any liability, loss or damage (including attorneys' fees and other costs incurred in connection therewith) relating to or arising out of any late returned item, including those claimed or incurred under Regulation CC of the Board of Governors of the Federal Reserve System ("Regulation CC") or for any breach of warranty claim.

## **8. Representation of Returns**

**a.** If an ACH Entry is returned because the original paper check was ineligible as a source document for the ACH Entry, Bank shall use reasonable efforts to collect the check related to the ACH Entry by presenting the original paper check (if not destroyed) or creating, in Bank's sole discretion, a Substitute Check, a Demand Draft or a PIL from the image of the original paper check. Customer represents and warrants to Bank that Customer has obtained all necessary and appropriate authorizations from its Payor Customers for Bank to create, and present for payment to Payor Customer's financial institution, any such Substitute Check, Demand Draft or PIL.

**b.** In the event the original paper check is required for representation in order to collect a returned Check Image, ACH Entry, Substitute Check, Demand Draft or PIL, Customer shall attempt to obtain a replacement check, or otherwise collect from the Payor Customer, if the original paper check has been destroyed.

## **9. Storage of Check Images**

Bank shall store Check Images, MICR Data and ACH Entry information on the RLCC system or other similar system, and shall make Check Images, MICR Data or ACH

Entry information available to Customer according to the fee schedule. Customer may purchase internet access, CDs, DVDs or file transmission, if available, of Check Images, MICR Data or ACH Entry information, at the price outlined in the fee schedule. Customer is solely responsible for safeguarding the security and confidentiality of, Transaction Data, Check Images and other information that is stored on, printed or downloaded from, the internet, CDs, DVDs, other portable media, file transmissions, or Customer's computer systems. If RLCC services are terminated, Bank will retain Check Images, MICR Data or ACH Entry information for the duration required under NACHA Rules or applicable law.

#### **10. Substitute Check Received for Deposit**

Bank reserves the right to reject the deposit of a Substitute Check that was created by another financial institution, Customer, Payor Customers or any other person.

#### **11. No Authorization to Create Substitute Checks**

Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the RLCC system or other similar system, CDs or DVDs, or otherwise transmitted to Customer, to print a Substitute Check for any reason.

#### **12. Representations and Warranties**

With respect to each original paper check, Check Image or Electronic Deposit, Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the original paper check, Electronic Deposit or Check Image, or a Substitute Check, Demand Draft, PIL or ACH Entry created from that Check Image or MICR Data.

#### **13. Customer Responsibility**

With respect to each original paper check, Check Image or Electronic Deposit, Customer will not hold Bank liable for any loss suffered by Customer as a result of (a) from Customer's breach of a representation or warranty as set forth in Section IV. N. 12. above, (b) as a result of any act or omission of Bank in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry; or (d) for any loss caused by Bank's creation of a Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry instead of presentment of the original paper check; or (e) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Section IV.N.13. This provision does not suggest that Customer shall be liable to any third party for losses related to

Section IV.N.13, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party. This Section IV.N.13. shall survive termination of the Agreement.

#### **14. Rules Applicable to Collection of Checks**

Customer acknowledges and agrees that an original paper check, Check Image, MICR Data, Substitute Check, Demand Draft or PIL may, in the sole discretion of Bank, be collected through one or more check clearinghouses, one or more Federal Reserve Banks, or an agreement with another financial institution or image share/exchange network. In such cases, the original paper check, Check Image, MICR Data, Substitute Check, Demand Draft or PIL is subject to the rules of that clearinghouse, Federal Reserve Bank, or image share/exchange network or financial institution agreement.

#### **15. Accuracy and Timeliness of RLCC services**

Performance of the RLCC services may be affected by external factors such as communication networks latency, mail delays and other factors beyond Bank's control. Bank will use reasonable efforts to provide the RLCC services in a prompt fashion, but shall not be liable for temporary failure to provide the RLCC services in a timely manner. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

### **O. RETURNED CHECK MANAGEMENT**

If selected by Customer and agreed to by Bank, Customer may direct that checks deposited by Customer at multiple bank locations and which are returned by the drawee bank(s) ("Returned Items"), be processed by Bank regardless of the identity of the bank of first deposit. Customer agrees that this Service shall be governed by this Section IV.O. and all other relevant sections of this Agreement.

#### **1. Returned Items**

All checks deposited by Customer shall have been endorsed by Customer using a form of endorsement and routing number(s) prescribed by Bank directing that all Returned Items be sent to Bank. Upon receipt of any Returned Items (which may include the original, replacement paper document, or electronic image, of such Returned Items), Bank will process them as consolidated returned items and charge Customer's designated account. Customer acknowledges that the success of items processed via Returned Check Management is dependent on the quality, consistency and location of the routing information and endorsement stamp placed by Customer. All uncollected Returned Items shall be forwarded by Bank to Customer as described in the Implementation Documents.

#### **2. Redeposited Returned Items**

Upon Customer's request, Bank will automatically redeposit checks returned unpaid due to insufficient funds. Customer has a right to be notified whenever a check Customer deposits is returned unpaid. To simplify collection of these items, Customer agrees to

waive this right of notification for redeposited items. If these items are returned a second time, Customer will receive a standard notification together with the original, replacement paper document, or electronic image, of the Returned Items. Bank reserves the right to place a hold on any redeposited Returned Item.

### **3. Adjustments.**

Customer shall not receive provisional credit if Customer's adjustment request is received by Bank fifteen (15) days past the initial return date that the Returned Item posted to the account. (In the case of a duplicate Returned Item, the 15 days runs from the date of posting of the first Returned Item). For these adjustment requests, Bank shall provide Customer with credit only upon Bank's receipt of credit from the Federal Reserve or from another financial institution.

### **4. Reporting; Fees and Charges**

Bank shall provide Customer with Returned Item activity reports using the reporting method described in the Implementation Documents. The fees and charges assessed by Bank for processing Returned Items are described in the Implementation Documents or in the fee schedules provided by Bank to Customer.

### **5. Late Returns**

Bank will not submit any late return claims for Returned Items, unless requested by Customer and subject to the late return fees described in the Implementation Documents or in the fee schedules provided by Bank to Customer, as set forth in **Exhibit A**. Bank will not give preliminary credit to Customer for any late return claims. If any late return claim is accepted, Bank shall credit Customer's designated account, as soon as, but not before, the funds relating to such late return claim are made available to Bank by the financial institution to which said late return claim was made. Customer will not hold Bank liable for its treatment of any late Returned Item. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, *et seq.* -- Bank will not be liable to third parties for losses related to Bank's treatment of any late Returned Item. This provision does not suggest that Customer shall be liable to any third party for losses related to Bank's treatment of any late Returned Item, and this provision does not constitute a waiver, express or implied, of any defense Customer may have, but for this provision, to any claim brought against Customer by any third party

### **6. Misrouted Items**

From time to time, Returned Items may be routed by the drawee banks to the bank of first deposit. Customer shall provide all of its banks of first deposit with instructions, in a form acceptable to Bank, describing the procedures for re-directing misrouted items to Bank.

### **7. Electronic Return Services**

National Automated Clearinghouse Association ("NACHA") Rules allows Customer to utilize ACH to electronically collect certain checks that have been returned unpaid for insufficient funds. In the event that Customer, Bank or its third party vendor initiates an

ACH entry on Customer's behalf for check collection purposes ("RCK Entry") on Returned Items, Customer agrees that such RCK Entry will comply with all relevant provisions of this Agreement and NACHA Rules. Customer shall provide clear and conspicuous notice of its electronic check representment policy at the time the check is initially presented to Customer.

### **8. Collection Fee Services**

Customer may request that Bank or its third party vendor collect Returned Item fees on Customer's behalf. Customer agrees to comply with all relevant provisions of this Agreement and all applicable laws, rules and regulations governing collection fees, including but not limited to, the Fair Debt Collection Practices Act and NACHA Rules. If Customer elects to collect Returned Item fees via ACH, Customer makes the following representations and warranties regardless of which party initiates the ACH entry on its behalf:

- a. Customer has obtained the consumer's authorization to collect Returned Item fees and has provided the consumer with an electronic or hard copy of the authorization.
- b. The authorization (i) is signed by the consumer and the signature stands alone and relates to the authorization language; (ii) is identifiable as an ACH debit authorization and clearly and conspicuously states its terms; (iii) contains information about how the consumer may revoke the authorization; and (iv) if stamped on the back of the check, is in the endorsement space provided.
- c. Customer shall retain the original or microfilm copy of the authorization for two years from the termination or revocation of the authorization.

### **9. Customer Authorizations**

Customer authorizes (i) Bank to disclose to its third party vendor information concerning Customer to the extent required to deliver the requested Services; (ii) Bank or its third party vendor to debit or credit Customer's accounts to perform the Services hereunder; and (iii) Bank or its third party vendor to initiate RCK Entries, or collect Returned Item fees, on Customer's behalf in the event Customer selects Electronic Return Services or Collection Fee Services.

### **10. Compliance with Law**

Customer will abide by all applicable law, regulations and operating rules, including without limitation, the NACHA Rules, and Customer will not hold Bank liable for any loss suffered by Customer as a result of Customer's failure to comply with applicable law, regulations, and operating rules. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1, C.R.S. § 29-1-110, and C.R.S. § 24-10-101, et seq. - Bank will not be liable to third parties for losses caused by Customer's failure to comply with applicable law, regulations, and operating rules. This provision does not suggest that Customer shall be liable to any third party for losses related to losses caused by Customer's failure to comply with applicable law, regulations, and operating rules, and this provision does not constitute a waiver, express or implied, of any defense

Customer may have, but for this provision, to any claim brought against Customer by any third party

## **P. COMMERCIAL SWEEP ACCOUNTS – LOAN OPTION**

### **A. Definitions**

1. "Account" means Customer's deposit account at Bank which Customer has designated as being covered by the Services described herein.
2. "Available Funds" means the total of the collected funds in the Account as of the close of business on any Business Day, determined in accordance with the manner in which Bank generally provides credit for deposited checks.
3. "Business Day" means any day other than a Saturday or Sunday on which Bank is open to the public for carrying on substantially all of its banking functions.
4. "Credit" means any loan arrangement which is designated as a line of credit where Bank has agreed will be subject to the Services described herein.
5. "Credit Agreement" means any loan agreement, promissory note, guaranty or other agreement, instrument or document which evidences, secures or guarantees the Credit.
6. "Deficiency Amount" means the amount by which the Target Balance exceeds the amount of Available Funds as of the close of business on any Business Day.
7. "Event of Insolvency" means any of the following: (i) Customer or Guarantor shall die or cease to exist; (ii) any Guarantor shall attempt to revoke its guaranty or other obligation to Bank, or such guaranty or other obligation shall become unenforceable in whole or in part; (iii) any bankruptcy, insolvency or receivership proceeding, or any assignment for the benefit of creditors, shall be commenced under any Federal or state law by or against Customer or any Guarantor; (iv) Customer or any Guarantor shall become the subject of any out-of-court settlement with its creditors; or (v) Customer or any Guarantor is unable or admits in writing its inability to pay its debts as they mature.
8. "Excess Funds" means the amount of Available Funds as of the close of business on any Business Day which exceeds the Target Balance.
9. "Guarantor" means any guarantor, surety, accommodation party or joint obligor of the obligations of Customer under the Credit.
10. "Target Balance" means that amount of funds which Customer desires to maintain in the Account and which is mutually agreeable to Bank and Customer from time to time.
11. "Transaction" means either a Loan Transaction or a Repayment Transaction.

### **B. Initiation of Transactions**

1. As of the close of business on each Business Day, Bank will determine the amount of

Excess Funds, if any. If Bank determines that there are Excess Funds, Bank will debit the Account and credit the Credit in an amount equal to the lesser of (i) the amount of Excess Funds or (ii) the outstanding principal balance of the Credit plus all interest, fees and charges then outstanding under the Credit (a "Repayment Transaction"); provided, however, that Bank will not be required to initiate any Repayment Transaction in an amount less than a minimum sum mutually agreeable to Bank and Customer. Customer grants Bank a security interest in and right of set-off with respect to the Account for purposes of effecting Repayment Transactions.

2. As of the close of business on each Business Day, Bank will determine the Deficiency Amount, if any. If Bank determines that there is a Deficiency Amount, Bank will charge the Credit in an amount equal to the lesser of: (i) the amount by which such available balance is less than the Target Balance or (ii) the amount which is available to be borrowed under the Credit (the lesser of such amounts being referred to as the "Loan Amount"), plus the amount of any fees and charges under the Credit, and credit the Account in an amount equal to the Loan Amount (a "Loan Transaction"); provided, however, that Bank will not be required to initiate any Loan Transaction in an amount less than a minimum sum mutually established by Bank, and Bank will not be required to initiate any Loan Transaction if any default exists under any Credit Agreement or these Terms and Conditions or Bank is otherwise excused or prohibited under any Credit Agreement or applicable law from making an advance to Customer. In addition, Bank will not be required to initiate any Loan Transaction, and the Services hereunder shall immediately and automatically terminate without notice, if: (A) the Credit has matured or been terminated; (B) Customer has cancelled the Credit; (C) an Event of Insolvency has occurred; or (D) Bank has demanded payment under the Credit.

3. If Bank has agreed to provide any other service to Customer pursuant to which Bank is authorized to transfer Excess Funds from the Account, (i) these Terms and Conditions shall prevail over the terms and conditions of such other service, (ii) Bank may initiate a Repayment Transaction or Loan Transaction under these Terms and Conditions in lieu of or prior to initiating the transfer of Excess Funds under such other service and (iii) Bank shall not be in default as to such other service solely by reason of not initiating the transfer of Excess Funds under such other service.

#### **4. Overdrafts**

Bank may debit the Account as set forth in Section 1 above, even though, subsequent to such debit, and as a result of additional transfers or withdrawals from the Account, the return of checks unpaid, or any other cause, the Account becomes overdrawn. In such event, Customer will be assessed Bank's then prevailing charges for overdrafts.

#### **5. Ordinary Course**

Customer and Bank intend that each Repayment Transaction hereunder be (a) in the ordinary course of business or financial affairs of Customer and Bank and (b) made according to ordinary business terms.

### **Q. COMMERCIAL SWEEP ACCOUNTS – INVESTMENT OPTION**

**NOTICE: THE INVESTMENT OPTIONS OFFERED BY BANK UNDER THE COMMERCIAL SWEEP ACCOUNT ARE NOT DEPOSITS, ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, ARE NOT OBLIGATIONS OF, OR GUARANTEED BY, THE UNITED STATES GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, U.S. BANK, OR ANY OF ITS AFFILIATES, AND ARE SUBJECT TO INVESTMENT RISKS, INCLUDING LOSS OF PRINCIPAL OF THE AMOUNT INVESTED. IN ADDITION, AN INVESTMENT IN A MONEY MARKET MUTUAL FUND IS NEITHER INSURED NOR GUARANTEED BY THE U.S. GOVERNMENT AND THERE IS NO ASSURANCE THAT THE FUND WILL BE ABLE TO MAINTAIN A STABLE NET ASSET VALUE OF \$1.00 PER SHARE.**

**1. General Terms Applicable to All Investment Options**

a. If a Commercial Sweep Account Investment Option has been requested and agreed to by Bank, Customer authorizes Bank to transfer funds on a manual or automated basis to and from the demand deposit account ("DDA") and investment device selected by Customer. Funds will be transferred between the accounts so that: (a) to the extent funds are available in either account, Customer's DDA maintains an average collected balance equal to a pre-established balance ("Peg Balance"); and (b) any collected funds in the DDA that exceed the Peg Balance are invested by Bank as directed by Customer in accordance with this Agreement. Amounts invested in money market mutual funds, including investment income, will be liquidated and credited back to the DDA as needed so that the average collected balance of Customer's DDA equals the Peg Balance. Amounts invested in other investment options, including interest or other investment income, will be credited back to the DDA upon maturity. Bank may limit the amount of excess collected funds that it will invest on behalf of Customer on any particular Business Day. Bank may also impose a maximum redemption amount to bring the DDA to the Peg Balance on a particular Business Day. If Customer's Investment Option is not available on a given Business Day, then all excess funds will remain in the DDA until the next Business Day.

b. Bank is authorized to accept verbal instructions, including telephone instructions, from Customer representatives, as designated in accordance with Section II.9., for the transfer of funds between Bank and Customer and between Customer's accounts. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine.

c. Bank is authorized to execute as Agent for Customer all certificates of ownership and other instruments required by law or by contract. Bank shall not be accountable for errors in judgment but only for gross negligence or willful misconduct. Bank shall not be required to comply with any direction of Customer which in Bank's judgment, may subject it to liability or to defend or prosecute any suit or action unless indemnified in a manner and amount satisfactory to it.

d. Customer may, by written instrument executed by Customer and delivered to Bank, terminate this Service and withdraw from the account the principal and accumulated income upon paying all sums due to Bank and indemnifying Bank to its satisfaction



against liabilities incurred in the administration of the account.

e. Bank will act as agent to invest on the order and for the benefit of Customer. The Services described herein are provided by Bank to Customer solely as bona fide treasury management services. Bank does not undertake any fiduciary obligation to Customer with respect to these services. Bank's duties to act for Customer hereunder are solely mechanical and administrative in nature.

## **2. Investment Options**

### **a. Repurchase Agreements**

(i) **Terms.** If Customer chooses to invest excess funds in repurchase agreements, Customer and Bank agree to be bound by the Master Repurchase Agreement with Bank. If Customer's investments in repurchase agreements exceed its typical investment amount by TEN MILLION DOLLARS (\$10 million) or more on a given Business Day, Customer agrees to notify Bank by providing sufficient advance notice to allow Bank to adequately collateralize the investments. Bank will exercise reasonable efforts to invest the entire amount but cannot guarantee full investment under these circumstances. If Customer fails to notify Bank in advance or if Bank is unable to invest any or all of the additional funds in repurchase agreements, Customer agrees that Bank may be required to withhold or withdraw any interest that may have been previously paid.

(ii) **Confirmations.** After each repurchase transaction, Bank will deliver to Customer (via mail, fax, email, or other electronic means, including without limitation, posting to a password protected website) a confirmation ("Confirmation") describing any information required by applicable law, and any other terms and information which Bank may include at its discretion. The information contained in the Confirmation shall be considered true and correct and conclusively binding unless Customer notifies Bank of any error therein within three (3) business days after the date the Confirmation is mailed, faxed, emailed, personally delivered to Customer or sent via other electronic means, including without limitation, posting to a password protected website. If Customer elects to receive Confirmations electronically, Customer acknowledges and agrees that Customer will no longer receive Confirmations by mail. If Customer desires to discontinue receiving Confirmations electronically, Customer shall provide written notice to Bank, whereupon Bank shall resume delivering mailed Confirmations.

### **b. Eurodollar Investments**

(i) **Terms.** If Customer chooses to invest excess funds in Eurodollars, Bank is authorized to sweep excess funds from Customer's DDA into overnight Eurodollar time deposits at the Cayman Islands branch of Bank. The minimum amount that may be swept pursuant to this option is ONE HUNDRED THOUSAND DOLLARS (\$100,000). Excess funds less than ONE HUNDRED THOUSAND (\$100,000) in a given business day will not be invested unless otherwise agreed by Bank. Customer's Eurodollar investments may be registered in the name of Bank's nominee or nominees. Earnings in Eurodollar investments shall be credited to

Customer's DDA on a daily basis.

- (ii) IMPORTANT DISCLOSURES REGARDING CAYMAN ISLAND DEPOSITS.** CAYMAN ISLAND DEPOSITS ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. IN THE EVENT OF THE FAILURE AND LIQUIDATION OF BANK, THE PROCEEDS OF SUCH LIQUIDATION WILL BE APPLIED TO THE CAYMAN DEPOSIT, IF AT ALL, ONLY AFTER PAYMENT OF ALL INSURED AND UNINSURED DOMESTIC DEPOSITS OR BANK, AND THE CAYMAN DEPOSIT WILL SHARE IN ANY REMAINING PROCEEDS OF LIQUIDATION WITH OTHER NON-DOMESTIC DEPOSITS AND CERTAIN GENERAL CREDITORS OF BANK. CUSTOMER ASSUMES ALL RISK OF LOSS ARISING FROM ANY ACTION TAKEN WITH RESPECT TO THE CAYMAN DEPOSIT BY THE GOVERNMENT OF THE CAYMAN ISLANDS OR ANY SOVEREIGN OR MILITARY POWER (DE FACTO OR DE JURE).

**c. Mutual Funds**

- (i) Terms.** If Customer chooses the Mutual Fund sweep option, excess funds will be invested in the First American fund offered for this service. Bank affiliates serve as investment advisor, custodian, transfer agent, and accounting services agent and receive compensation for such services as disclosed in the prospectus for the selected fund.
- (ii) Customer Acknowledgments.** BY ACCEPTING THIS SERVICE, CUSTOMER HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE PROSPECTUS OF ANY DESIGNATED FUND. CUSTOMER FURTHER ACKNOWLEDGES THAT BANK IS NOT PROVIDING ANY INVESTMENT ADVICE HEREIN TO CUSTOMER AND MAKES NO REPRESENTATION OR WARRANTY AS TO THE SUITABILITY OR SAFETY OF THE INVESTMENTS IN ANY FUND OFFERED UNDER THIS SERVICE.

**d. Commercial Paper.** If Customer chooses the Commercial Paper sweep option, excess funds shall be invested in an unsecured short-term promissory note issued by Bank. At the end of each Business Day, excess funds are automatically transferred from Customers' DDA into a sweep account that invests in overnight commercial paper. The minimum amount that may be swept pursuant to this option is TWENTY-FIVE THOUSAND DOLLARS (\$25,000). Excess funds less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000) on a given business day will not be invested in the Commercial Paper sweep.

**R. MASTER REPURCHASE AGREEMENT (MRA)**

**1. Applicability**

From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or other assets ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction"

and, unless otherwise agreed in writing, shall be governed by this MRA.

## **2. Definitions**

- a.** "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;
- b.** "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Section IV.R. 4. a. hereof;
- c.** "Buyer's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Buyer's Margin Percentage to the Repurchase Price for such Transaction as of such date;
- d.** "Buyer's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Seller's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;
- e.** "Confirmation", the meaning specified in Section IV.R. 3.b. hereof;
- f.** "Income", with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;
- g.** "Margin Deficit", the meaning specified in Section IV.R. 4.a. hereof;
- h.** "Margin Excess", the meaning specified in Section IV.R. 4.b. hereof;
- i.** "Margin Notice Deadline", the time agreed to by the parties in the relevant Confirmation, or otherwise as the deadline for giving notice requiring same day satisfaction of margin maintenance obligations as provided in Section IV.R. 4. hereof (or, in the absence of any such agreement, the deadline for such purposes

established in accordance with market practice);

**j.** "Market Value", with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Section IV.R. 5 hereof) as of such date (unless contrary to market practice for such Securities);

**k.** "Price Differential", with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

**l.** "Pricing Rate", the per annum percentage rate for determination of the Price Differential;

**m.** "Prime Rate", the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);

**n.** "Purchase Date", the date on which Purchased Securities are to be transferred by Seller to Buyer;

**o.** "Purchase Price", (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Section IV.R. 4.b. hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Section IV.R. 4.a. hereof or applied to reduce Seller's obligations under clause (ii) of Section IV.R. 5. hereof;

**p.** "Purchased Securities", the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Section IV.R.9. hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Section IV.R.4.a. hereof and shall exclude Securities returned pursuant to Section IV.R.4.b. hereof;

**q.** "Repurchase Date", the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Section IV.R. 3.c. or Section IV.R.11. hereof;

**r.** "Repurchase Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in

each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;

s. "Seller's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Seller's Margin Percentage to the Repurchase Price for such Transaction as of such date;

t. "Seller's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

### **3. Initiation; Confirmation; Termination**

a. An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.

b. Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this MRA. The Confirmation, together with this MRA, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this MRA, this MRA shall prevail.

c. In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Section IV.R. 5. hereof) against the transfer of the Repurchase Price to an account of Buyer.

### **4. Margin Maintenance**

a. If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the

aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).

b. If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

c. If any notice is given by Buyer or Seller under subparagraph a. or b. of this Section IV.R. 4. at or before the Margin Notice Deadline on any business day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next business day following such notice.

d. Any cash transferred pursuant to this Section IV.R.4. shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

e. Seller and Buyer may agree, with respect to any or all Transactions hereunder, that Section IV.R.4. the respective rights of Buyer or Seller (or both) under subparagraphs a. and b. of this Paragraph may be exercised only where a Margin Deficit or Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).

f. Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs a. and b. of this Section IV.R.4. to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this MRA).

## **5. Income Payments**

Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.

## **6. Security Interest**

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.

## **7. Payment and Transfer**

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

## **8. Segregation of Purchased Securities**

To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this MRA. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this MRA shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Section IV.R.3., Section IV.R.4. or Section IV.R.11. hereof, or of Buyer's obligation to credit or pay Income to, or apply

Income to the obligations of, Seller pursuant to Section IV.R. 5. hereof.

**Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities**

Seller is not permitted to substitute other securities for those subject to this MRA and therefore must keep Buyer's securities segregated at all times, unless in this MRA Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]\* [may]\*\* be subject to liens granted by Seller to [its clearing bank]\* [third parties]\*\* and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to re-segregate substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]\* [any]\*\* lien or to obtain substitute securities. \* Language to be used under 17 C.F.R. § 403.4(e) if Seller is a government securities broker or dealer other than a financial institution. \*\* Language to be used under 17 C.F.R. § 403.5(d) if Seller is a financial institution.

**9. Substitution**

a. Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.

b. In Transactions in which Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph a. of this Section IV.R.9., to have agreed to and accepted in this MRA substitution by Seller of other Securities for Purchased Securities; provided, however, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

c. In the case of any Transaction for which the Repurchase Date is other than the business day immediately following the Purchase Date and with respect to which Seller does not have any existing right to substitute substantially the same Securities for the Purchased Securities, Seller shall have the right, subject to the proviso to this sentence, upon notice to Buyer, which notice shall be given at or prior to 10 am (New York time) on such business day, to substitute substantially the same Securities for any Purchased Securities; provided, however, that Buyer may elect, by the close of business on the business day notice is received, or by the close of the next business day if notice is given after 10 am (New York time) on such day, not to accept such substitution. In the event such substitution is accepted by Buyer, such substitution shall be made by Seller's transfer to Buyer of such other Securities and Buyer's transfer to Seller of such Purchased Securities, and after such substitution, the substituted Securities shall be deemed to be Purchased Securities. In the event Buyer elects not to accept such substitution, Buyer shall offer Seller the right to



terminate the Transaction.

d. In the event Seller exercises its right to substitute or terminate under sub-paragraph (c), Seller shall be obligated to pay to Buyer, by the close of the business day of such substitution or termination, as the case may be, an amount equal to (A) Buyer's actual cost (including all fees, expenses and commissions) of (i) entering into replacement transactions; (ii) entering into or terminating hedge transactions; and/or (iii) terminating transactions or substituting securities in like transactions with third parties in connection with or as a result of such substitution or termination, and (B) to the extent Buyer determines not to enter into replacement transactions, the loss incurred by Buyer directly arising or resulting from such substitution or termination. The foregoing amounts shall be solely determined and calculated by Buyer in good faith.

## **10. Representations**

Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this MRA, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing in advance of any transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this MRA on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this MRA and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this MRA and the Transactions hereunder will not violate any law, ordinance, charter, bylaw or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

## **11. Events of Default**

In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Section IV.R. 4. hereof, (iv) Buyer fails, after one business day's notice, to comply with Section IV.R. 5. hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

a. The non-defaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event

that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.

**b.** In all Transactions in which the defaulting party is acting as Seller, if the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subparagraph a. of this Section IV.R.11., shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the non-defaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the non-defaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.

**c.** In all Transactions in which the defaulting party is acting as Buyer, upon tender by the non-defaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the non-defaulting party, and the defaulting party shall deliver all such Purchased Securities to the non-defaulting party.

**d.** If the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph a. of this Section IV.R.11., the non-defaulting party, without prior notice to the defaulting party, may: (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and (ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the non-defaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally

recognized source or the most recent closing offer quotation from such a source. The parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the non-defaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

e. As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the non-defaulting party for any excess of the price paid (or deemed paid) by the non-defaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Section IV.R. 5. hereof or otherwise hereunder.

f. For purposes of this Section IV.R.11., the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the non-defaulting party of the option referred to in subparagraph (a) of this Paragraph.

g. Both Bank and Customer shall each bear their respective costs and expenses associated with enforcing the terms of this MRA.

h. To the extent permitted by applicable law, the defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the non-defaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the non-defaulting party under this Section IV.R. 11.h. shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

i. The non-defaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

## **12. Single Agreement**

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any

Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

### **13. Notices and Other Communications**

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger or otherwise to the address specified by Bank, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

### **14. Entire Agreement; Severability**

This MRA shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

### **15. Nonassignability; Termination**

a. The rights and obligations of the parties under this MRA and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this MRA and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This MRA may be terminated by either party upon giving written notice to the other, except that this MRA shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.

b. Subparagraph a. of this Section IV.R.15. shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Section IV.R. 11. hereof.

### **16. Governing Law**

This MRA shall be governed by the laws of the State of Colorado without giving effect to the conflict of law principles thereof. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. The Bank expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

### **17. No Waivers, Etc.**

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this MRA and no consent by any party to a

departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Section IV.R. 4.a. or Section IV.R.4.b.hereof will not constitute a waiver of any right to do so at a later date.

#### **18. Use of Employee Plan Assets**

**a.** If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

**b.** Subject to the last sentence of subparagraph a. of this Section IV.R.18., any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

**c.** By entering into a Transaction pursuant to this Section IV.R.18., Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

#### **19. Intent**

**a.** The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

**b.** It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Section IV.R. 11. hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

**c.** The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

d. It is understood that this MRA constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

## **20. Disclosure Relating to Certain Federal Protections**

The parties acknowledge that they have been advised that:

a. In the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission (“SEC”) under Section 15 of the Securities Exchange Act of 1934 (“1934 Act”), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 (“SIPA”) do not protect the other party with respect to any Transaction hereunder;

b. In the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

c. In the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

***[Signature pages follow]***

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

**US BANK National Association**

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

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

**ATTEST:**

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

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

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO,

Roger A. Partridge  
Roger A. Partridge, Chair

OFFICE OF THE COUNTY TREASURER:

Diane A. Holbert  
Diane A. Holbert  
Treasurer

ATTEST:

Melissa Pelletier  
Melissa Pelletier  
Deputy Clerk



Date: 2/24/14

APPROVED AS TO FISCAL CONTENT:

Andrew Copland  
Andrew Copland  
Director of Finance

Date: 1/31/14

APPROVED AS TO CONTENT:

Douglas J. DeBord  
Douglas J. DeBord  
County Administrator

Date: 2/5/14

APPROVED AS TO LEGAL FORM:

Meredith P. Van Horn, Esq.  
Meredith P. Van Horn, Esq.  
Assistant County Attorney

Date: 1/29/14



**00 Balance & Comp. Information**  
 Proposal Pricing for the County of Douglas, Colorado

Service Bank's  
AFP Code Description Unit Price

Proposal  
 for Annual  
 Costs  
 Years 1-3

000110	FDIC Rate - Provide Rate Only in Gray Shaded Area (Decimal Only)	0.12075
000230	FDIC Assessment	
000122	Earnings Allowance Rate-Provide Rate Only in Gray Shaded Area	0.00400
000143	Rate - Net Collected Balance Overdraft - Provide Rate Only in Gray Shaded Area	-
009999	Unidentified Compensation Rates	

**01 General Account Services**  
 Proposal Pricing for the County of Douglas, Colorado

Service Bank's  
AFP Code Description Unit Price

Proposal for Years 1-3

010308 DDA Statement - Automated - Internet (preferred method)

3.50000

010411 Account Analysis - Manual - Account Detail

-

010407 Account Analysis - Automated - Internet (preferred method)

7.00000

019999 Undefined General Account Services / Fees

-

Statement with front and back images

2.00000

**10 Depository Services**  
**Proposal Pricing for the County of Douglas, Colorado**

[Empty box]

<u>AFP Code</u>	<u>Service Description</u>	<u>Bank's Unit Price</u>
-----------------	----------------------------	--------------------------

Proposal for Years 1-3

100000 Branch Deposit 0.20000

Vault Deposits Processed

0.20000

100141 Vault Coin and/or Currency Order - Automated  
 100144 Vault Furnished Coin - Rolled  
 100148 Vault Furnished Currency - Loose  
 10014A Vault Furnished Currency - Fed Standard Strap

2.00000
0.10000
0.25000
0.25000

**Check Deposit Processing**

100220 Unencoded Checks-On-U.S.  
 100225 Unencoded Checks - Transit  
 100228 Check Encoding Surcharge

0.03000
0.05000
-

10022A Unencoded Checks - Electronic Check Presentment (ECP)  
 100230 Checks Deposited - MICR Reject/Repair

-
-

**Return Item Processing**

100400 Return Item Processing - Regular  
 100402 Return Item Processing - Reclear Item  
 100405 Return Item Processing - Maintenance  
 100416 Return Item Notification - Internet  
 100450 Returned Check Conversion - Maintenance  
 100453 Returned Check Conversion - Data Capture  
 100454 Returned Check Conversion - Data Entry

1.00000
1.00000
3.50000
25.00000
-
-
-

**Deposit Adjustments**

100501 Deposit Adjustment Processing - Coin and/or Currency  
 100502 Deposit Adjustment Processing - Checks  
 100515 Deposit Adjustment Notification - Internet

5.00000
5.00000
5.00000

N/A	Electronic Credits (Incoming)	0.10000
N/A	Electronic Debits (Outgoing)	0.10000
N/A	Image Cash Letter Monthly Maintenance	175.00000
N/A	Image Cash Letter Transmission (per transmission)	7.00000
N/A	Image Cash Letter Deposit Fee	1.00000
N/A	Image Cash Letter Checks-On-U/s	0.05000
N/A	Image Cash Letter Checks - Transit	0.05000

**Remote Deposit Processing (Volumes not available as not a current service)  
Please Provide Pricing Only**

101300	Remote Deposit Maintenance Fee - Internet	15.00000
101310	Remote Deposit Capture-Transit	0.05000
101311	Remote Deposit Capture - On-U/s	0.05000
101320	Remote Deposit Image Delivery - Per Item - Internet	-
101323	Remote Deposit Image Delivery - Batch - Internet	0.80000
109999	Undefined Depository Services	30.00000

Image Retrieval - Remote Deposited Items		
N/A	Check Imaging - Maintenance	-
N/A	Check Image Capture	-
N/A	Check Image - Internet	0.75000
N/A	Check Image-Archival	-

Image Capture Hardware - Lease/Purchase Option  
**Please provide pricing only**

Lease With an Option to Purchase Image Capture Hardware  
(include only hardware with the ability to process greater than  
60 documents per minute)  
N/A

**15 Paper Disbursement Services**  
**Proposal Pricing for the County of Douglas, Colorado**

--

<u>AFP Code</u>	<u>Service Description</u>	<u>Bank's Unit Price</u>
<b>Proposal for Years 1-3</b>		
<b>Paper Disbursement Maintenance</b>		
150000	Paper Disbursement Maintenance - Controlled	75.00000
150030	Paper Disbursement Maintenance - Positive Pay - Bank Match	20.00000
<b>Paper Disbursement</b>		
150300	Check Rejects - MICR	-
150341	Non-Sufficient Funds (NSF) - Item Paid	-
150110	Checks Paid - Controlled Disbursement	0.08000
<b>Positive Pay Disbursement</b>		
150120	Positive Pay- Checks Issued	0.01000
N/A	Positive Pay-Checks Rejected	-
150324	Positive Pay Reject Notification - Image - Internet	1.00000

Check Imaging

151350	Check Imaging - Maintenance	
N/A	Image Access/Archive - Maintenance	20.00000
151351	Check Image Capture	-
151355	Check Image - Internet	1.00000
159999	Undefined Disbursement Services / Fees	-
	SinglePoint Issue Maintenance	20.00000
		-

**25 General ACH Services**

Proposal Pricing for the County of Douglas, Colorado

Service

Bank's

AFP Code      Description

Unit Price

**Proposal for Years 1-3**

**ACH Transactions Originated**

250000	General ACH Maintenance	15.00000
250100	ACH Originated-On Us	0.03000
250101	ACH Originated-Transit	0.03000
250120	ACH Originated - Addenda Records	0.04000

2510/U ACH Return-Notification of Change - Automated

2,000,000

**ACH Input-Automated**

250505 ACH Input - Automated - Internet

2,000,000

**ACH Transaction Exception Processing**

250632 ACH Exception Processing - File Reject

-

**ACH Special Services**

251052 Special ACH Service - Stop/ Debit Block

2,000,000

251050 Special ACH Service - Debit Authorization (ACH Filter)

5,000,000

259999 Undefined General ACH Services / Fees

-

2,000,000
2,000,000
-
2,000,000
5,000,000
-
-
-

**35 Wires and Other Fund Transfers Services**  
Proposal Pricing for the County of Douglas, Colorado

[Empty rectangular box]

Service

Bank's

350101	Outgoing Fedwire Transfer - Automated - Semi-Repetitive	3.0000
350103	Outgoing Fedwire Transfer - Automated - Freeform Straight-Through	3.0000
350120	Outgoing Book Transfer - Automated - Repetitive (Internal to Bank)	3.0000
350300	Incoming Fedwire Transfer	3.0000
350310	Incoming CHIPS Transfer	3.0000
350320	Book Transfer	0.1000
359999	Undefined Wire and Other Funds Transfer Services / Fees	-

**40 Information Services**  
**Proposal Pricing for the County of Douglas, Colorado**

[Empty Box]

<u>AFP Code</u>	<u>Description</u>	<u>Service</u>	<u>Bank's Unit Price</u>
-----------------	--------------------	----------------	--------------------------

**Proposal for Years 1-3**

**Domestic Information Reporting**

Domestic Information Maintenance - Internet - Previous Day -

[Empty Box]	[Empty Box]
[Empty Box]	[Empty Box]



400273	Domestic Reporting - Internet - Intraday - Summary	0.0200
400274	Domestic Reporting - Internet - Intraday - Detail	0.0200
401000	Information Services Software - Maintenance	-
N/A	Information Services - ACH Origination Maintenance	15.0000
N/A	Information Services-Fed Wire Monthly Maintenance	-
N/A	Information Services-Positive Pay Monthly Maintenance	-
N/A	Information Services-Issued Checks Monthly Maintenance	-
N/A	Information Services-Issued Checks Archival Monthly Maintenance	20.0000
N/A	Information Services-Returned Items Monthly Maintenance	25.0000
N/A	Token Monthly Maintenance	-
N/A	Mobile Banking Monthly Maintenance	10.0000
N/A	Bank Messaging Monthly Maintenance	25.0000
N/A	Bank Messaging - External User Message Sent	-
N/A	Bank Messaging- User Task Sent	-
N/A	Special Report-ACH Return and NOC Report	5.0000
N/A	Special Report-ACH Received Item Report	30.0000
N/A	Special Report-ACH Redeposit Report	-

**45 Investment Safekeeping Svcs**  
**Proposal Pricing for the County of Douglas, Colorado**

--

	<b>Bank's</b>
<u>AFP</u>	<u>Unit</u>
<u>Code</u>	<u>Price</u>
<u>Description</u>	

**Proposal for Years 1-3**

**Investment/Custody (Safekeeping) Services**

**Note: The County currently has Safekeeping Services**

450000 Domestic Custody Maintenance	20,00000	
450100 Domestic Custody - Security Receipt - Automated - Fed	40,00000	
450108 Domestic Custody - Security Receipt - Automated - DTC	40,00000	
450120 Domestic Custody - Security Presentment - Automated - Fed	-	
450174 Domestic Custody - Security Receipt/Presentment - Automated - DTC	-	
N/A Domestic Custody - Security Holding and Receipt of Interest/Principal - Automated - Government Securities	2,000000	

450402 Investment/Custody Information Report - Automated - Market Valuation

459999 Undefined Investment/Custody Services / Fees

-
-
-

ONE-TIME SET-UP FEES  
 Proposal Pricing for the County of Douglas, Colorado

--

<u>AFP Code</u>	<u>Service Description</u>	<u>Bank's Unit Price</u>
-----------------	----------------------------	--------------------------

<u>AFP Code</u>	<u>Service Description</u>	<u>Bank's Unit Price</u>
Proposal for Years 1-5		
One-Time Initial Set-Up Fees		
Refer to Section V: Scope of Banking Services for Further Information		
Retail and Wholesale Lockbox Setup pricing included in worksheet "05		
Lockbox"		
010700	Set-Up Fee - Demand Deposit Account	-
010702	Set-Up Fee - Zero Balance Service	-
060500	Payroll Card Set-Up	-
060520	Payroll Card PIN Set-Up	-
100451	Returned Check Conversion - Set-Up	-
251000	Special ACH Service - Set-Up Fee	-
400810	Information Services - Set-Up Fee	-
400820	Information Services Administration - Customer ID - Set-Up	-
N/A	Image Cash Letter - Set-Up Fee	-
099999	Unidentified Set-Up Fee(s)	-

Lockbox Web decisioning Monthly Maintenance	100.00000
Lockbox Web Decisioning - per item	0.45000
ACH Monthly Maint - 3rd Party	15.00000
Payee Positive Pay - per account	20.00000
Payee Positive Pay - per item	0.01000

100.00000
0.45000
15.00000
20.00000
0.01000

Additionally, we are providing pricing on E-Payment and E-Lockbox services. However, due to limitations on the spreadsheet regarding the number of lines available, we will be providing the pricing for these two products as attachments.

## U.S. Bank E-Payment Service Pricing

Web Monthly Maintenance	\$157.50
First Application	\$35.00
Each Additional Application	\$245.00
IVR Monthly Maintenance	\$105.00
First Application	
Each Additional Application	

Total Web one-time Payments-per Confirmation Number	
1 - 1,000 Total Items	\$0.47
1,001 - 10,000 Total Items	\$0.34
10,001 - 50,000 Total Items	\$0.25
50,001 - 100,000 Total Items	\$0.20
100,001 - 250,000 Total Items	\$0.17
250,001 Total Items and Above	\$0.13
Total IVR one-time Payments-per Confirmation Number	
1 - 1,000 Total Items	\$0.47
1,001 - 10,000 Total Items	\$0.34
10,001 - 50,000 Total Items	\$0.25
50,001 - 100,000 Total Items	\$0.20
100,001 - 250,000 Total Items	\$0.17
250,001 Total Items and Above	\$0.13

**E-Payment Service**

E-Payment Fed Item

\$0.07

**Monthly Maintenance and Reporting**

E-Payment Return - per Item

\$0.06

E-Payment Notification of Change - per Item

\$2.98

\$2.45

U.S. Bank E-Payment Service Pricing,

Page 1

**One Time Payments (E-Check (ACH), Credit & ATM Card)**

**Recurring Payments**

**ACH Items and Fees**

Custom Remittance File Monthly Maintenance	\$70.00
Custom Remittance File - per Payment	.\$0.06
Custom Remittance File - per Transmission	\$3.50
Custom Remittance File VAN Transmission - per Kilocharacter	\$0.28
Custom Remittance File Se:up	\$525.00
Custom Remittance File Setup Modification	\$175.00

### Additional Services

E:Pay Gateway Payments- Additional per Item	\$0.07
Real-Time Communications Support	\$52.50
File Transmission Support	\$70.00
Custom Programming - per Hour	\$105.00
E:Payment Services Call Center Setup	\$1,225.00
E:Payment Call Center Support (Min. \$250.00)	\$0.67
Visa Account Updater	
1 - 500 Total Items	\$0.67
501 - 1,000 Total Items	\$0.53
1,001 - 5,000 Total Items	\$0.35
5,000 +Total Items	\$0.28

Remote Web Services Set-Up	\$1,750.00
E:Pay Setup Remote Web Services Additional Application	\$700.00
Remote Web Services Items	
1 - 1,000 Total Items	\$0.33
1,001 - 10,000 Total Items	\$0.22
10,001 -50,000 Total Items	\$0.16
50,001 Total Items and Above.	\$0.12
Remote Web Services Monthly Maintenance	\$140.00

### Kiosk Channel

E:Payment Kiosk Outdoor Series	\$574.00
E:Payment Kiosk Indoor Series	\$420.00
E:Payment Kiosk Set-Up	\$2,450.00
E:Payment Kiosk Shipping & Handling	\$1,050.00
E:Payment Kiosk Additional Language	\$2,800.00
E:Payment Kiosk Support	\$280.00
E:Payment Kiosk Armor Service	\$175.00
E:Payment Kiosk Payment	\$0.67
E:Payment Kiosk Add-On	\$0.70

Setup Web payments -Additional Applications	\$630.00
Setup IVR Payments - 1st Application	\$2,800.00
Setup IVR Payments -Additional Applications	\$700.00
Setup IVR and Web Payments - 1st Application	\$5,250.00
Setup IVR and Web Payments -Additional Applications	\$1,400.00

**Test Application Hosting and Support (if requested)**

IVR and Web Test Application Monthly Maintenance	\$122.50
IVR Test Application Monthly Maintenance	\$105.00
Remote Web Services Test Application Monthly Maintenance	\$87.50
Web Test Application Monthly Maintenance	\$35.00

**Test Application Transactions (if requested)**

Test Application IVR Transactions	\$0.42
-----------------------------------	--------

**Test Application Implementation (if requested)**

IVR and Web Test Application Implementation - Post-Production	\$2,450.00
IVR and Web Test Application Implementation - Pre-Production	\$1,260.00
IVR Test Application Implementation- Post-Production	\$2,100.00
IVR Test Application Implementation - Pre-Production	\$1,050.00
Remote Web Services Test Application - Post Production	\$1,260.00
Remote Web Services Test Application - Pre Production	\$665.00
Remote Web Services Test Application-Pre Production	\$665.00
Test Application Hourly Support- per Hour	\$70.00
Web Test Application Implementation - Post-Production	\$840.00
Web Test Application Implementation - Pre-Production	\$420.00

Service Description

**E Lockbox**

**Monthly Maintenance**

Monthly Maintenance - per Biller ID \$175.00  
First Biller ID \$35.00  
Each Additional Biller ID

**Consumer Initiated Payments**

Remote Banking Items (Min. \$100.00)  
0 - 4,999 Total Items \$0.11  
5,000 - 9,999 Total Items \$0.08-  
10,000-24,999 Total Items \$0.07  
25,000 - 49,999 Total Items \$0.06  
50,000 - 99,999 Total Items \$0.04  
100,000 Total Items and Above \$0.03

**Consur**

CCCS Item \$0.11

**Account Conversion**

Implementation Setup \$350.00  
Monthly Maintenance \$105.00  
One Time Upload Fee ,into Prod  
0 to 1,000 Total Items \$0.06  
1,000 to 10,000 Total Items \$0.04  
10,000 Total Items and Above \$0.01  
Translation Fee \$0.01  
Research Fee \$0.01

Automated Return- per Item \$0.70  
Automated Notification of Change ;: per Item \$0.70  
Manual Notification of Change - per Item \$1.40  
Manual Return - per Item \$1.25

**9)**

Biller Activity Report Monthly Maint - per Biller ID \$14.00  
Credit Counseling Report Monthly Maint- per Biller ID  
First Item \$350.00  
All Additional Items



VAN Data Transmission - per Kilocharacter

\$0.28

Stop File Monthly Maint- Shared File or Dollar Amt

First item

\$52.50

.2 to 5 items

\$17.50

All additional items

Stop File Monthly Maintenance - Direct File to BCP

\$105.00

Stop Payment - per Item

\$0.70

Reporting Modifications, Administrative

\$3.50

Reporting Modifications, Map

\$105.00

Custom Setup

\$525.00

Setup

\$525.00

ELBX Multicycle File Setup

\$140.00

Stop File Setup - Shared File or Dollar Amount Stop

\$70.00

Stop File Setup - Direct File to BCP

\$140.00

U.S. Bank E-Loan Servicing  
Setup Fee

Modifications

Biller Stop Payment Process

Reporting Translation - per Payment  
File Translation

Data Transmission

## EXHIBIT B

### RFP RESPONSE-SECTION V. SCOPE OF SERVICES

## **SECTION V ~ SCOPE OF BANKING SERVICES**

### **A. Required Banking Services**

#### **1) Bank Accounts**

The County currently has ten (10) bank accounts as described in the following paragraphs. All accounts are non-interest bearing. There is one (1) pooled account that serves as a master account (future referenced as the Master Account) and four (4) other depository accounts, two (2) of which are zero balance accounts (ZBA). There are three (3) ZBA controlled disbursement accounts. The ZBA depository account sweeps into the Master account, while the ZBA disbursement accounts are funded from the Master account. Two (2) of the accounts are used for Lockbox depositing only and one (1) wires the daily balance to the Master and the other one (1) is debited via ACH monthly into the Master account.

The County requests the earliest controlled disbursement available, preferably, funding the ZBA accounts prior to 7:30 a.m. Mountain Time (MT).

A description of each of the accounts is provided in the following paragraphs, followed by a chart that provides an overview of the County's current bank accounts and cash flow:

#### **a) Pooled Cash-Master Account**

This account is the County's general operating account. County cash receipts flow into this account by both paper and remote depositing (via cash letter), lockbox, and electronic funds transfer (EFT). Disbursements from this account include all EFT transactions, funding of ZBA accounts and returned checks. No checks are issued on this account and an ACH Debit Filter is required.

#### **b) Clerk and Recorder Depository Account – ZBA Depository Account**

This account is used to deposit Motor Vehicle lockbox collections, online credit card payments for license plate renewals and ACH credits for County recordings services. This is a ZBA account and all excess funds transfer to the Master account daily. No checks are issued from this account and an ACH Debit Block is required.

#### **c) Federal Payroll Tax Depository Account – Not a ZBA Depository Account**

This account is used to transfer, from the Master account, any Federal payroll taxes via an account to account. Only the IRS is authorized to debit this account on the due date of any such taxes. No checks are issued from this account and an ACH Debit Filter is required.

#### **d) Accounts Payable Disbursement Account - ZBA Controlled Disbursement Account**

Vendor payments, issued via check, are disbursed from this account by the County's Accounts Payable department. This is a controlled disbursement account and issues only paper checks, using blank check stock and MICR ink. An ACH Debit Block is required.

#### **e) Treasurer's Disbursement Account - ZBA Controlled Disbursement Account**

Property tax related checks are disbursed through the issuance of Treasurer's checks. This is a controlled disbursement account and issues only paper checks, using blank check stock and MICR ink. An ACH Debit Block is required.

#### **f) Payroll Check Disbursement Account - ZBA Controlled Disbursement Account**

**The County issues about 60 payroll checks on the last business day of each month. The balance of employees have elected to participate in the direct deposit program. This is a controlled disbursement account and issues only paper checks, using blank check stock and MICR ink. The Direct Deposit file is drawn on the Master account. An ACH Debit Block is required.**

**g) RMHIDTA Disbursement Account - ZBA Disbursement Account**

The Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA) issues about 45 checks monthly. RMHIDTA is not a controlled disbursement account and issues checks printed using Quick Books. This account issues only paper checks and is drawn on the Master account. An ACH Debit Block is required.

**h) FUND FOR SOCIAL SECURITY BENEFICIARIES - Not a ZBA Depository Account**

This account receives only ACH credits from the Social Security Administration several times a month. One (1) withdrawal, via an account-to-account transfer to the Master account, is anticipated each month. An ACH Debit Block is required.

**i) MOTOR VEHICLE LOCKBOX - Not a ZBA Depository Account**

This account receives the daily lockbox processing for Motor Vehicle license renewals. The ending daily balance is wired to the Master account. An ACH Debit Block is required.

**j) SHERIFF FALSE ALARM REDUCTION - Not a ZBA Depository Account**

This account receives the daily lockbox processing for the Sheriff's False Alarm Registration program. The County uses the services of a third party to process these payments. After the close of each month, the County initiates an ACH debit to transfer the balance to the Master account. An ACH Debit Filter is required.

In the proposal, the Bank should provide the following information:

- a) **Indicate that the Bank can fulfill the County's requested bank account structure or provide an alternate structure that fully meets the County's requirements.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

As the County's primary banking services provider, we have the capability to integrate other accounts into our existing banking structure.

- b) **Confirm that the Bank can provide the required ACH Debit Blocks and ACH Debit Filters.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

U.S. Bank offers an ACH Filter and Block service that enables customers to protect deposit accounts against unauthorized ACH debit and/or credit transactions. Business eCheck Block is also available and allows customers to block WEB and TEL payment types and the converted check payment types: ARC, POP and RCK.



Additionally, the County can use the SinglePoint ACH Positive Pay service to add new authorizations to their accounts online. Authorizations are a set of rules that the customer can establish to determine which incoming ACH credits and debits should be allowed to post to their accounts.

The ACH Block service effectively blocks all ACH debit transactions, except generated settlement items. Customers can also configure the ACH Block Service to block all incoming credits.

**c) Provide the Bank's recommended location for any controlled disbursement accounts.**

The County's current Controlled Disbursement accounts are located in Miamisburg, Ohio. We do not recommend that the County change from this location

**d) Include if the Bank has a maximum number of rejected checks allowed per month, which need to be manually processed due to non-scannable MICR lines.**

U.S. Bank does not use an allowable reject rate. A pre-encoded reject fee per item is assessed to pre-encoded depositors based on the type of error that caused the reject.

**e) Include the daily expected time, in Mountain Time (MT), that any ZBA accounts will be funded (negative balance) or swept (positive balance) and reflected in the Bank's reporting system.**

ZBA funding the last thing to occur after all debits and credits have been posted to the accounts. It occurs overnight during batch processing.

**f) Provide any other information the Bank feels would assist the County in evaluating this services.**

At this time, U.S. Bank does not have any additional information to provide.



- The credit posts to their U.S. Bank account. Files received by 3:55 p.m. MT are reported on current day Information Reporting available through U.S. Bank SinglePoint.
- U.S. Bank will clear all items in the County's deposit. Checks drawn on U.S. Bank and electronic endpoints are cleared electronically. Other items are cleared as substitute checks.
- Check images are stored at U.S. Bank.
- On the following banking business day, the deposit amount and float are available through their SinglePoint previous day Information Reporting service. Each electronic deposit will report individually on their Information Reporting service. An Administrative Returns report is also generated and sent to the customer's mailbox, containing information about any rejected image cash letter items. The Administrative Returns report is also included in SinglePoint Information Reporting, Special Reports.

**b) Include the daily cutoff time to process the Image Cash Letter file for same day Ledger credit.**

The cut-off time to ensure same day ledger credit is 9:00 p.m. MT.

**c) Provide the method for notification of receipt of the Image Cash Letter file.**

A File Acknowledgement Report confirms U.S. Bank received, validated and processed the County's image cash letter file. One File Acknowledgement report is generated for each file and delivered to the County's outgoing mailbox.

We recommend the County download and review the File Acknowledgement report after every Image Cash Letter transmission to U.S. Bank to determine whether the Image Cash Letter was accepted or rejected. Reports may be viewed, printed or saved and are available to be downloaded for 30 days.

**d) Include the Bank's availability schedule for image deposited items.**

We have included the **Premier Availability Schedule** in the **Exhibits** section.

**e) If a check is not Check 21 eligible, explain the process the Bank will use for further clearing.**

The following table outlines eligible/ineligible items for image cash letter files. Ineligible items cannot be included in an image cash letter and clear through traditional deposit channels.



Eligible Items	Ineligible Items
<ul style="list-style-type: none"> <li>■ U.S. Bank and transit forward cash letter items</li> <li>■ Consumer Checks</li> <li>■ Business and corporate checks</li> <li>■ Money orders</li> <li>■ Government warrants</li> <li>■ U.S. Treasury checks</li> <li>■ Traveler's checks</li> <li>■ Controlled disbursement checks</li> <li>■ Payable through drafts</li> <li>■ Redeposited returned items, eligible for representation</li> <li>■ Substitute checks, if you are able to capture and pass the value in position 44 of the MICR</li> </ul>	<ul style="list-style-type: none"> <li>■ Qualified and unqualified returned items</li> <li>■ Items in carrier documents</li> <li>■ Foreign items, including all Canadian items</li> <li>■ Food coupons</li> <li>■ Photocopies of missing or destroyed items</li> <li>■ Non-MICR/non-machineable items</li> <li>■ ACH Converted items</li> <li>■ Deposit slips</li> <li>■ Savings bonds</li> <li>■ Batch and block tickets</li> <li>■ Any other items that cannot be sent in an image cash letter as defined by the Federal Reserve banks</li> </ul>

Foreign items and savings bonds inadvertently sent to U.S. Bank in an image cash letter will not be processed and will be returned to you as administrative returns. The full amount of the image cash letter will credit to your depository account and any administrative returns will be adjusted back to your account. An adjustment advice will be sent to you via U.S. mail.

Other types of ineligible items that cannot be detected (such as items in carrier envelopes) may be returned by the paying banks as an ineligible item. Upon receipt of these items, U.S. Bank will adjust your account and send an adjustment advice via U.S. mail.

**f) If an image is unreadable, explain the process the Bank will use to notify the County and the preferred method for deposit resubmission.**

The County will be notified of these rejected items through a daily Administrative Returns report. On a daily basis we recommend reviewing and researching items listed on the Administrative Returns report. These items have not been processed and need to be resubmitted in an image cash letter file or deposited as an original paper check.

**g) Provide any other information the Bank feels would assist the County in evaluating this service.**

The U.S. Bank Image Cash Letter Service is a state of the art service that was built keeping the implementation process in mind. The U.S. Bank solution accepts the industry standard formats, provides reporting on what was processed, and more importantly what was not.

The U.S. Bank Solution offers exceptional reporting, workflow details and error detection.

**b) Depositing of Paper Check**

The Douglas County Clerk & Recorder's office currently deposits paper checks, which are transported directly to the Bank's processing center via armored car. There are four (4) separate deposits sent daily, with attached calculator tapes. These checks are not pre-encoded and the annual volume is approximately 248,000.

In the proposal, the Bank should provide the following information:

**a) Include the Bank's preferred location for delivery of paper check deposits.**

The County's primarily mode of deposit is via armored car, which transports deposits to our cash vault processing in Denver. Should the County should ever need to make a deposit at a local branch. The closest in-store branch is:

**U.S. Bank Perry Street - Safeway**  
880 South Perry Street  
Castle Rock, CO 80104

The closest traditional branch is:

**Stonegate Office**  
16961 Lincoln Ave  
Parker, CO 80134



**b) Provide the Bank's cutoff time to receive same day Ledger credit on paper check deposits.**

For branches, the cut-off times vary by market. A list of approximate branch cut-off times is available upon request.

For cash vault, the ledger cut-off time for the Denver Cash Vault sites is 4:30 p.m. MT.

**c) Include the Bank's availability schedule for paper check deposited items.**

We have included the **Premier Availability Schedule** in the **Exhibits** section.

**d) Describe the process for validating deposit totals, based on the calculator tapes, and to notify the County of the individual corrected item within the deposit (e.g. mailed notice, online, notation on register tape, etc.).**

**Cash Vault Deposits**

For cash vault services, bankers identify all discrepancies and adjust customer accounts for differences over \$10.00.

Cash Vault Services provides a duplicate carbon copy of the adjustment ticket to the preferred customer location through the U.S. mail. Deposit discrepancies over \$100.00 initiate a call to an assigned customer contact. Cash Vault discrepancies are easily identified by unique descriptions and customer location/store number IDs on Information Reporting application reports.

Cash Vault Services provides denominational breakdown on the copy of the deposit adjustment ticket mailed to the customer-assigned address.

## **Branch Deposits**

U.S. Bank branches accept both immediate and post-verified or drop-off deposits at the teller line.

When a deposit is left at the teller line for post-verification, the customer and teller who accepted the deposit must sign a drop-off deposit log. Every effort is made to process the deposit the same day as received. Depending on volume and staffing, deposits delivered just prior to cutoff may be stored securely and held over until the next day for processing. The teller who runs and verifies the deposit also records completion of those tasks on the log. The County may arrange for notification of deposit discrepancies however requests for special processing instructions must be reviewed by branch management prior to finalizing the agreement. However, requests for special instructions or processing must be reviewed by branch management prior to finalizing the agreement to ensure the request is both feasible and appropriate.

For branch services, all night drop discrepancies greater than \$50.00 are verified by two or more tellers. In addition, the County is notified of discrepancies over \$50.00 and are asked for instruction to continue processing the deposit.

- For deposits left for post-verification or drop-off, customers may establish their own discrepancy procedures.
- Discrepancies found with the cash portion of over-the-counter deposits are adjusted immediately.



For item processing and proof corrections, bankers identify all discrepancies and adjust customer accounts for differences over \$50.00. For over-the-counter deposit discrepancies, the customer can change and initial the deposit slip reflecting the adjusted deposit amount. Another option the branch has is to process the adjustment as a separate credit or debit transaction with the deposit posting for the amount on the deposit slip.

Night deposit or post-verification deposit discrepancies may be processed as separate credit or debit transactions or the deposit slip may be adjusted, depending on the branch's contact with the customer and/or special written deposit adjustment procedures the customer has in place with the branch. Any branch adjustment to a deposit ticket when the customer is not present requires that two tellers verify the deposit amount and initial the deposit ticket.

The County is contacted for discrepancies over \$50.00. Copies of adjustment advices may be picked up at the branch or mailed, or other special processing instructions may be established upon request. Special processing requests are subject to management approval.

The branch adjustment advice provides the County with the store name, location # (if applicable), deposit date, original deposit amount, amount of the adjustment and description of the adjustment.

- e) **Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.

**c) Remote Check Depositing (No Cash Letter Required)**

The Clerk & Recorder's office is considering remote depositing, via check images, using bank provided software. However, a feasibility study will need to be conducted to determine the most cost effective method for depositing. As part of this feasibility study, the County would determine whether to purchase or lease the image capture hardware. Images of deposited checks must be maintained by the Bank for a period of twenty-five (25) months and easily accessed by the County via a secure Internet website. Pricing is requested in Section VI, Proposal Pricing Spreadsheet of this RFP, although the County currently does not utilize this service.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

**a) Provide the Bank's cutoff time to receive the remote deposit transmission in order to assure same day Ledger credit.**

All deposits transmitted by the appropriate deposit cut-off time will be processed as a daily deposit. The deposit deadlines differ for image check and ACH items. During your daily work, however, image check and ACH payment types are co-mingled. The following table illustrates the deposit deadlines in Mountain Time for image check and ACH transactions.

<b>Image Check</b>		
<b>Deadline Description</b>	<b>Deposit Deadline</b>	<b>Bank Processing Time</b>
Morning	7:00 a.m.	9:00 a.m.
Mid-Morning	10:00 a.m.	12:00 p.m.
Mid-Day	1:00 p.m.	3:00 p.m.
Early Evening	5:00 p.m.	7:00 p.m.
End-of-Day	9:00 p.m.	11:00 p.m.
<b>ACH</b>		
Monday- Friday	6:30 p.m.	6:30 p.m.
Saturday	8:00 p.m.	9:00 p.m.
Sunday	11:00 a.m.	1:00 p.m.

<sup>1</sup> Bank Processing Time is an estimate

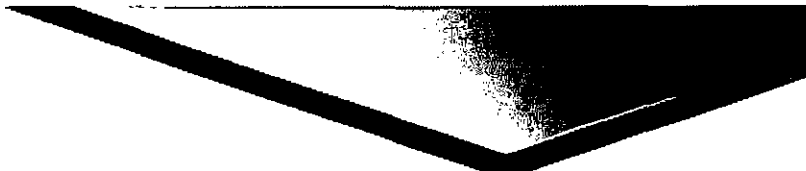
A Deposit Summary report detailing the daily breakout of deposited image check and ACH items (if used) is available on the Electronic Deposit Manager system.

**b) Provide the Bank's availability schedule for remote deposited checks.**

We have included the Premier Availability Schedule in the Exhibits section.

**c) Specify the maximum number of items in a batch and maximum number of items per transmission.**

The U.S. Bank On-Site Electronic Deposit service has a configurable batch limit that is set to 300 items per batch; this may be increased or decreased as needed. Transmissions may contain an unlimited number of batches.

- 
- d) **Explain the Bank's image retention policy. Include standard retention timeframe, options for an extended archival retention period and the Bank's preferred retrieval process.**

Your images are stored in the Electronic Deposit Manager (EDM) archive. You have online access for query and retrievals of items for 25 months. Multiple search parameters provide users the ability to quickly get to the item(s) needed.

Additionally, deposited item images are stored in the bank's SinglePoint system. The images will be provided for you upon request.

- e) **If a check is not Check 21 eligible, explain the process the Bank will use for further clearing.**

Please refer to the table of eligible and ineligible items on **page 19** of this response for ineligible items which cannot be included in an image cash letter and clear through traditional deposit channels. Those items must be deposited at a branch.

- f) **If an image is unreadable, explain the process the Bank will use to notify the County and the preferred method for deposit resubmission.**

OED has many capabilities to manipulate an image to allow it for processing. Should the check image not be able to be recognized via OCR, the MICR information can be keyed in for processing. If the County would prefer to not key in the MICR information, the check can be deposited via the branch network.

- g) **Explain the Bank's contingency procedure in the event of Internet connection failure, due to accessibility issues on the Bank's part.**

Ineligible items cannot be included in an image cash letter and should be cleared through traditional deposit channels.

- h) **Provide the hours of remote deposit support, including weekends.**

The County may call Commercial Customer Service (CCS) between 6:00 a.m. and 6:00 p.m. MT. If necessary, the inquiry may be escalated to the appropriate operations area.

- i) **Discuss the Bank's recommended check scanner documents per minute (dpm), based on the volumes of 50,000, 100,000, and 150,000 checks annually, and other scanner features the Bank would recommend. Include any lease options. Pricing is included in Section VI, Proposal Pricing Spreadsheet, Worksheet "10 Deposit Services" for both lease or purchase options.**

The following table provides the minimum system requirements and document feeding and throughput limitations for all supported check scanner devices. Scanner throughput is based on each manufacturer's published specifications for straight document feeding without accounting for any data entry, endorsing or franking time.

<b>Scanner/Feeder and Exit Pocket Capacity</b>	<b>Dual Side Scan (dpm)** with no data keying</b>
<b>RDM EC7000i</b> <ul style="list-style-type: none"> <li>• Single feed/1 item</li> <li>• Single exit pocket/1 item</li> </ul>	Serial or USB: up to 20/10
<b>Epson CaptureOne 30</b> <ul style="list-style-type: none"> <li>• Single or Batch feeder/1-100 items</li> <li>• Main exit pocket/100 items*</li> <li>• Secondary exit pocket/100 items*</li> </ul>	USB 2.0: up to 30 documents per minute (dpm) with pocket dicisioning disabled  USB 2.0: up to 30 dpm with pocket decisioning enabled
<b>Epson CaptureOne 60</b> <ul style="list-style-type: none"> <li>• Single or Batch feeder/1-100 items</li> <li>• Main exit pocket/100 items*</li> <li>• Secondary exit pocket/100 items*</li> </ul>	USB 2.0: up to 60 documents per minute (dpm) with pocket dicisioning disabled  USB 2.0: up to 30 dpm with pocket decisioning enabled
<b>Panini My Vision X 30</b> <ul style="list-style-type: none"> <li>• 3-mode feeder: Single, 30 Item Batch and 100 Item Batch</li> <li>• Single exit pocket/100 items*</li> </ul>	Up to 30 documents per minute (dpm)
<b>Panini My Vision X 90</b> <ul style="list-style-type: none"> <li>• 3-mode feeder: Single, 30 Item Batch and 100 Item Batch</li> <li>• Single exit pocket/100 items*</li> </ul>	Up to 90 documents per minute (dpm)
<b>Panini Vision X 50</b> <ul style="list-style-type: none"> <li>• 3-mode feeder: Single, 50 Item Batch and 100 Item Batch</li> <li>• Single exit pocket/100 items*</li> </ul>	Up to 50 documents per minute (dpm)
<b>Panini Vision X 50</b> <ul style="list-style-type: none"> <li>• 2-mode feeder: Single and 100 Item Batch</li> <li>• Single exit pocket/100 items*</li> </ul>	Up to 100 documents per minute (dpm)

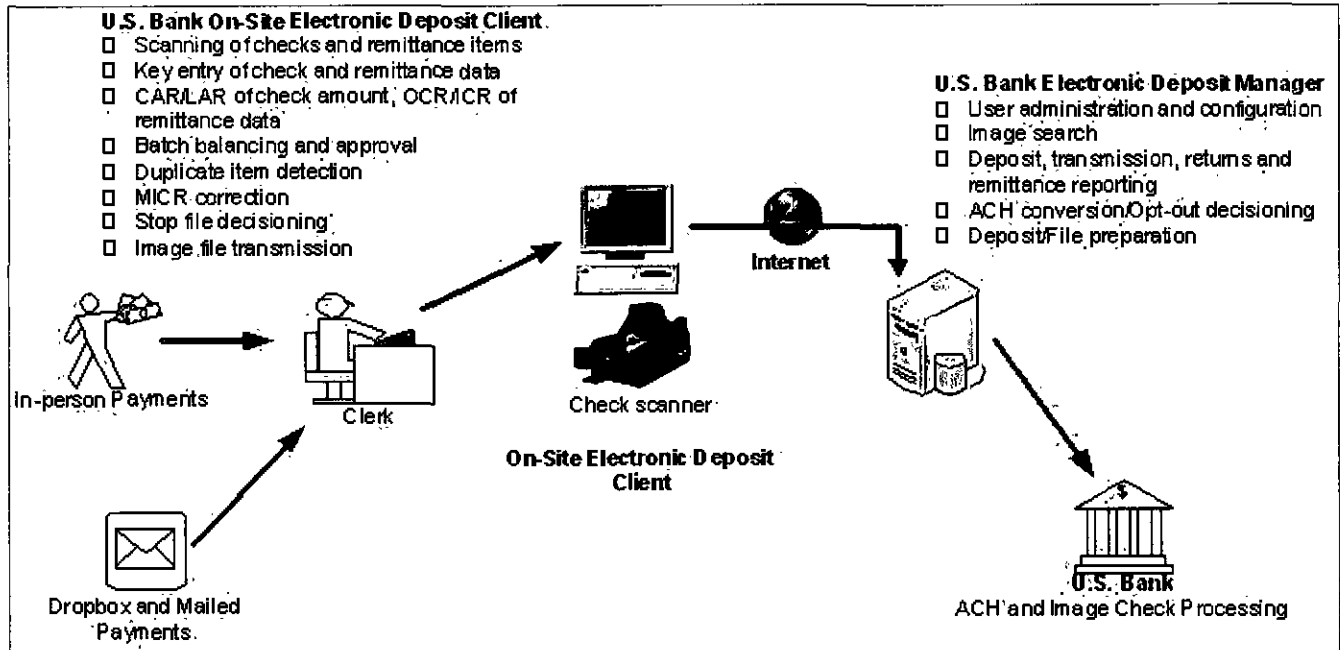
\* Depending on document thickness and condition.

\*\* dpm refers to documents per minute. Values are based on 6" item length.

*Note: The PC system power, the scanner connection and the system processes running on the computer during item scanning affect document feeding and throughput potential. The more robust the workstation and the fewer system processes running, the more likely the device will perform at full capacity. Throughput potential values listed in the following table are estimates only.*

- j) Provide any other information the Bank feels would assist the County in evaluating this service.

Detailed below is the process flow for U.S. Bank Onsite Electronic Deposit:



d) Depositing of Cash

Cash is deposited by both the Douglas County Treasurer and Clerk & Recorder's offices daily. Separate cash deposits are transported to the Bank's Cash Vault, via armored car. Minimal use of strapping or rolled coins is used.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- a) Include the Bank's preferred location to receive cash deposits.

The County's primary mode of deposit is via armored car, which transports deposits to our cash vault processing in Denver. Should the County should ever need to make a deposit at a local branch.

The closest in-store branch is:

**U.S. Bank Perry Street - Safeway**  
 880 South Perry Street  
 Castle Rock, CO 80104

The closest traditional branch is:

**Stonegate Office**  
 16961 Lincoln Ave  
 Parker, CO 80134

- b) **Provide the daily cutoff to receive cash deposits at the Bank's Cash Vault and receive same day available credit.**

For cash vault, the ledger cut-off time for the Denver Cash Vault sites is 4:30 p.m. MT.

For branches, the cut-off times vary by market. A list of approximate branch cut-off times is available upon request.

- c) **Describe any cost savings the County could realize by bill strapping.**

U.S. Bank will waive the cost of cash deposited at the vault, regardless of if it is loose or strapped.

- d) **If a cash deposit adjustment was necessary, describe the method of notification to the County.**

### ***Cash Vault Deposits***

For cash vault services, bankers identify all discrepancies and adjust customer accounts for differences over \$10.00.

Cash Vault Services provides a duplicate carbon copy of the adjustment ticket to the preferred customer location through the U.S. mail. Deposit discrepancies over \$100.00 initiate a call to an assigned customer contact. Cash Vault discrepancies are easily identified by unique descriptions and customer location/store number IDs on Information Reporting application reports.



Cash Vault Services provides denominational breakdown on the copy of the deposit adjustment ticket mailed to the customer-assigned address.

### ***Branch Deposits***

The County may arrange for notification of deposit discrepancies; however, requests for special processing instructions must be reviewed by branch management prior to finalizing the agreement. Requests for special instructions or processing must be reviewed by branch management prior to finalizing the agreement to ensure the request is both feasible and appropriate.

The County is contacted for discrepancies over \$50.00. Copies of adjustment advices may be picked up at the branch or mailed, or other special processing instructions may be established upon request. Special processing requests are subject to management approval.

- e) **If a counterfeit bill was detected, describe the notification method to the County and what information would be provided to the County.**

The amount of the counterfeit note is charged against the County's account. The description on the adjustment is listed as "Counterfeit Currency."

- f) **Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.



### 3) Disbursement Services

#### 1) General Check Disbursement Requirements

The County uses controlled disbursement accounts, which may require the account be located outside the State of Colorado. These accounts utilize both Positive Pay and Reverse Positive Pay and are reviewed daily. The County is able to retrieve images of cleared checks via the Internet.

The County is interested in implementing payroll card services, whereby payroll amounts can be automatically loaded via the Internet onto a prepaid card, and are requesting pricing in Section IV, Proposal Pricing Spreadsheet.

Features required by the County on checking accounts are:

##### a) Positive Pay

The County currently has Positive Pay on the Accounts Payable checking account, Treasurer's checking account, and Payroll checking account. Payee Verification is currently not used, due to restrictions with the County's current accounting system. The County transmits a file to the Bank, in the required format, prior to releasing any checks for payment. This file includes the check number, amount, and check date. The file is uploaded through the Bank's Internet reporting system and confirmation of receipt is retrieved in the same application. Cancellation information, or an order to not pay, will be included in the file. The Bank notifies multiple users, via e-mail, of any exception items awaiting decisioning. Due to the small dollars and low check volumes involved, Positive Pay is not used on the RMHIDTA checking account.

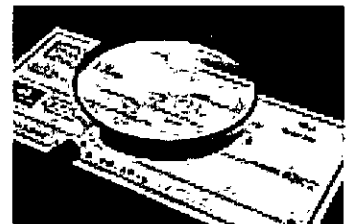
In the proposal, the Bank should provide the following information:

- a. Describe the steps to transmit a Positive Pay file to the Bank and include the preferred software required.

#### U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.

The U.S. Bank SinglePoint Positive Pay process is described below:

- The County transmits "main" issue files containing information about all the checks you are issuing to U.S. Bank each day.
- The County may transmit additional issue files throughout the day if they need to, or simply issue "one-off" checks through SinglePoint Issue Maintenance.
- Issue files can contain check data from multiple accounts, and each account has its own decision default rule to handle exceptions ("pay all" or "return all"). SinglePoint Positive Pay keeps track of all of this.
- Positive Pay accepts transmitted issues and updates its issue file hourly, at the top of the hour from 6:00 a.m. until 10:00 p.m. MT Monday - Saturday and at 5:00 p.m. MT on Sundays.
  - It takes approximately 30 minutes to update information at the teller line with electronic data after the issue is received by U.S. Bank.
  - The final input deadline for transmitted issue files is 9:00 p.m. MT.



- Positive Pay accepts issues submitted through SinglePoint Issue Maintenance and updates its issue file hourly, ten minutes to the hour, from 5:50 a.m. MT to 8:50 p.m. MT Monday - Saturday and at 5:00 p.m. MT on Sundays.
  - It takes approximately 30 minutes to update information at the teller line with electronic data after the issue is received by U.S. Bank.
  - The final input deadline for Issue Maintenance submitted issues is 8:50 p.m. MT.
- The County's checks will present and post to Hogan and the next day the customer will decision any exceptions. The County has from 9:00 a.m. until 2:00 p.m. account processing time each business day to make decisions about individual exceptions that are listed.

**b. Provide the process to receive either an acceptance or a rejection notification of the Positive Pay file.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Positive Pay reports are delivered:

- Through the Internet via SinglePoint Positive Pay
- The County can receive an alert that there are exceptions to review on SinglePoint Positive Pay via the phone, fax, email and a message on SinglePoint.

**c. Include the latest timeframe whereby exception items are available for decisioning.**

U.S. Bank will notify the County no later than 9:00 a.m. MT of any exception items.

**d. Include the latest timeframe whereby exception items must be decided.**

The County has until 2:00 p.m. MT to decision exception items.

**e. Provide if the Bank has the capability to send an e-mail, which includes the last four (4) digits of the affected account, to various users when there is an item to decision.**

**U.S. BANK CAN PROVIDE THE SERVICE WITH THE FOLLOWING EXCEPTIONS.**

SinglePoint will provide an email alert to the County that there are exceptions to review on SinglePoint Positive Pay. The Positive Pay Exception List will provide the entire account number for each decisionable item.

**f. Provide if the County can set a default decision of "No Pay".**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

The County sets the default when the service is activated. Default options include "return all" or "pay all." The County can change your default at an account level using SinglePoint Positive Pay.

**g. Provide any other information the Bank feels would assist the County in evaluating this service.**

If the County's accounting system can at some point allow it, we recommend the following enhancements to Positive Pay:

***Teller Payee Positive Pay option***

Positive Pay customers have the option to have payee name information verified prior to checks being cashed by U.S. Bank tellers.

- **Reduce check fraud at the teller window**—The check amount, check number and payee name on checks presented for payment are matched to the data on your issue file. Any mismatches are not cashed, but returned to the presenter.
- **Requirements:**
  - Add payee name information to your issue file.
  - Verify that the payee name on the check exactly matches the payee name on the issue file.

***Payee Positive Pay option***

In addition to Teller Payee Positive Pay, leverage our most advanced Positive Pay service, which provides the most complete fraud protection. This service expands our payee name verification to all items processed for your Positive Pay account, both at U.S. Bank's teller line and in the back office. The Payee Positive Pay service option is available only through SinglePoint, a suite of integrated online treasury management solutions.

- **Timely fraud alerts**—U.S. Bank Payee Positive Pay identifies payee name mismatches. These exceptions will be presented to you daily in the SinglePoint Positive Pay Exceptions List for your review, along with all other Positive Pay exceptions.
- **Easily view exception images and make payment decisions online**—You can link directly from the exception list to the corresponding check image. You can view and manipulate the image and easily make your decision from the image viewer.
- **Pre-approved checks for Payee Positive Pay uses Safeguard check stock**—U.S. Bank and Safeguard are partnering to provide Safeguard check stocks guaranteed to meet U.S. Bank guidelines. To order Safeguard check stock, call 877-632-7572 to locate a Safeguard consultant.
- **Requirements:**
  - Add payee name information to your issue file.
  - Verify that your check stock meets the specifications on the U.S. Bank Payee Positive Pay Check Formatting Guidelines.
  - Complete and return the U.S. Bank Payee Positive Pay Check Image Questionnaire.
  - U.S. Bank evaluates and confirms the payee name readability of your check image.

**b) Cleared Check File**

**The County performs reverse positive pay daily into the County's financial software, J.D. Edwards. The County downloads, via the Bank's Internet reporting system, a single electronic file that contains cleared check information for the Accounts Payable, Treasurer's**

and Payroll bank accounts. This file contains: a bank account identifier, the check number, check amount, and the date the Bank paid the check. The file layout is specific to the County's accounting system.

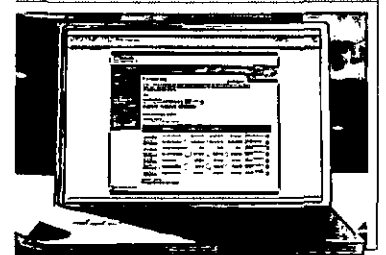
In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- a. Describe the Bank's ability to provide a cleared check file from the Bank's Internet reporting system.

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

The County can continue to employ SinglePoint's saved report filters to upload cleared check files. We recommend that the County consider utilizing SinglePoint's Report File Delivery service. By utilizing this service, a link between Douglas County Treasurer and U.S. Bank can be established, allowing for the direct transfer of information reporting into the County's accounting software.



- b. Provide if the Bank would develop the file to the County's specifications.

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

U.S. Bank will continue to work with the County to ensure that your file specifications are met.

- c. If the file is developed by the County, explain any media available (Bank report writer, import in standard form and translate to meet the County's required file layout, etc.).

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

The SinglePoint Report File Delivery Transmission service allows the County to create and customize a scheduled delivery of their reports to a transmission mailbox. The County can set up schedules for all accounts and standard reports to which they are entitled, with the exception of special reports.

Once the County has gone through the process of setting up a transmission mailbox, your users can click the "Manage File Delivery" link in the left navigation under Information Reporting to create, edit and delete report schedules. The County can choose the data and report type, the file format, the accounts you want included, the frequency of delivery and finally the destination mailbox (if they have multiple mailboxes).

The County can automatically feed this data into their internal accounting system or other computer-based applications. Please refer to the **Data Transmission Options Matrix** in the **Exhibits** section for details regarding communication methods that the bank supports.

- d. Include currently available file formats (e.g. .xls, csv).

The County can utilize CSV and BA12 file formats.

- e. Provide any other information the Bank feels would assist the County in evaluating this service.

At this time, U.S. Bank does not have any additional information to provide.

**c) Online Check Image Retrieval**

The County retrieves images of issued checks via the Bank's Internet reporting system for three (3) disbursement accounts, Accounts Payable, Treasurer and Payroll checks. High-resolution image recovery showing the front and back of each check is required. Per I.R.S. code, images of these checks must be available for a period of seven (7) years.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

**a. Describe the Bank's ability to offer online check image retrieval of County issued checks.**

SinglePoint Image Access is a powerful image viewing and retrieval application. Users can view paid checks, deposit tickets, deposited checks, miscellaneous debits or credits, returned deposited checks, returned redeposited items, returned deposited item (RDI) advices, ICL deposited items and ICL administrative returns with a couple of mouse clicks.

SinglePoint Image Access features include:

- Find images using any of a number of search parameters across multiple customer accounts.
- Images can be saved and shared.
- List page values can be sorted by any column.
- Images are quickly available and retained for seven years.
- Image Access is integrated with other SinglePoint services.

**b. Describe the process to retrieve check images, including the source application.**

To initiate a search in SinglePoint Image Access, the user must select:

1. An account (DDA or MICR) or leave the default value at "All Accounts."
2. A transaction type if other than the default value of checks only.

All accounts in the user profile are available for image retrieval. Users do not need to type an account number to initiate search. These accounts can be different from the accounts in information reporting prior day detail that will also have access to check images.

**c. Provide the Bank's maximum image retention period. Include the retention period for immediate retrieval and, if applicable, if older images require a waiting period to receive and how long that period is.**

The County can request images posted within the last seven years; however, SinglePoint retains information and images for 45 days, so the image retrieval capability in that service is limited by the service itself. If the County extends previous day storage to 60 or 90 days, image availability correspondingly increases to those increments. Images less than 90 days old may be viewed immediately; Images older than 90 days can be requested from SinglePoint's digital image archive.

Image retrieval times are as follows:

- Two days for less than 15 items under one year old.
- Ten days for 15-200 items under a year old, negotiable over 200.
- Four days for less than 15 items over one year
- Twenty days for more than 15 items over one year.

**d. Provide any other information the Bank feels would assist the County in evaluating this service.**

We recommend the County use SinglePoint Image File Delivery, referenced above. SinglePoint Image File Delivery features include:

- Transmission schedules are flexible and can be scheduled for daily, weekly, monthly, bi-monthly or a customized calendar transmission of images.
- The status of each transmission can be monitored in SinglePoint.
- Transmission schedules can be changed in SinglePoint.
- Customers can time their access to image file transmissions.
- Transmissions are available for the front and back of paid checks, deposit tickets, miscellaneous paper debits and miscellaneous paper credits.
- The transmission format is in ZIP. The ZIP file contains the index file (CSV format) and the image files (TIF format).
- Customers can request single use files of historical images.
- Customers can request files to be recreated.
- Files can be easily incorporated into internal image archive systems to allow for import and storage of images in a cost-effective manner.
- Images can also be viewed from other SinglePoint service areas:
  - Image Access
  - Information Reporting (previous Day Transaction Detail Report and Transaction Search Results)
  - Positive Pay
  - Reverse Positive Pay
  - Stop Payments (cleared checks only)

**d) Payroll Card Services**

**In the proposal, the Bank should provide the following information:**

- a. Describe the Bank's process to enroll employees into payroll card services.**
- b. Include the steps to upload the file that authorizes payment to be loaded onto the employee's prepaid card and if this can be done via a secured Internet connection.**
- c. Describe all reporting available to both the County and the County's employees.**
- d. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. Bank has multiple prepaid/payroll cards that may fit the County's needs. While the loading volume of 1,680 is very helpful, U.S. bank would like to have a deeper discussion regarding the total number of cards, the loading frequency, controls required, and any other specific requirements before providing detailed information. Different programs have different costs and benefits, so it is U.S. Bank's desire to provide the right fit for Douglas County.

#### 4) Wire Transfers

The County sends wires for investment purchases and a limited number of vendor payments. Wires received are generally for investment redemptions and property tax payments. The County initiates wires online through the Bank's Internet reporting system. Available wire formats include: a) repetitive wires (only the amount and date fields change each time it is used), b) semi-repetitive (the amount, date, and reference information fields change), and c) free form wire formats. Templates for repetitive and semi-repetitive wires are stored on the Bank's server and cannot be modified. Future-dated wires may be entered up to thirty (30) days in advance. All templates and wire transfers require segregated initiation and approval rights. The Bank's Internet reporting system also provides detailed reporting of future dated, received and sent wires and their associated Fed Reference numbers, Repeat Code report, Template Detail report and Audit Report. Mailed Bank debit and credit paper advices are not required.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- a) Provide the opening hours and cut-off times for initiating and approving outgoing wire transfers to ensure same-day execution. Provide the cut-off time for incoming domestic wire transfers to receive same day credit.

The following are U.S. Bank's opening hours and cut-off times in Mountain Time for initiating wire transfers to ensure same day execution.

Input Method			
Type of Transfer	Internet (SinglePoint)	Voice or VRU	CPU-CPU (Mainframe Batch Wire)
<b>Domestic</b>			
Same Day Fedwire and Drawdown	6:30 a.m.-3:30 p.m.	6:30 a.m.-3:30 p.m.	6:30 a.m.-3:00 p.m.
Same Day Internal	7:30 a.m.-5:00 p.m.	6:30 a.m.-5:00 p.m.	6:30 a.m.-3:00 p.m.
Future Day Fedwire, Drawdown and Internal	6:30 a.m.-5:30 p.m.	6:30 a.m.-5:30 p.m.	6:30 a.m.-3:00 p.m.
<b>International*</b>			
Same Day (USD)	6:30 a.m.-4:00 p.m.	6:30 a.m.-4:00 p.m.	6:30 a.m.-3:00 p.m.
Same Day (Foreign Currency)	6:30 a.m.- 3:00 p.m.	6:30 a.m.-3:00 p.m.	6:30 a.m.-3:00 p.m.
Future Day – 1 day only (USD)	6:30 a.m.-5:30 p.m.	6:30 a.m.-5:30 p.m.	6:30 a.m.-3:00 p.m.
Future Day – 1 day only (Foreign Currency)	6:30 a.m.-3:00 p.m.	6:30 a.m.-3:00 p.m.	6:30 a.m.-3:00 p.m.

*\*Please Note: International wire transfers are sent on the day U.S. Bank is instructed to send it. The value date defines the date the beneficiary should receive the funds within their account. However, U.S. Bank does not have control over an international bank and the process they use to complete the wire.*

The cut-off time is 4:00 p.m. MT for same-day credit on incoming domestic wire transfers.

- b) Describe the wire transfer initiation options available (e.g. repetitive, semi-repetitive, etc.). Include how long before a repetitive and semi-repetitive template, hosted on the Bank's server, can be used.

The table below describes wire transfer origination processes. The descriptions assume no repair or reject activity (which branch to special sub-processes) and that sufficient funds are in the settlement account to cover the value of the wire transfer.

Wire Initiation Method	Initiation	Approval	Release
Voice-VRU	An authorized user calls Wire Transfer Operations to initiate a wire.  The initiator provides a PIN and instructions to submit the wire transfer.	Wire Transfer Operations contacts an authorized approver at the customer to approve all non-repetitive wire transfers (approval is optional for repetitive wire transfers).	The Bank initiates and releases the approved wire immediately upon confirmation.
Internet (SinglePoint)	An authorized user logs in to our browser-based interface (SinglePoint) via the internet and initiates wire transfers.  The user must enter a PIN prior to submitting the wire transfer.	An authorized approver accesses the non-repetitive wire transfer in SinglePoint and approves it.  Approval requirements can be defined for Repeat Codes and template-based repetitive wire transfers through the administration tool on SinglePoint.	The County transmits the approved wire transfer directly to the bank from SinglePoint.  The Bank releases wire transfers within a few seconds of receipt that are free of errors and have sufficient funds available.
CPU to CPU (Mainframe Batch Wire)	The County creates and populates a batch of wire transfers on their internal systems. The batch file is then transmitted to U.S. Bank through direct transmission.	Approval is controlled through customer's internally defined procedures prior to the wire transfers being submitted to U.S. Bank. No Bank callback is triggered with this method.	The Bank releases the file after all transfers in the batch are checked:  Wires are released after the last wire transfer record is validated, which may take a few seconds to a minute, depending on batch size.
Automated Standing (Wire) Transfer (AST)	The County completes a paper form defining all the wire transfer details authorizing the Bank to send a wire at the scheduled intervals.	The County's approval is secured through the AST authorization form.	The AST is processed on the appropriate date/day, at the defined time and for the preset value based on the authorization form specifications.

The Bank processes online requests for Repeat Codes for repetitive wire transfers within five business days. When a Repeat Code is ready to use, it is uploaded into SinglePoint with a confirmation message. U.S. Bank also mails a confirmation to the County.



- c) **Explain the Bank's policy and procedure in the event of an outgoing wire transfer creating a daylight overdraft.**

The County can be set up at either the account level or customer level to calculate your daylight overdrafts. The daylight overdraft can be measured across all accounts for wire transfers as long as all accounts are included in the setup for the wire transfer process. Balances regarding daylight overdrafts are not provided to customers. Currently, U.S. Bank does not charge its customers for general daylight overdrafts.

- d) **Explain the Bank's policy in the event of a wire transfer failure. Include how and when the County would be notified of a failed transfer.**

U.S. Bank reviews each wire transfer failure on a case-by-case basis to determine how the transaction should be resolved. The Receiving Bank notifies the customer by first class mail that it has rejected a payment order.

- e) **Indicate if the Bank's reporting system has the ability to report, via the Internet, wire activity status and Fed Reference number.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

The full wire transfer advice detail displays in both current day and previous day details within SinglePoint. Wire transfer reports generated in information reporting list the following detail (optional fields appear if the information is part of the wire transfer record).

Date and time entered	Date and time approved
Repeat Code	Amount
USD equivalency	Contract number
Exchange rate	Beneficiary name and account
Debit account name and number	Initiator
Approver	Originator to beneficiary data
Bank to bank data	Originating bank
Beneficiary reference	Beneficiary bank data
Receiver bank	Originator
Fed reference number	Date and time received
Sender	Date and time transmitted
Wire transfer sequence or PAR number	Control Number

- f) **Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.

## **5) ACH Services**

The County initiates ACH disbursements as discussed in the following paragraphs. Segregated roles of initiator and approver are required for all transactions. Preferably, a level of confidentiality is available for Payroll Direct Deposit transmissions, whereby, they cannot be viewed by Accounts Payable or Treasury. It is further desired to restrict viewing, or at a minimum modifying, Accounts Payable transactions by Treasury and Payroll. Treasury approves all ACH transactions for the County, with the exception of the Direct Deposit file. If the receiving bank rejects the payment (e.g. account is closed, invalid account number, etc.) the Bank notifies the County via their Internet reporting system, which includes the reason for return, and credits the money to the County's Master account. When a Notice of Change (NOC) is received by the Bank, it notifies the County of the corrected information via their Internet reporting system. Other online reports include a detailed listing of all ACH transactions, Templates Report, Import Error Report and Audit Report, each for a defined period of time.

### **a) Manual Free Form ACH**

Both the County's Finance and Treasurer's departments do periodic manual ACH transactions that are not produced via a file upload. The transaction creates a template of the receiver's bank instructions, which must be approved, and can be reused with only the amount and effective date modified. CTX format is required for several manual tax payments to the State of Colorado.

### **h) ACH Payroll Direct Deposit**

The County's Finance Department, Payroll Division, currently pays most of our employees via ACH Direct Deposit, which equates to approximately 950 transactions monthly. However, the County is interested in implementing payroll card services, whereby payroll amounts can be automatically loaded on a prepaid card, and are requesting pricing in Section IV, Proposal Pricing Spreadsheet. Payroll is only issued one time per month and paid on the last business day of the month. No later than two (2) business days prior to the payroll date, an electronic file is processed in the J.D. Edwards accounting system and transmitted to the Bank via the Bank's Internet secured website in the required PPD format. The Finance Office confirms receipt of the file in the Bank's reporting system, including the total count of transaction and total dollar amount. The transmission is then approved within the Finance Department.

### **c) ACH to Taxing Districts**

The County's Treasurer's Office pays the Douglas County Taxing Districts via ACH, which equates to approximately two-hundred (200) transactions per month. No later than two (2) business days prior to the District distribution date, an electronic file is processed in the J.D. Edwards accounting system and uploaded to the Bank via the Bank's ACH Internet secured website. The transmission is then approved within the Treasurer's Office.

### **d) ACH To Vendors**

The County's Finance Office, Accounts Payable Division, pays many vendors via ACH. Currently, this equates to in excess of 300 transactions per month and occurs almost daily. The initiator prepares the disbursement file in J.D. Edwards, the County's accounting system, and then uploads it to the Bank's ACH Internet secure website. The transmission is then approved within the Accounts Payable department before final approval and send at Treasury.

e) **ACH Debit Block/Filter**

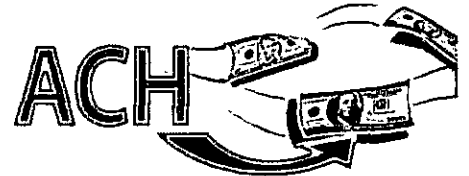
Since ACH debits are not authorized on eight (8) of the County's bank accounts, a full ACH Debit Block is required on these accounts. On two (2) of the bank accounts, (Master and Payroll Tax) an ACH Filter is required.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

a. **Describe the Bank's ACH electronic file submission process for Direct Deposit, Vendor and Taxing Districts payments.**

Data can be submitted to U.S. Bank via ACH Direct File Transmission, SinglePoint ACH Origination, or through a third-party processor.



Once the Direct Deposit information is received, U.S. Bank will transmit the transactions contained in the data file into the ACH network to ensure they post to the receivers accounts on the designated settlement date. The National Automated Clearing House Association (NACHA) formatted data file must be submitted to the bank one or two business days prior to the transactions' settlement date. The input deadline for mainframe transmissions (directly from the County or through a third-party) is 9:30 p.m. MT and for SinglePoint transmissions is 8:00 p.m. MT. If the input file is submitted after the applicable deadline for the transmission method, then funds settlement and availability to recipients will be delayed until the next valid business day. Funds will be available by 7:00 a.m. (account holder's local time) to Direct Deposit recipients at any domestic financial institution. U.S. Bank suggests sending payroll files two business days prior to the effective date whenever possible to ensure open of business availability.

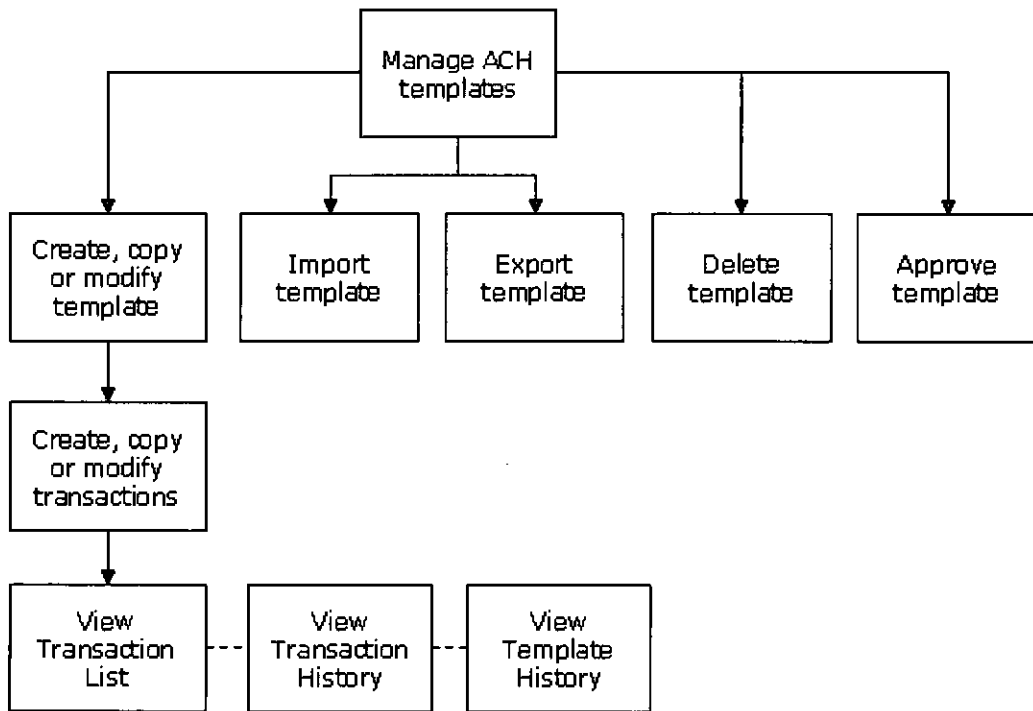
b. **Describe the Bank's ACH payment process for manual transactions.**

SinglePoint ACH has two distinct sets of navigation sequences: one for defining the ACH header information and transactions in ACH templates; and another to initiate and approve batches from those templates. Each of these ACH process flows are described in two parts:

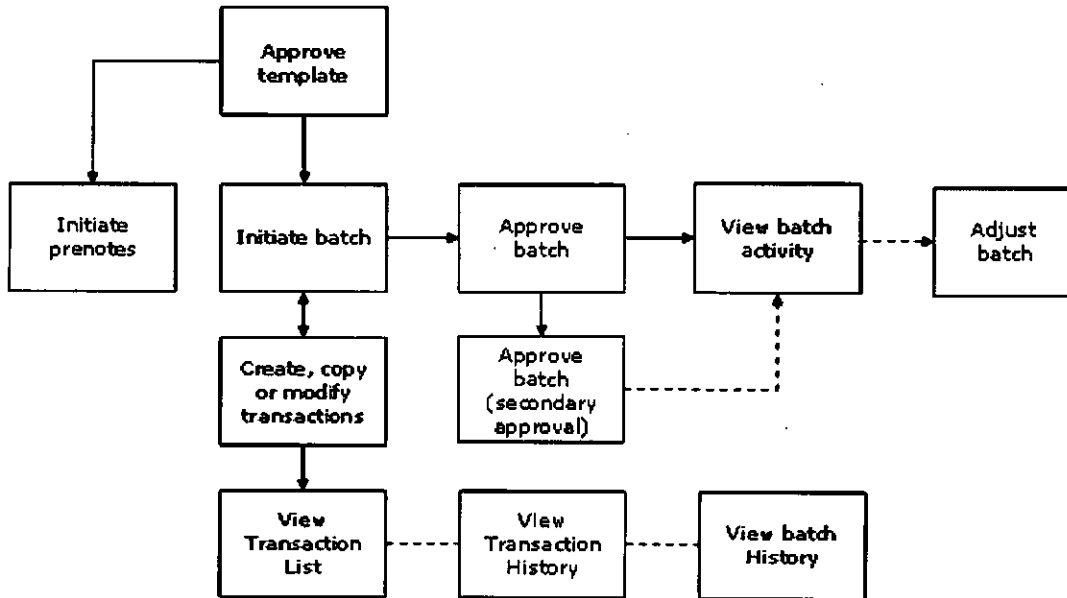
- A diagram shows all the components involved in managing ACH.
- A process table that describes activities and possible outcomes in each stage.

***ACH Template Process Flow Diagram***

All ACH transactions must be contained in a template before initiating. SinglePoint has a distinct set of pages to create, modify, delete and report from ACH templates.



**ACH Batch Process Flow**



- c. **Include the transmission cutoff time in Mountain Time (MT) and required number of lead days prior to payment day.**

The table below lists U.S. Bank's cut-off times.

Customer Input Method	Cut-Off Time		
	Day Cycle	Night Cycle	Same Day Transfer
SinglePoint ACH	8:00 p.m. MT (Domestic)	8:00 p.m. MT (Domestic)	8:00 p.m. MT (Domestic)
	5:00 p.m. MT (International with FX)	5:00 p.m. MT (International with FX)	
FTP Transmission	9:30 p.m. MT	9:30 p.m. MT	9:30 p.m. MT
PC-CPU (Asynchronous)	9:30 p.m. MT	9:30 p.m. MT	9:30 p.m. MT
Touch-Tone Phone	n/a	n/a	n/a
Terminal (Direct Transmission)	9:30 p.m. MT	9:30 p.m. MT	9:30 p.m. MT
ACH Adjustment Requests	6:00 p.m. MT	6:00 p.m. MT	n/a
ACH Positive Pay Exception Decisions	6:00 p.m. MT	6:00 p.m. MT	n/a

Provided that U.S. bank receives transmissions by the cut-off times specified above, payments will process the following day.

- d. **Describe the method of notifying the County that the electronic file has been accepted or rejected and if the Bank has the capability to provide the file total and number of transactions.**

Yes, U.S. Bank can provide an automatic file receipt confirmation within 30 minutes to one hour of receiving the County's ACH file. The ACH File Confirmation notification provides information from the file including:

- File creation date and time
- File ID modifier
- Batch count
- Entry and addenda
- Debit and credit amount
- Positive or negative confirmation regarding the file

For negative confirmations, the County is instructed to contact ACH Services for further assistance.

**e. Include the method of confirming that the manual ACH is accepted.**

- Customers originating files via ACH Direct Transmission or through another method (third party originator) may receive a notice from ACH Services confirming that the file was received and will be processed.

A file confirmation is a notice that can be securely emailed, faxed or transmitted back to the customer after the file has been transmitted to the bank. The notice confirms that ACH Services received the ACH file for processing. This is called the ACH File Confirmation Service. An organization may be setup with an unlimited number of email addresses or fax numbers to receive the file confirmation notice.

- U.S. Bank offers touch-tone response access with validation totals followed by a confirmation from the Bank that the ACH file was received and will be processed.

Customers can confirm receipt during a window beginning 30 minutes after validating control totals and ending one hour after control total validation. Customers can confirm through fax, email, transmission or manually by re-accessing the Interactive Voice Response (IVR) unit.

- Customers originating through Direct Transmission can access the ACH File Confirmation System by touch-tone telephone. The customer enters transaction totals as prompted by an IVR. The IVR compares entered amounts with amounts on the file and confirms matches and discrepancies within 30 minutes of submission. The control totals and file should be submitted simultaneously. The customer calls into the service and selects the confirmation option to validate entered totals.

Customers may choose to bypass entering control totals prior to processing if the company's security procedures prevent them from doing so. U.S. Bank then processes the file received from the customer with no control totals requiring reconciliation. The option to bypass entry of control totals requires the customer to receive a file confirmation through one of the notification methods and to respond to any processing issues noted in the confirmation.

**f. Disclose any circumstances in which the Bank could do same-day ACH transactions.**

Files sent to ACH by 9:30 p.m. MT are processed on the same day.

**g. Fully describe all options the Bank offers for transaction confidentiality between departments.**

For security, SinglePoint employs 128-bit encryption, SSLv3, individual customer IDs and passwords. Additionally, VeriSign Tokens are required to transmit ACH transactions. Please refer to our response to **Question h** below for further detail.

**h. Include the Bank's capability to allow for dual ACH security roles, initiate and approve, for both file transmission and manual transactions.**

The County defines security levels for SinglePoint as part of the implementation process. Security levels are set at account, function and user levels. The County can also set a dollar amount limit at the company level and individual user level for both batch initiation and approval. Additional security controls, such as locking and confidentiality, prevent unauthorized users from modifying transaction detail or initiating invalid batches.

The implementation team at U.S. Bank establishes customer-defined security levels during setup. System administrators at the County site may change user and account security levels using SinglePoint's system administration service. By default, modifications by system administrators are subject to dual approval. Alternately, a customer may also request that implementation representatives at U.S. Bank complete desired security changes.



**i. Provide the Bank's preferred method of notifying the County of ACH rejected payments (e.g., account closed, invalid account number, etc.). Include the notification method for Notice of Change (NOC).**

The County can review your blocked and filtered exception items within the ACH Positive Pay service or by accessing the following reports from SinglePoint's Special Reports menu:

- ACH Filter Rejected Item Report for filtered and rejected items
- ACH Filter Authorization Report for items authorized to post to an account.

**j. Explain the Bank's policy in the event of a Bank ACH transfer failure.**

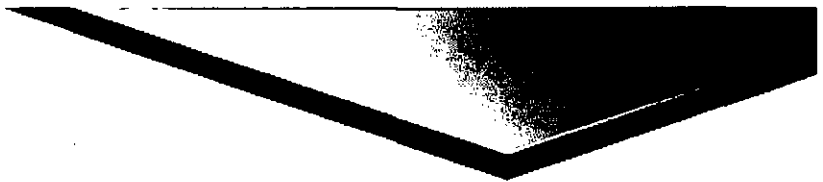
U.S. Bank SinglePoint provides multiple contingency options, including site redundancy, to ensure system up time. Additionally, SinglePoint's ACH services enable customers to export ACH template and transaction information in NACHA file format.

Direct transmission contingency procedures are unique to each customer and can be discussed with the customer during the transmission verification process.

**k. Provide information on any further ACH services the Bank offers.**

The **SinglePoint ACH Positive Pay** service helps to detect ACH fraud by electronically matching incoming ACH transactions to account authorizations that customers can create and manage online. The County creates authorizations on each of their accounts. Authorizations are sets of rules that the customer can establish to determine which incoming ACH credits and debits they want to allow to post to their accounts. The Bank compares the County's incoming items to these authorizations. Any non-matching items are identified and reported to the County as ACH Positive Pay exceptions.

With ACH Positive Pay, each day the County is able to review a list of these non-matching transactions and decision them. LaunchPoint or External Messages can alert them that exceptions require decisions. Their decision options are to either Pay the item, allowing it to post, or they will have the option of returning exception items back to their originator.



As a default, SinglePoint will also Return All exception items that have not been decided by 6:00 p.m. MT on their effective settlement date. This means that the exception items will be returned unless the company instructs U.S. Bank, through SinglePoint, to handle an exception item differently.

The County establishes ACH authorizations on your accounts and can review any new items that do not match your authorizations by the 6:00 p.m. MT decision deadline. Authorizations can include the following criteria:

- Create a single authorization on multiple accounts, or create unique authorizations for each specific account.
- Choose to allow debits or credits to post to an account.
- Determine the number of times authorized transactions may post.
- Place a maximum authorization amount on an account; alternatively, the County may choose to allow only specific amounts to post to an account.
- Allow only transactions from a specific company (or companies) to post to an account.
- Create a date range for the authorization.
- Incoming ACH transactions that meet the authorization requirements will process successfully and post to the customer's accounts. However, incoming ACH transactions that do not match existing authorizations will be placed in a pending status.
- The County can review a list of Exception Items in a pending status and then have the option to decision (either pay or return) those items by 6:00 p.m. MT on the exception item's effective date.
- *\*\*\*Because a small percentage of items may collect and process through ACH Positive Pay after business hours, please remind customers to remain diligent about setting up authorizations for expected incoming items, particularly when they are transacting business with other U.S. Bancorp entities or U.S. Bank customers.*
- Debits for Federal Tax Payments
- Vendor Payments

### ***ACH Positive Pay Dual Authorization***

The County can introduce additional security to their ACH Positive Pay processing by using ACH Positive Pay Dual Authorization. With Dual Authorization, approvals can be required for all exception and authorization actions or only for actions related to items over a customer-specified dollar threshold, called the zero approval amount.

For exception items, an initial user indicates whether an item should be treated as pending, return/no pay or accept/pay and then a secondary user must approve the action in order for the decision to be communicated to the bank. For authorizations, an initial user adds, modifies or deletes the authorization and a secondary user must approve the action in order for the decision to be communicated to the bank. The County determines which ACH Positive Pay users have approval authority based on the group in which they are placed.

- 1. Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.



## 6) Other Banking Services

Other banking services required by the County are:

### a) Change Order Services

The County's Clerk and Recorder's Office has five (5) locations that request change orders. The request is made via a touch-tone telephone and delivered by armored courier to the appropriate branch location.

In the proposal, the Bank should provide the following information:

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

#### a. Describe the Bank's preferred method for requesting change orders.

U.S. Bank has an automated coin and currency order service, which is described below.

#### **Cash Vault**

Cash Vault Services utilizes the Glory VAS and Comp-U-Order™ automated systems to reduce cash deposit processing time and speed collection as an enhancement to the customer's treasury management function. Armored carriers deliver cash and check deposits to U.S. Bank's highly secured Cash Vault. The amount of cash deposit is entered into the system and assigned a trace number. The deposit is tracked by the systems from receipt to verification, allowing U.S. Bank to constantly monitor the status of all deposits. Cash deposits are sent to the verification area while check deposits go to item processing for deposit to the customer's account.



The Glory Comp-U-Order automated phone ordering system and SinglePoint Cash Vault online ordering allow change orders to be placed 24/7. Standing change orders, containing pre-determined denominational values and pre-scheduled delivery days, may be setup through Cash Vault Services to avoid having to manually place daily orders by telephone or Web. Standing change orders allows customer's corporate offices to set change order amounts to ensure the local stores are not ordering excessive amounts and avoid any fraud.

Security is of utmost importance to U.S. Bank's Cash Vault Service. U.S. Bank's Cash Vault has camera surveillance throughout. The Glory VAS System has built-in counterfeit detection.

#### **Change Orders**

Orders may be placed 24/7 on Comp-U-Order or SinglePoint Cash Vault. Weekend orders, including Monday inventory, must be ordered by the Friday deadline for all vaults. Customers must make all arrangements with their courier for change order delivery.

#### b. Include daily cutoff time for ordering and anticipated shipment timeframe.

The following are U.S. Bank's cut-off times for receiving orders:

- 12:00 p.m. MT (standard)
- 10:00 a.m. MT (nonstandard)

Orders placed prior to the above deadlines for a given vault location are typically available for pickup by the armored vendor and delivered on the same business day.

**c. Include any minimum purchase requirements.**

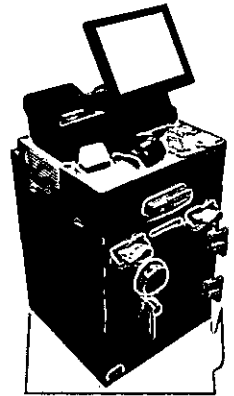
For cash vault services, vaults provide strapped and loose currency. U.S. Bank prefers orders of full boxed coin, but individual rolls of coin are also available. Discounts are offered for ordering full straps of currency and full boxes of rolled coin. There is a minimum order of \$1.00 and all orders must be whole dollars. In all cases, the Bank debits the change order amount to the County's account on the day the order is made.

**d. Discuss any cost reduction features the Bank offers (e.g. full bill straps, etc.).**

U.S. Bank has priced the cash vault functionality so that the County can operate in a manner that benefits itself, rather than making it easier on the Bank.

**e. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. Bank's **Remote Cash Deposit** allows the County to deposit cash electronically by using an on-site vendor-supplied safe that transmits a daily posting file to U.S. Bank for credit into your depository account. U.S. currency is stored in locked cassettes for secure retrieval by an armored courier at a later date. Depository transaction detail may be obtained online through U.S. Bank SinglePoint, using prior day information reports. Users of the smart safe service contract directly with the armored courier for equipment leasing, maintenance, transportation and deposit consolidation. U.S. Bank's role as your depository bank is to receive the posting data file from the armored courier, provide credit to your account and accept the consolidated currency from your armored courier.



All coin, checks, mutilated currency, coupons or other similar items that are not accepted by the safe's bill acceptor are prepared as a separate deposit and will not receive provisional credit under the Remote Cash Deposit service. All cash deposits are picked up and verified by the armored courier. If discrepancies are noted at this time, the difference between the actual and reported amounts are debited or credited to your depository account as deemed appropriate. Check deposits will be delivered to the bank for processing.

***Change Fund Services***

Remote Cash Deposit can provide change fund services delivered to you by your armored courier. U.S. Bank automated currency and coin order services are available through the Glory Comp-U-Orderphone ordering system or online through U.S. Bank SinglePoint Cash Vault service. You are assigned a unique customer ID and password to securely access the telephone ordering system and the SinglePoint Cash Vault ordering functionality. Change orders must be placed prior to the established deadlines by cash vault location (typically one to two business days prior to delivery date).

The Glory Comp-U-Order automated phone ordering system and SinglePoint Cash Vault online ordering service allow change orders to be placed 24/7. Standing change orders containing pre-determined denominational values and pre-scheduled delivery days may be setup to avoid having to manually place daily orders by telephone or Web. Your corporate offices can use standing change orders to ensure local stores are not ordering excessive

amounts of currency. Limiting orders in this manner can avoid potential fraud. Weekend orders, including Monday inventory, must be ordered by the Friday deadline. All arrangements for change order delivery are made by you with your armored courier.

Remote Cash Deposit may reduce the frequency of armored pickups per week for some locations. As a result, it is important to manage your change fund levels until your next scheduled pickup/delivery.

**b) Returned Item Processing**

**The County utilizes the benefits of Re-presented Check Entry (RCK) for all returned checks. This allows for eligible insufficient funds returned items to be presented an additional two (2) times. The County does not “time” the additional ACH re-presentments. Insufficient funds returned check items that are not eligible for RCK are automatically re-presented in a paper form one (1) additional time.**

**Once it is determined that the County must pursue collection on a returned item, a copy of the image replacement document (IRD) must be provided to the County to determine the payer and depositing County department.**

**In the proposal, the Bank should provide the following information:**

**U.S. Bank no longer supports RCK; however, we have provided our standard processes for returned items and special instructions the County can provide to direct processing.**

**a. Describe any notification processes available via the Bank’s information reporting system of both eligible and ineligible RCK return items.**

U.S. Bank offers three notification service options: SinglePoint, data transmission and fax.

The ACH Returns and NOC report include previous day settled items. Information about NOCs and returns is available on SinglePoint by 9:00 a.m. MT.

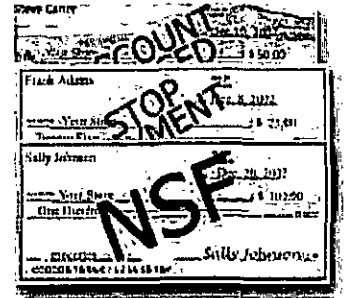
ACH returns are listed in SinglePoint with key data from the batch header and specific details about each item, including:

- Company name and company ID number
- Date and processing cycle of the item
- Settlement date of the transaction
- Transaction code
- Originating RDFI
- Receiver's account number
- Individual ID and name
- Amount
- Return reason code and description
- Addenda information.

SinglePoint offers an automated NOC Update service. ACH transactions originated through SinglePoint that generate Notifications of Change (NOCs) from the receiving institution automatically update the ACH template in SinglePoint. SinglePoint reports transactions that were automatically updated by the Bank, based on NOC information.

- b. Provide if each re-presentation creates a credit to the County's bank account, followed by a subsequent debit each time the check is returned.

U.S. Bank's standard service is to chargeback item(s) to the deposit account on the first return. We do not automatically redeposit any item without special instructions. U.S. Bank currently processes returned items at two Operations Centers: St. Paul, Minnesota and Portland, Oregon. Returned items are processed in an image-based environment using Touchless Returned Item Processing System (TRIPS) software. One of the most sophisticated in the industry.



- c. Include the Bank's preferred method(s) to provide the County with the IRD of the returned check (e.g. online image, USPS, etc.) and the anticipated timeframe till available to the County.

The County can establish special instructions for: redeposit; email or fax notification; mail advices/items to an alternate address; charge items to an alternate account; or provide duplicate advice copies. Transmission of returned item information with option images is also available. Online decisioning for current day items and reporting of previous day detail is available through SinglePoint. Special instructions are available by account or location.

As the County's returned items are processed by TRIPS, they go through a number of steps to determine processing procedures. Outlined below is a description of the critical steps that comprise that process:

- U.S. Bank receives returned items within an image cash letter.
- The MICR line of the item is read and compared against a captured item file created during the initial deposit process.
- The returned item is matched to an associated deposit ticket on the captured items file.
- Following the match, the system accesses the returned item special instructions associated with the item.
- Returned items are processed according to documented procedures and any special instructions on file for the account.
- When returned items are forwarded to the County, the returned items are attached to an advice. A maximum of eight returned items can be attached to a single advice. For reconciliation purposes, each advice matches to a single debit on a customer's bank statement.

U.S. Bank's processing of returned items may result in the County receiving multiple advices and debits on a given day. Multiple advices can be the result of many factors including segregation by store number, reject processing (bad MICR, mutilated item) and multiple cycles. Special instructions are available to allow a consolidated debit for multiple advices by location or by account. However, because returned items are processed at two different locations, a daily advice may be created by each return location.

**d. Describe any other reporting capabilities the Bank can offer. You may include sample reports for clarification.**

U.S Bank's ACH return item processing is completed at end of day at which time funds are posted to the account. ACH return reports are available the next business day. There are two options for viewing previous day settled ACH Returns online:

- The ACH Settlement report
- The ACH Return and NOC report

Each of these reports is available from SinglePoint's Special Reports menu.

ACH Returns can also be reported back to the company via fax or transmission. The ACH Return Transmission reports previous day settled returns or current day returns that will settle at end of day and is available by 8:00 a.m. MT.

**e. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. bank does not have any additional information to offer at this time.

**c) Account-to-Account Transfer (Book Transfer)**

**The County transfers their Federal Payroll taxes from the Master account to the Payroll Tax account via an Account-to-Account transfer, this occurs several times per month. Once a month, the County does Account-to-Account transfers from the Social Security Beneficiaries account to the Master. Account-to-Account transfers use the Bank's secure Internet reporting system, via templates, and requires segregated initiate and approval rights. Detailed Account-to-Account transactions and template reports are available on the Bank's Internet reporting system.**

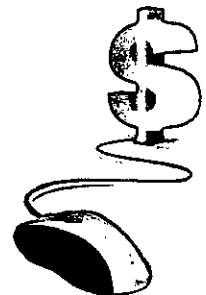
**In the proposal, the Bank should provide the following information:**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

**a. Describe the Bank's preferred method for transferring funds from one of the County bank accounts to another County bank account.**

U.S. Bank SinglePoint Book Transfer allows the County to move funds from one U.S. Bank account to another. Book Transfer is available every day from 5:00 a.m. to 10:00 p.m. MT for DDA to DDA transfers, and Monday through Friday until 5:00 p.m. local time for loan transfers. Funds are immediately available in the destination account, as long as the effective date of the transfer falls on a business day.

SinglePoint book transfers are processed in real time, immediately upon receipt of input from 5:00 a.m. to 10:00 p.m. MT every day. Entries entered outside of operations hours will receive an error message. Book transfers can be future dated. Note that the initiator of the book transfer can only select effective dates from the calendar or enter effective dates that fall on a business day. If the user tries to enter a date that falls on a weekend or holiday, they will receive an error message, and will need to select an effective date that falls on a business day.



Both the source and destination accounts must be U.S. Bank accounts that are defined in SinglePoint. AFS loan accounts, DDA accounts, and Institutional Trust and Custody (IT&C) accounts are eligible for book transfers.

- b. Include if the Bank allows transfers via standard templates, set up by the County, with dual template initiation and approval rights.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Yes, U.S. Bank allows both template and non-template book transfers.

- c. Include if the Bank offers dual initiation and approval rights for the actual transfer of funds.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Yes, the County has the ability to set approval levels independently by user so that one user's transfers may not require approvals, but another user's may require one or two approvals.

- d. Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.

**d) Overdrafts and Daylight Overdrafts**

**In the early morning, it is possible that a daylight overdraft may occur. This occurs when the County's payroll direct deposit, ACH transactions or investment transactions post to the account before the transfer of funds from an outside investment account occur. This could cause a daylight overdraft that would be cured before the end of the banking day, usually prior to 9:00 a.m. Overnight overdrafts do not normally occur.**

**In the proposal, the Bank should provide the following information:**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- a. Provide the order that various transactions such as deposits, incoming and outgoing wire transfers, incoming and outgoing ACH transactions and checks presented are processed for calculation of overdrafts.**

- Deposits are processed at 4:30 p.m. MT
- Wire transfers (incoming and outgoing) are processed in real time as they are received by our system.
- ACH transactions are processed at 9:30 p.m. MT
- Checks are processed at 7:00 a.m. and 8:30 a.m. MT

- b. Include if the County would be notified of daylight overdrafts, when this would occur and the method of notification.**

U.S. Bank, as required by the Federal Reserve, monitors real time daylight overdrafts by account and by client relationship. To facilitate wire transfers and other routine business, U.S. Bank can establish an intra-day limit for the County to ensure the movement of funds as needed. These limits are set for control purposes to protect the County and the bank. Decisions to release wires with daylight overdrafts are made on a discretionary basis. However, to protect the County's interests, the County will always be consulted on wires exceeding the established daylight overdraft limit. Your Relationship Manager will contact you in all instances of overdraft.

- c. Provide any other information the Bank feels would assist the County in evaluating this service.**

Your Relationship Manager, Sherrie Vogt, will continue to work closely with the County to ensure the proper movement of funds is completed in the manner the County has requested. As in the past, any circumstances that require discretionary consideration would be communicated to the County to assure the validity and accuracy of the transaction.

- e) Account Analysis**

**Each month, the Bank will prepare an Account Analysis/billing statement identifying the services performed and costs incurred by the County. The County requires a month-end billing period and receipt of the account analysis within seven (7) business days after month-end. This Analysis statement should include all the services and fees for each bank account individually, then, a consolidated analysis that bundles the costs for all accounts.**

**At a minimum, the account analysis must show the following information:**

- **account number**
- **period covered**
- **average ledger balance**
- **average collected balance**
- **earnings credit rate**
- **earnings credit allowance**
- **services rendered and description**
- **quantity/volume**
- **per unit charges**
- **extended charges**
- **totals for all services**

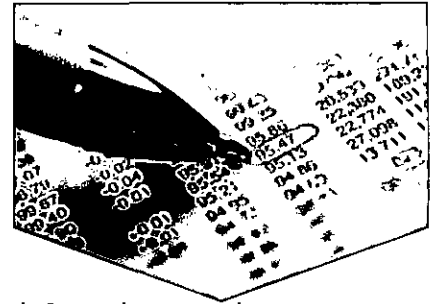
**The County will pay all bank fees via our normal Accounts Payable process rather than the Bank directly debiting any of the County's bank accounts.**

**In the proposal, the Bank should provide the following information:**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- a. Include the Banks preferred method of providing the Account Analysis statement and when it would be available to the County.**

Account Analysis statements can be delivered in the mail, through SinglePoint Information Reporting in several formats, and in an ASC X12 822 file via direct transmission or the SWIFT network. U.S. Bank can provide the ASC X12 822 using the most recent version of the TMA/AFP Service Codes in the following versions: 3010, 3020, 3030, 3040, 3050, 3070, and 4010.



When delivered via one of our online services such as SinglePoint information reporting or EDI (available in the ANSI ASC X12 822 format), the account analysis is available the seventh business day of the month. If the analysis is mailed, mailing is generally complete by the eighth business day of the month, with the DDA being charged on the tenth business day of the month.

- b. Provide if the Bank has the capability to report the fees for each County account separately, plus, a statement aggregating all fees into a consolidated Account Analysis statement.**

U.S. Bank can continue to provide the County with a segregated and consolidated analysis statement.

- c. Include how often fees are posted to the Analysis statement (e.g. daily, weekly or monthly).**

U.S. Bank Customers are billed on a monthly cycle. Applicable service fees are debited from the designated account on the 10<sup>th</sup> business day of the month following the month of activity.

- d. Indicate if the Bank has the ability to provide the account analysis in an exportable Microsoft Excel format and include all other file formats available.**

Account Analysis statements can be delivered via mail, SinglePoint information reporting, or EDI. EDI statements are sent via the ANSI ASC X12 822 using the most recent version of the TMA/AFP Service Codes. U.S. Bank can provide the 822 in the following versions: 3010, 3020, 3030, 3040, 3050, 3070 and 4010. The 822 formatted analyses is available through direct transmission and VAN (Value Added Network) delivery methods. Statements on SinglePoint are available in PDF, Text and CSV formats.

- e. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. Bank has nothing else to add at this time.

- f) Earnings Credit**

**The County requests the flexibility to choose, at the County's discretion, to compensate the Bank for services provided as a direct payment of fees in hard dollars or by maintaining a compensating balance in the County's accounts to pay, or partially pay, for services rendered.**



**The County would also like the ability to carry excess earnings credits over to the following calendar month for a mutually agreed upon timeframe.**

**In the proposal, the Bank should provide the following information:**

- a. Provide the earnings credit rate offered to the County.**

The Earning Credit Rate offered to the County is a bank managed rate of 0.40%, indexed to the Average Federal Rate (+/-0) with a floor of 0.40%.

- b. Include the formula that the Bank uses to calculate the earnings credit rate (ECR) and include if all accounts that hold a balance will be combined prior to the calculation.**

U.S. Bank offers the County a bank managed Earnings Credit Rate that is indexed to the Average Fed Funds Rate (+/- 0 basis points) with a floor of 0.40 basis points (0.40%) for the life of the contract. Yes, 100% of collected balances in the County's combined accounts are used in the calculation.

- c. Include if the Bank has the capability to carry excess earnings credits over to the following month.**

While U.S. Bank does not offer the ability to carry over excess earnings credits to the following month, the County may choose to be invoiced on a quarterly basis, allowing quarterly average collected balances to be used for the calculation of ECR.

- d. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. Bank does not have any additional information to provide at this time.

- g) Pass Through of Deposit Insurance Fees**

**Based on Section VI, Proposal Pricing Spreadsheet, the estimated annual base amount for calculating pass through FDIC insurance is 56,490, in thousands (/001). The County recognizes that Deposit Insurance Fees are a substantial portion of the overall Bank fees and seeks an equitable solution for both parties.**

**In the proposal, the Bank shall provide the following information:**

- a. Include if the Bank charges a fee, or other assessment, for FDIC insurance.**

U.S. Bank does not charge a specific FDIC insurance assessment. A Deposit Coverage Fee is assessed each month and is a managed rate based on factors including bank incurred costs for maintaining your deposits as well as other market indicators. The fee is assessed on the ledger balance of the account on the last business day of the month.

- b. Provide the Bank's current FDIC insurance rate and the formula used to calculate the charge.**

The Deposit Coverage Fee is 0.12075 per \$1,000.00 in Ledger Balances.

- c. Include the Bank's estimated annual FDIC insurance assessment to the County, based on the Bank's current rate and the County's annual base amount provided above.**

Based on the estimated balance volumes the County provided in the spreadsheet, the annual fee would be approximately \$6,800.

- d. Include if the Bank charges the FDIC insurance on Collected balances or on Ledger balance.**

The Deposit Coverage Fee is calculated on the Average Ledger balance.

- e. Provide how often the Bank adjusts the FDIC insurance rate.**

The Deposit Coverage fee is calculated on average ledger balances and is a managed rate based on factors including bank incurred costs for maintaining your deposits as well as other market indicators.

- f. Include any suggestions the Bank can provide in order for the County to minimize the impact of the FDIC insurance pass through fee.**

The County would want to manage balances across their accounts that would allow both Deposit Coverage Fees and Bank Service Charges to be offset by ECR earnings. To help mitigate the cost of deposit coverage, we are offering the County an enhanced earnings credit rate of 40 basis points.

Additionally, utilizing alternative methods for investment of excess funds such as U.S. Bank Commercial Paper or participating in the Insured Cash Sweep (ICS) program are both strategies that could be employed to reduce the impact of Deposit Coverage charges as well as increased yield.


- g. Provide any other information the Bank feels would assist the County in evaluating this service.**

U.S. Bank does not have any additional information to provide at this time.

- h) Online Reporting and Transaction Capabilities**

**At a minimum, the County would prefer access to the following applications through a single portal on the Bank's secured Internet website:**

- 1) Information Reporting**
- 2) Cleared Check File**
- 3) ACH Transactions and Various Reports**
- 4) ACH File Confirmations**
- 5) ACH Received, ACH Returned and Notice of Change (NOC) Reports**
- 6) Fed Wire Transactions and Various Reports**
- 7) Account to Account Transfers**
- 8) Positive Pay File Transmission and Decisioning**
- 9) Online Check Image Retrieval**
- 10) E-Mail Notifications**
- 11) Security Safekeeping**
- 12) Internal Security Administration**
- 13) Audit Logs**



Other items that would be beneficial to have on the Bank's single sign on portal are: Image Cash Letter upload and confirmation of receipt, Remote Check depositing, Change Order requests, images of returned items, Demand Deposit monthly statements and Account Analysis.

- 1) **Information Reporting** - requires detailed access to prior day and up-to-date current day transactions for each account by transaction type (e.g. deposits, wire transfers, ACH transactions, ZBA credits and debits, check clearing detail, etc.) with the ability to report by subtotals for each type. Collected and Ledger balances must be provided for each account. Deposit reporting must include same day, next day and two or more day availability (float) totals.
- 2) **Cleared Check File** - Refer to Section V, Item 3, Disbursement Services, b) Cleared Check File for further information.
- 3) **ACH Transactions and Various Reports** - Refer to Section V, Item 5, ACH Services for further information.
- 4) **ACH File Confirmations** - Refer to Section V, Item 5, ACH Services for further information.
- 5) **ACH Received, ACH Return and Notice of Change (NOC) Reports** - Refer to Section V, Item 5, ACH Services for further information.
- 6) **Fed Wire Transactions and Various Reports** - Refer to Section V, Item 4, Wire Transfers.
- 7) **Account to Account Transfers** - Refer to Section V, Item 6, Other Banking Services, c) Account to Account Transfers.
- 8) **Positive Pay File Transmission and Decisioning** - Refer to Section V, Item 3, Disbursement Services, a) Positive Pay.
- 9) **Online Check Image Retrieval** - Refer to Section V, Item 3, Disbursement Services, c) Online Check Image Retrieval.
- 10) **E-Mail Notifications** - The County desires the Bank's Internet reporting system to have e-mail notification functionality of pending or completed transactions. The types of notifications should be defined by each individual user, based on their roles and responsibilities. Examples of notifications are: ACH approval required, incoming Wire, Positive Pay decision available, Controlled Disbursement posted, Balance below threshold, etc. Multiple e-mails for each user (work, mobile, etc.) is strongly desired.
- 11) **Security Safekeeping** - Refer to Section V, Item 7, Securities Transaction Settlement and Safekeeping.
- 12) **Internal Security Administration** - The County prefers to retain the complex administration of entitlements "in house". Examples of entitlement roles are: initiator, approver, access to view, maximum dollar amounts, etc. Dual roles of initiate an entitlement and approve an entitlement are required.
- 13) **Audit Logs** - Audit logs, whereby the County may view user history, should be available for all transactions to include Fed Wire, ACH, and Account to Account. Positive Pay decisioning and Internal Security Administration audit logs are also desirable.

**In the proposal, the Bank shall provide the following information:**

- a) **List the above items 1 through 13 and for each service:**
  - i. **Discuss the Bank's capability to provide the service via your secure Internet reporting system. If you are not able to provide the service via the Internet, please propose your alternative solution.**

## 1) Information Reporting

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

### ***Previous Day***

Previous Day summary reporting within SinglePoint includes:

- Ledger Balance
- Opening Collected Balance
- One Day Float
- Two Day Float
- Three Day + Float
- Collected + One Day Float
- Total Credits
- Total Number of Credits
- Total Debits
- Total Number of Debits
- MTD Average Collected
- MTD Average Negative Collected



Previous Day transaction detail reporting within SinglePoint includes:

- ACH debit and credit transactions (addenda are reported on the EDI Remittance Report).
- Coin and currency purchases.
- Complete wire transfer transaction details
- Controlled Disbursement Presentments
- Checks Paid
- Deposited Items Returned
- Location Numbers
- Lockbox Deposits
- Times available
- Wire Transfer Credits
- Wire Transfer Debits
- ZBA Credits

These prior day reports are available from SinglePoint:

- Previous Day Summary and Detail Report
- Previous Day Detail Report
- Previous Day Summary Report
- Previous Day International Summary and Detail Report
- Previous Day International Summary Report
- Previous Day International Detail Report
- DDA Checks Paid Report
- ACH Secured Funds Pledge Report

### **Current Day**

Current day information is updated at different times for different applications and different processing sites.

<b>Type of Data</b>	<b>Update Schedule</b>
Wire transfer information	Updated continuously and in real time.
ACH Data	Updated twice during business hours: 6:00 a.m. and 9:00 a.m. MT.
Deposit reporting	Continuous and updated according to site-specific schedules.
Lockbox	Continuous and updated according to site-specific schedules.
Controlled Disbursement	Data is updated twice daily according to the site schedule list in the table below.
Foreign exchange and global trade, Federal Reserve Bank Settlement Activity	Updated upon login to banking system
Other items, such as ATM, phone and branch-initiated transactions	Updated upon login to banking system

First and second presentment reporting deadlines for the Miamisburg disbursement site are 7:00 a.m. and 8:30 a.m. MT.

Current Day reporting provides detailed information on ACH, book transfers, wires, lockbox transactions, other paper deposits, foreign exchange and global trade, Federal Reserve Bank Settlement Activity, and other items, such as ATM, phone and branch-initiated transactions.

Current Day summary reporting within SinglePoint includes the following:

- Opening Ledger Balance
- Opening Collected Balance
- Current Day Credits
- Number of Credits
- Current Day Debits
- Number of Debits
- Interim Ledger
- Interim Collected
- Interim 1 Day Float
- Interim 2 Day Float
- Interim 3 + Day Float

These are the transactions that are detailed in SinglePoint's current day reports:

- ACH transactions
- Wire transfer transactions
- Controlled Disbursement Check Debits
- Lockbox Deposit
- Other Paper Deposits

- Book Transfers
- Foreign exchange and global trade
- Federal Reserve Bank Settlement Activity
- Other items, such as ATM, phone and branch-initiated transactions

Current Day reports include:

- Current Day Summary and Detail
- Current Day Detail
- Current Day Summary
- ACH Summary and Detail
- Controlled Disbursement/Draft Summary
- Controlled Disbursement/Draft Detail
- Lockbox Detail
- Wire Transfer Detail
- Wire Transfer Detail New

## 2) Cleared Check File

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Each day by 7:00 a.m. account processing time, SinglePoint displays the previous day's check-paid transactions for all participating accounts on the Reverse Positive Pay Transaction List page.

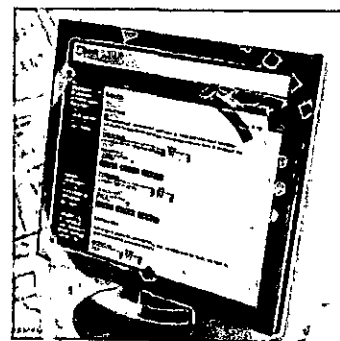
## 3) ACH Transactions and Various Reports

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

ACH summary and ACH detail reports are available through SinglePoint, direct transmission and fax.

U.S. Bank SinglePoint Information Reporting is U.S. Bank's browser-based information reporting tool. In addition to providing transaction detail and summary information through its information reporting service, SinglePoint also provides the following ACH Special Reports:

- ACH Return and NOC Report
- ACH Received Item Report
- ACH Redeposit Report
- ACH Settlement Report
- ACH Filter Rejected Item Report
- ACH Filter Authorization Report
- ACH Transaction Capture Report
- EDI Remittance Report





ACH transactions are reported with the following detail:

- The ACH system PAR number (trace number)
- Effective entry date
- Payment description
- Originator's company I.D. number
- Transaction amount

#### 4) ACH File Confirmations

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

##### ■ **Transmittal letter to bank with fax back from ACH production**

Customers originating files via ACH Direct Transmission or through another method (third party originator) may receive a notice from ACH Services confirming that the file was received and will be processed.

A file confirmation is a notice that can be securely emailed, faxed or transmitted back to the customer after the file has been transmitted to the bank. The notice confirms that ACH Services received the ACH file for processing. This is called the ACH File Confirmation Service. A company may be setup with an unlimited number of email addresses or fax numbers to receive the file confirmation notice.

##### ■ **Secure interactive voice response access with validation totals entered by customer followed by confirmation from bank that ACH file is received and processed**

U.S. Bank offers touch-tone response access with validation totals followed by a confirmation from the Bank that the ACH file was received and will be processed.

Customers can confirm receipt during a window beginning 30 minutes after validating control totals and ending one hour after control total validation. Customers can confirm through fax, email, transmission or manually by re-accessing the Interactive Voice Response (IVR) unit.

##### ■ **Secure interactive voice response access with validation totals only**

Customers originating through Direct Transmission can access the ACH File Confirmation System by touch-tone telephone. The customer enters transaction totals as prompted by an IVR. The IVR compares entered amounts with amounts on the file and confirms matches and discrepancies within 30 minutes of submission. The control totals and file should be submitted simultaneously. The customer calls into the service and selects the confirmation option to validate entered totals.

Customers may choose to bypass entering control totals prior to processing if the company's security procedures prevent them from doing so. U.S. Bank then processes the file received from the customer with no control totals requiring reconciliation. The option to bypass entry of control totals requires the customer to receive a file confirmation through one of the notification methods and to respond to any processing issues noted in the confirmation.

## 5) ACH Received, ACH Return and Notice of Change (NOC) Reports

### U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.

U.S. Bank offers three notification service options: SinglePoint, data transmission and fax.

The ACH Returns and NOC report include previous day settled items. Information about NOCs and returns is available on SinglePoint by 9:00 a.m. MT.

ACH returns are listed in SinglePoint with key data from the batch header and specific details about each item, including:

- Company name and company ID number
- Date and processing cycle of the item
- Settlement date of the transaction
- Transaction code
- Originating RDFI
- Receiver's account number
- Individual ID and name
- Amount
- Return reason code and description
- Addenda information.

SinglePoint offers an automated NOC Update service. ACH transactions originated through SinglePoint that generate Notifications of Change (NOCs) from the receiving institution automatically update the ACH template in SinglePoint. SinglePoint reports transactions that were automatically updated by the Bank, based on NOC information.

## 6) Fed Wire Transactions and Various Reports

### U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.

The following table describes reporting available for each wire transfer initiation service offered by U.S. Bank.

Initiation Method	Reporting Available
Voice-VRU	<ul style="list-style-type: none"><li>• Customer arranged callbacks from the Bank</li><li>• Mailed or faxed wire advices available</li></ul>
SinglePoint	SinglePoint offers the flexibility to customize and generate reports from either the Wire Transfer service or from its Information Reporting service: <ul style="list-style-type: none"><li>• In SinglePoint Wire Transfer, users can view detailed reports of outgoing wire transfer activity that are customizable at the field level.</li><li>• In SinglePoint Information Reporting, the Wire Transfer Summary and Detail report provides current and previous day detail on incoming and outgoing wire transfers. Users can customize and filter all wire transfer reports to suit their needs.</li></ul>
Batch Wire	Batch Wire reporting is optionally available through direct transmission of wire data. A Data Extract file is available to provide customers a list of incoming and/or outgoing wires with the pertinent detail, including Fed Reference number (primarily used for large volume customers).



**7) Account to Account Transfers - Refer to Section V, Item 6, Other Banking Services, c) Account to Account Transfers.**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

For Book Transfer reporting, the County may utilize the Daily Activity Detail report in SinglePoint.

SinglePoint provides the following detail for incoming and outgoing wire transfers on previous day reports and current day reports:

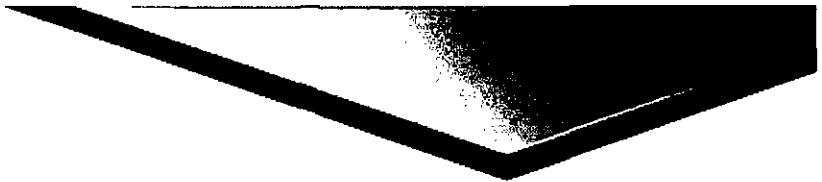
Date and time entered	Date and time approved
Repeat Code	Amount
USD equivalency	Contract number
Exchange rate	Beneficiary name and account
Debit account name and number	Initiator
Approver	Originator to beneficiary data
Bank to bank data	Originating bank
Beneficiary reference	Beneficiary bank data
Receiver bank	Originator
Fed reference number	Date and time received
Sender	Date and time transmitted
Wire transfer sequence or PAR number	Control Number

**8) Positive Pay File Transmission and Decisioning**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

The U.S. Bank SinglePoint Positive Pay process is described below:

- The County transmits “main” issue files containing information about all the checks you are issuing to U.S. Bank each day.
- The County may transmit additional issue files throughout the day if they need to, or simply issue “one-off” checks through SinglePoint Issue Maintenance.
- Issue files can contain check data from multiple accounts, and each account has its own decision default rule to handle exceptions (“pay all” or “return all”). SinglePoint Positive Pay keeps track of all of this.
- Positive Pay accepts transmitted issues and updates its issue file hourly, at the top of the hour from 6:00 a.m. until 10:00 p.m. MT Monday - Saturday and at 5:00 p.m. MT on Sundays.
  - It takes approximately 30 minutes to update information at the teller line with electronic data after the issue is received by U.S. Bank.
  - The final input deadline for transmitted issue files is 9:00 p.m. MT.

- 
- Positive Pay accepts issues submitted through SinglePoint Issue Maintenance and updates its issue file hourly, ten minutes to the hour, from 5:50 a.m. MT to 8:50 p.m. MT Monday - Saturday and at 5:00 p.m. MT on Sundays.
    - It takes approximately 30 minutes to update information at the teller line with electronic data after the issue is received by U.S. Bank.
    - The final input deadline for Issue Maintenance submitted issues is 8:50 p.m. MT.
  - The County's checks will present and post to Hogan and the next day the customer will decision any exceptions. The County has from 9:00 a.m. until 2:00 p.m. account processing time each business day to make decisions about individual exceptions that are listed.

Positive Pay reports are delivered:

- Through the Internet via SinglePoint Positive Pay
- The County can receive an alert that there are exceptions to review on SinglePoint Positive Pay via the phone, fax, email and a message on SinglePoint.

#### 9) Online Check Image Retrieval

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

SinglePoint Image Access is a powerful image viewing and retrieval application. Users can view paid checks, deposit tickets, deposited checks, miscellaneous debits or credits, returned deposited checks, returned redeposited items, returned deposited item (RDI) advices, ICL deposited items and ICL administrative returns with a couple of mouse clicks.

#### 10) E-Mail Notifications

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

SinglePoint provides email notification to the County for the listed requirements.

#### 11) Security Safekeeping

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Safekeeping documents are available in electronic form via U.S. Bank's SinglePoint application. We have included the following reports in the **U.S. Bank Safekeeping Reporting** exhibit:

- Trade Confirmations
- Maturity Notices
- Credit Advices
- Monthly Statements
- Pledge documents.

## 12) Internal Security Administration

### U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.

The table below describes SinglePoint user entitlement by service.

Service	Entitlements	Access and Limits
ACH	Batches: <ul style="list-style-type: none"> <li>• Initiate Batches</li> <li>• Approve Batches</li> </ul> Templates: <ul style="list-style-type: none"> <li>• Create template</li> <li>• Approve template</li> <li>• Export template</li> </ul>	Access to accounts Company level limits  User level batch initiation limits <ul style="list-style-type: none"> <li>• Per Batch</li> <li>• Daily Cumulative limit</li> </ul> User level batch approval limits <ul style="list-style-type: none"> <li>• Per Batch</li> <li>• Daily Cumulative limit</li> </ul>
ACH Additional Services	Allow access to the ACH Activity Schedule, Control totals, Positive Pay Warehouse Search services	Access to accounts
Account Reconciliation	Allow access to Account Reconciliation Reports	Access to accounts
Book Transfer	<ul style="list-style-type: none"> <li>• Initiate</li> <li>• Approve</li> </ul>	Access to only U.S. Bank accounts
Cash Vault	<ul style="list-style-type: none"> <li>• Allow access to online ordering</li> <li>• Allow access to reports</li> </ul>	Access to Cash Vault locations
External Messaging	<ul style="list-style-type: none"> <li>• Enable Messages</li> </ul>	Delivery Options: <ul style="list-style-type: none"> <li>• Primary email</li> <li>• Secondary email</li> <li>• Mobile device (text and email)</li> <li>• LaunchPoint page</li> <li>• Fax</li> </ul>
Image Access	<ul style="list-style-type: none"> <li>• Allow access to image service (images may be viewable in other services, such as reporting, without access to Image Access service)</li> </ul>	Access to accounts
Image File Delivery	<ul style="list-style-type: none"> <li>• Allow access to Image File Delivery</li> </ul>	Access to accounts
Information Reporting	<ul style="list-style-type: none"> <li>• View current and previous day</li> <li>• View and generate special reports</li> <li>• View images</li> <li>• View returned item images</li> </ul>	Access to accounts Access to specific special reports
International Banking Services	<ul style="list-style-type: none"> <li>• View international reporting pages</li> <li>• View and export international reports</li> <li>• Initiate report requests</li> </ul>	Access to accounts
Investment Reporting	<ul style="list-style-type: none"> <li>• View and export investment reports</li> </ul>	Access to accounts
Positive Pay	<ul style="list-style-type: none"> <li>• Decision</li> <li>• Approve decision</li> </ul>	Access to accounts Adjust amount, payee
Reverse Positive Pay	<ul style="list-style-type: none"> <li>• View transactions</li> <li>• Decision</li> </ul>	Access to accounts Adjust amount

Service	Entitlements	Access and Limits
Stop Payments	Place stop payment Approve stop payment Modify stop payment parameters	Access to accounts Up to 50 stop payments per submitted page Up to 50 pages of stop payment submitted per session
Wire Transfer	Initiate <ul style="list-style-type: none"> <li>• Domestic repetitive</li> <li>• International repetitive</li> <li>• Domestic non-repetitive</li> <li>• International non-repetitive</li> <li>• Repeat code request</li> </ul> Approve <ul style="list-style-type: none"> <li>• Wire transfer</li> <li>• Templates</li> <li>• Repeat code requests</li> <li>• Create templates</li> </ul>	Access to accounts Limits—up to eight levels:  Initiate <ul style="list-style-type: none"> <li>• Per transaction semi-repetitive</li> <li>• Per transaction repetitive</li> <li>• Per transaction non-repetitive</li> <li>• Daily cumulative (all types)</li> </ul> Approve <ul style="list-style-type: none"> <li>• Per transaction semi-repetitive</li> <li>• Per transaction repetitive</li> <li>• Per transaction non-repetitive</li> <li>• Daily cumulative (all types)</li> </ul>

SinglePoint offers dual system administration; all changes to user access or limits require a second system administrator approval to process.

### 13) Audit Logs

#### U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.

SinglePoint's audit features include:

- User activity audit reporting for all of the services
- Token maintenance and status reports
- User profile reports
- Account profile reports
- Service profile reports

- ii. **For each service, disclose the number of days the data or images would be available for research or retrieval.**

SinglePoint retains 45 days of previous day data that can be optionally expanded to 60 or 90 days. SinglePoint also retains 10 days of data in current day report format. Images are retained for seven years.

- iii. **When applicable, for each service include if dual initiate and approve roles are available.**

SinglePoint offers dual system administration; all changes to user access or limits require a second system administrator approval to process.

- iv. **For each service, provide a listing of reports. You may include selected sample reports for clarification.**

**1) Information Reporting**

These prior day reports are available from SinglePoint:

- Previous Day Summary and Detail Report
- Previous Day Detail Report
- Previous Day Summary Report
- Previous Day International Summary and Detail Report
- Previous Day International Summary Report
- Previous Day International Detail Report
- DDA Checks Paid Report
- ACH Secured Funds Pledge Report

Current Day reports include:

- Current Day Summary and Detail
- Current Day Detail
- Current Day Summary
- ACH Summary and Detail
- Controlled Disbursement/Draft Summary
- Controlled Disbursement/Draft Detail
- Lockbox Detail
- Wire Transfer Detail
- Wire Transfer Detail New

**2) Cleared Check File**

SinglePoint displays the previous day's check-paid transactions for all participating accounts on the Reverse Positive Pay Transaction List page.

**3) ACH Transactions and Various Reports**

SinglePoint provides the following ACH Special Reports:

- ACH Return and NOC Report
- ACH Received Item Report
- ACH Redeposit Report
- ACH Settlement Report
- ACH Filter Rejected Item Report
- ACH Filter Authorization Report
- ACH Transaction Capture Report
- EDI Remittance Report

**4) ACH File Confirmations**

Not applicable.

**5) ACH Received, ACH Return and Notice of Change (NOC) Reports**

ACH Return and NOC Report

**6) Fed Wire Transactions and Various Reports**

SinglePoint provides the following wire transfer reports:

- Wire Detail
- Single Wire Detail
- Daily Activity Detail
- Daily Activity Summary
- Import Error Report
- Repeat Code Detail
- Repeat Code Summary
- Template Detail
- Template Summary
- User Audit

**7) Account to Account Transfers**

SinglePoint provides the following book transfer reports:

- Daily Activity Detail
- Template Detail

**8) Positive Pay File Transmission and Decisioning**

SinglePoint provides the following account reconciliation reports:

- ARP Recon Summary Report
- ARP Recon Data File
- Recon Outstanding File
- Daily Outstanding File
- Daily Checks Paid File

**9) Online Check Image Retrieval**

Not applicable.

**10) E-Mail Notifications**

Not applicable.

**11) Security Safekeeping**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

Safekeeping documents are available in electronic form via U.S. Bank's SinglePoint application.

We have included the following reports in the U.S. Bank Safekeeping Reporting exhibit:

- Trade Confirmations
- Maturity Notices
- Credit Advices
- Monthly Statements
- Pledge documents.

**12) Internal Security Administration**

SinglePoint provides the following system administration reports:

- User Profile
- User Audit
- Account Profile
- Service Profile

**13) Audit Logs**

- User Audit Report

- v. **Include any services, if any, that would require installation of a secondary piece of software.**

No additional software is required for the above services.

- b) **Detail any other banking services that are available on the Bank's Internet portal. Include a full description of the capabilities of each online service.**

We have provided a full listing of the services available through SinglePoint in the **SinglePoint Services Overview** exhibit.

- c) **Include whether current day information is real-time or batched and how often the current day information is updated.**

Current day information is updated at different times for different applications and different processing sites.

<b>Type of Data</b>	<b>Update Schedule</b>
<b>Wire transfer information</b>	Updated continuously and in real time.
<b>ACH Data</b>	Updated twice during business hours: 6:00 a.m. and 9:00 a.m. MT.
<b>Deposit reporting</b>	Continuous and updated according to site-specific schedules.
<b>Lockbox</b>	Continuous and updated according to site-specific schedules.
<b>Controlled Disbursement</b>	Updated twice during business hours: 7:00 a.m. and 8:30 a.m. MT.
<b>Foreign exchange and global trade, Federal Reserve Bank Settlement Activity</b>	Updated upon login to banking system
<b>Other items, such as ATM, phone and branch-initiated transactions</b>	Updated upon login to banking system

- d) Provide if the monthly Bank Statements and Analysis Statements can be retrieved via the Bank's Internet reporting system or if the Bank would prefer to provide them via USPS.**

Account Analysis statements can be delivered in the mail, through SinglePoint Information Reporting in several formats, and in an ASC X12 822 file via direct transmission or the SWIFT network. U.S. Bank can provide the ASC X12 822 using the most recent version of the TMA/AFP Service Codes in the following versions: 3010, 3020, 3030, 3040, 3050, 3070 and 4010.

When delivered via one of our online services such as SinglePoint information reporting or EDI (available in the ANSI ASC X12 822 format), the account analysis is available the seventh business day of the month. If the analysis is mailed, mailing is generally complete by the eighth business day of the month, with the DDA being charged on the tenth business day of the month.

- e) Include what data or reports can be converted to other medias, such as .xls and .csv, for use with the County's other applications.**

The following reports are available in additional formats:

- Previous Day Summary—PDF, TXT, CSV, BAI
- DDA Checks Paid—PDF, BAI, XLS
- ZBA Daily Cash—CSV
- Current Day Summary—PDF and CSV
- Lockbox Detail—PDF, BAI and CSV
- Wire Detail—PDF and XLS
- Account Analysis—PDF, CSV and TXT
- Controlled Disbursement Presentment Comparison—TXT and PDF
- DDA Statement—XLS, CSV, TXT and PDF
- EDI Remittance—PDF and TXT
- EDI Supplemental—PDF and TXT

- f) Provide the level of technical support available to the County for your Internet applications. Explain the Bank's procedures to request technical support, if the County can access support personnel directly and include hours of operation in Mountain Time (MT). Provide if there is a single technical support contact or a contact for each service.**

The Commercial Customer Service Banker (CSB) is the contact for the County. The CSB handles level one servicing, and if an issue requires escalation for level-two support, the customer Call Tracking is assigned to an operations or technical area for resolution. If a CSB needs to escalate an issue further, they refer the matter to a Team Leader and/or Commercial Customer Service Manager, who has a listing of escalation contacts for all operations areas. Commercial Customer Service is available between 6:00 a.m. and 6:00 p.m. MT. Transmission support is available 24/7.



- g) Provide any other information the Bank feels would assist the County in evaluating this service.**

At this time, U.S. Bank does not have any additional information to provide.



## **7) Securities Transaction Settlement and Safekeeping**

The County utilizes a third party as their securities Safekeeping agent. On June 30, 2013, the County's portfolio consisted of sixty-seven (67) securities, which included U.S. Treasuries, Federal Agency securities, Commercial Paper, Corporate notes and bonds and Municipal securities. The total par value was approximately \$112 million. Maturities of all these securities are under five (5) years. The County generally does not sell investments prior to maturity.

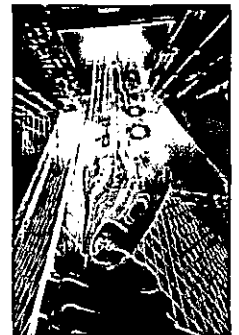
The Bank, as Safekeeping agent, has final responsibility for the proper settlement of all securities transactions, along with receipt of any principal and interest payments due. All purchase and sale transactions must be settled using "Delivery versus Payment" protocol. Preferably, Buy or Sell transaction requests are provided using the Bank's Internet system and the Bank is responsible to provide the secure website for such orders.

Safekeeping receipts, confirmations and Holdings reports should be provided, preferably, via the Bank's Internet system. Market Price should be included on the Holdings Report and it is highly desirable that pricing is as of the last business day of the month, close of business.

In the event of a failed transaction, the Bank must notify the County at least one (1) hour before the delivery deadline in order to provide the County time to resolve the issue and settle same day. If the transaction fails due to an error on the part of the Bank, the Bank will make the County, or harmed party, whole. It is the preference of the County that proceeds from maturities and any interest payments be posted to the County's bank account by 8:00 a.m. Mountain Time (MT) on the day payment is received.

U.S. Bank Safekeeping settles all trades Delivery versus Payment. The OCC requires that we only conduct business for the County upon receipt of specific written instructions signed by a previously authorized individual. We have a secure mailbox where trading instructions can be sent to us.

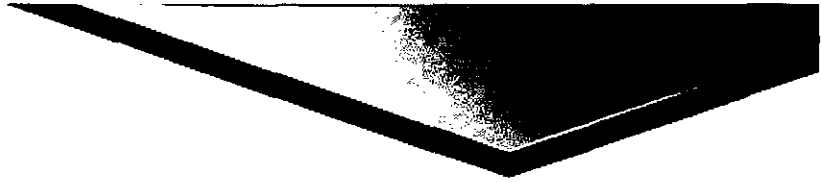
Confirms and Month End Report (which shows activity for the month, and security position on the last business day of the month) are sent via U.S. mail or to SinglePoint. Pricing occurs as of the second business day prior to month-end, but is projected to month-end. Reports, confirms and Safekeeping Receipts are also available via "Safekeeping on the Web," a free service where customers can download them in a PDF format. Please refer to the Safekeeping Forms exhibit for complete detail.



We notify the County of trading issues as they happen and cannot guarantee that we would be able to make the notification one hour prior to delivery deadline. U.S. Bank Safekeeping will notify the County if we fail to deliver a security and will credit the customer the funds they should have received if the delivery failure was due to our error. We will try to notify the County if we fail to receive a security but we cannot guarantee that we will always do so. Our ability to notify the County of failure to receive securities depends on the value of the trade and the number of failed trades we have that day. We notify the County of failure to receive trades starting with the trade highest in value to the lowest value. We may not have time to notify everyone about their failed trade based on the day's activity.

**In the proposal, the Bank shall provide the following information:**

**U.S. BANK IS ABLE TO FULLY PROVIDE THE SERVICE.**

- 
- a) **Provide the preferred method of notification on Buy or Sell transactions. Include the “lead” time required for same day and next day settlements.**

Notification of trade activity must be in writing and signed by a preauthorized individual. The Clearance Trade instructions may be faxed or scanned and emailed to the U.S. Bank Safekeeping Clearance trade shared mailbox. Delivery instructions received by 11:00 a.m. MT are guaranteed delivery; after that time, we promise best effort, depending on the time instructions were received and the volume of trade instructions we receive from our customers.

- b) **Include the Bank’s preferred method in order to securely provide Safekeeping receipts, Confirmations and Holdings Reports.**

Confirms and Safekeeping Receipts are mailed to U.S. Bank Safekeeping customers the day they are created. Month End Reports are mailed the first business day of the month. These are also available on SinglePoint and Safekeeping on the Web, both of which are updated several times each day.

- c) **Provide if the Bank’s Safekeeping application is integrated in a portal with all other Bank services or a separate Internet website.**

All confirms, receipts and reports are available on SinglePoint which is updated every two hours and Safekeeping on the Web, which is a separate website.

- d) **Include if Market Price is provided and, if so, include the monthly schedule (day and time) whereby securities are priced.**

Market Price is available on most reports/receipts. Interactive Data Corporation (IDC) prices securities held in safekeeping at mid-month and two business days prior to last business day of the month.

- e) **Provide the information included in the Bank’s monthly Holdings Report and any other inner-month reports available. You may include sample reports for clarification.**

Please refer to the **Safekeeping Forms** exhibit for complete detail.

- f) **Include safekeeping hours of operation and any designation of an Account Representative.**

The entire U.S. Bank Safekeeping Department staff is dedicated to provide quality customer service for all Safekeeping functions so we do not have a dedicated Customer Service person. There is someone on-site from 5:00 a.m. to 4:00 p.m. MT each business day.

- g) **Provide any other information the Bank feels would assist the County in evaluating this service.**

Our customer base consists of over 4,700 customer accounts who own combined assets of over \$93 billion face in securities.

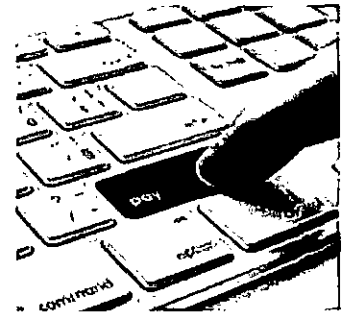
## **9) Other Value Added Banking Services**

The County requests proposing banks to make recommendations of other services or expansion of current services which could enhance the cash management capabilities of the County, reduce County staff time, reduce County costs or provide other value to the County’s banking services.

**The County, at their discretion, will evaluate each of these services individually. Pricing for proposed services must be included in the Proposal Pricing Spreadsheet worksheet, “Value Added Services” worksheet, but will not be included in the overall cost of required services, “Summary” worksheet.**

**U.S. Bank E-Payment Service** provides you with a robust and highly configurable collections solution that can be integrated with your existing systems. It offers the ability to efficiently collect payments through multiple channels such as the Internet, Integrated Voice Response Unit (IVR), and through live agents in your call center using a single, integrated solution. All payments, including one-time and recurring transactions, are made by direct bank account debit via ACH, ATM debit card, credit card, signature-based debit card, or stored value card with Visa or MasterCard logo. Once the payments are processed, you receive consolidated reports and remittance data to update your receivables system. This back office electronic payment infrastructure reduces your collection expense while appearing transparent to your customers. You maintain your identity or brand while providing additional convenience and benefit to your customers.

- **Improve collections**—With this electronic payment option, the time it takes to receive and deposit customer payments until the funds are settled is much shorter than other payment channels.
- **Increase customer satisfaction**—Customers increasingly want and expect to be able to pay you electronically. U.S. Bank E-Payment Service enhances your e-commerce image, while at the same time putting powerful customer service tools in your hands.
- **Reduce operating costs**—Customers can conveniently make payments via the Internet or IVR, reducing the number of payments your company receives from more costly channels, such as in-person payments.
- **Increase control of your cashflow**—Powerful reporting capabilities allows you to know exactly when to expect funds to settle from the moment a payer initiates or schedules a payment.
- **Integrate with your current systems**—The flexibility of file formats we can deliver means you don’t have to build new or revise your current databases in order to import the receivables data into your current financial systems. Our data translation feature supports industry standard formats, such as ANSI X12 as well as proprietary file formats.
- **Maintain brand identity**—U.S. Bank E-Payment Service appears transparent to the user, so the user experience remains on your Website or IVR, even though the user accesses our secure payment infrastructure.
- **Maintain security**—U.S. Bank E-Payment Service is hosted in a secure environment that has passed stringent security and disaster recovery audits. This environment also conforms to rapidly evolving payment association rules.



- **Add flexibility for future growth**—Additional services, functionality and features are planned for enhancements in the future. U.S. Bank E-Payment Service is designed on a scalable system to allow for growth and flexibility of service.

For organizations whose employees have purchasing responsibilities for multiple expense categories (e.g., travel and procurement), U.S. Bank offers enhanced user convenience and versatility through the one card. The **U.S. Bank One Card** combines the flexibility of a corporate card with the convenience of a purchasing card. It incorporates the features and benefits of both and provides streamlined accounting for all your commercial spending needs. Employees carry one card and reconcile one statement every month and your organization makes one payment to one provider, meaning less paperwork for your accounting department. With a U.S. Bank One Card, your employees enjoy the ease and simplicity of one card for all their business expenses, while your organization benefits from better management of the entire procure-to-pay process – with no loss of data or control.



- **Complete T&E expense management**—Provides a comprehensive, simplified way to monitor and control corporate travel and entertainment (T&E) expenses, while providing complete insurance protection, travel assistance, and emergency assistance services for cardholders.\* Our card solution offers extensive reporting functions that yield valuable information to help monitor T&E spending, as well as aid in vendor negotiations.
- **Comprehensive procurement expense management**—Streamlines the purchasing process and empowers your supply chain management strategies. By using the card to place orders, the costs associated with processing requisitions, purchase orders and check requests are reduced by up to \$70 per transaction<sup>1</sup>. The program simplifies and enhances all aspects of the purchasing process, including policy compliance, vendor negotiations, transaction monitoring, security, reporting and payment.
- **Unsurpassed worldwide acceptance**—Provides access to the world's largest acceptance network with merchant and cash locations in over 190 countries. Our vast worldwide acceptance via the Visa®/MasterCard® networks ensure your employees access to goods, services and cash around the globe – eliminating the need for more costly alternatives (such as petty cash or cash advances) and ensuring that your organization captures transaction data on every purchase.
- **Increased cost savings**—Reduces administrative costs by consolidating program features and reports, while eliminating the paperwork needed to track receipts, file expense reports and issue purchase orders.
  - Simplify the buying process and require fewer human resources.
  - Deploy people in other, more productive ways that help meet your business objectives.
  - Provide thorough data and reporting to facilitate preferred vendor negotiations.

<sup>1</sup> RPMG, 2010 Purchasing Card Benchmark Survey Report

\* Certain limitations and restrictions may apply. Consult U.S. Bank for details.

U.S. Bank One Card is issued by U.S. Bank National Association ND.



### **Working Capital DNA Consultation**

U.S. Bank is uniquely positioned to be your strategic partner as we view your card, check-based and electronic payment spend holistically, and recommend solutions based on optimizing the entire,

tiered payables process. We offer our unique Working Capital DNA model to solve for your entire payable strategy. Working Capital DNA Process consultation is a multi-phased approach that will

analyze your current Accounts Payables (AP) environment to develop a customized payments strategy helping you optimize your working capital. This model is designed to align your current payment solution with the latest technologies in a tiered, holistic fashion. We will optimize your

check, wire, card and ACH process with a tiered strategy, offering your vendors the payment terms and types that provide the County with the most savings and rebate available based on the County's

procurement and payment process. This model, and the consulting process incorporated into it, is part of our offer and the County incurs no additional cost.

We extend an offer to the County to meet with U.S. Bank's National Payments Consulting experts who will listen and advise based upon your unique business model for maximum efficiency, flexibility and control. This process typically starts with mapping your complete payment model. From there, we can engineer a solution based on solving your individual challenges of cash flow, working capital and payables management. To accomplish this, we host a session on site (less than 90 minutes), at no charge, to understand more about your organization's process flow, from procurement to payment.

This session is an informal discussion of your current process and does not require any pre-work on your behalf. U.S. Bank will review this information, compare it to industry best practices and lessons learned, and provide recommendations during a subsequent visit. The next meeting is the recommendation session. This is when we present our recommendations to optimize your working capital including:

- Creating process improvements
- Changing payment methods
- Improving payment terms
- Employing supplier enablement
- Developing deployment strategies

This service is a long-term business solution built on our commitment to be a treasury advisor who understands your strategic and tactical initiatives at the County. We know that partnering across all payment types in a working capital optimization engagement is the most transformative exercise your payables process can undergo and we look forward to supporting the County in this end-to-end advisory capacity should we be selected as a partner.

## Exhibit C

# DEPOSIT ACCOUNT AGREEMENT

## General Terms & Conditions

### Electronic Transfers

### Funds Availability

### Safe Deposit Box Lease

### Reserve Line

### Checking Account Advance

### Effective March 9, 2014

### Between Douglas County,

### Colorado and U.S. Bank

#### TERMS APPLICABLE TO ALL DEPOSIT ACCOUNTS

##### THIS IS AN AGREEMENT

Welcome to U.S. Bank and thank you for opening an account with us. This booklet provides the general rules that apply to deposit accounts you have with U.S. Bank. Additional rules are provided in:

- (1) the Treasury Management Service Terms and Conditions signed by Douglas County, Colorado (the "County") and U.S. Bank (the "Bank") on March 9, 2014, including Exhibits A, B, and C thereto;
  - (2) the U.S. Bank Treasury Management Service Agreement signed by the County and the Bank on March 9, 2014;
  - (3) the U.S. Bank Depository Services Regulation for Government Entities signed by the County on March 9, 2014;
  - (4) the most current Treasury Management Services fee and availability schedule and other fee disclosures provided to the County, including account statements, as modified by Exhibits A, B, and C thereto, and Exhibit B, Proposal for Banking Services to the U.S. Bank Treasury Management Terms and Conditions signed by the County and the Bank on March 9, 2014. In the case of a conflict between the most current Treasury Management Services fee and availability schedule and other fee disclosures provided to Customer, including account statements, and Exhibits A and B, Exhibits A and B supersede, and control;
  - (5) the ELAVON Terms of Service and Merchant Operating Guide;
  - (6) the set-up materials, user guides, and any supplement thereto required by Bank to implement a specific Service;
  - (7) the Uniform Commercial Code, as enacted in the State of Colorado as Article 4.3 of Title 4 of the Colorado Revised Statutes;
  - (8) any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (the "NACHA Rules"), the National Clearing Clearinghouse Association Rules (the "NCHA Rules"), and the rules promulgated by the Electronic Check Clearing House Organization (the "ECCHO Rules"); and
  - (9) federal, state, and local laws and regulations applicable to the Bank or the County, including, without limitation, Regulation CC promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Section 229.1, et seq. ("Regulation CC"), all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations promulgated by the Office of Foreign Assets Control ("OFAC").
- No changes in this Deposit Account Agreement or in any of the foregoing will be effective or binding unless and until such changes are specifically agreed to in writing by both the County and the Bank.
- These things, together, are an agreement between you and U.S. Bank.
- Please read this carefully.
- By signing a signature card, opening, or continuing to hold an account with us, you agree to the version of this Deposit

Account Agreement signed by the County and the Bank on March 9, 2014.

If any terms of your signature card, resolution, or certificate of authority are inconsistent with the terms of this Agreement, the terms of this Agreement will control.

If you have any questions, please call us. Our most commonly used phone numbers are printed on the back of this booklet.

#### DEFINITIONS

The words "we," "our," and "us" mean U.S. Bank National Association ("U.S. Bank" or the "Bank"). We are a national bank. We are owned by U.S. Bancorp.

U.S. Bancorp and U.S. Bank own or control other companies, directly and indirectly. The members of this family of companies are our "affiliates."

The words "you" and "your" and the "Douglas County" and the "County" mean the Board of County Commissioners of the County of Douglas, State of Colorado. Unless otherwise specifically indicated in this Agreement for the matters covered by this Agreement, the Board of County Commissioners will be acting through the Treasurer of Douglas County.

The term "account" means any savings, transaction (for example, checking), and time deposit account or other type of account you have with us (including, without limitation, any investment accounts), wherever held or maintained.

An "owner" is one who has the power to deal with an account in his, her or its own name. The owner is the County. An "agent," in contrast, is one whose power to withdraw from an account comes from, or is on behalf of, the owner. Authorized signers, designated corporate officers, trustees, attorneys-in-fact, and convenience signer are examples of agents.

Entities such as corporations, limited liability companies, partnerships, estates, conservatorships, and trusts are not natural persons, and can only act through agents. In such cases, it is the person, that is the owner.

"Personal accounts" are accounts in the names of natural persons (individuals). They are to be distinguished from "non-personal accounts" which are accounts in the name of corporations, partnerships, trusts and other entities.

Except where it is clearly inappropriate, words and phrases used in this document should be interpreted so the singular includes the plural and the plural includes the singular.

#### PLAIN LANGUAGE

We have written this booklet in plain language. Where possible, we have avoided the use of legal jargon and, where appropriate, we have used examples to explain the larger ideas. The examples we use are not intended to be the only application of the rule we are explaining.

#### RELATIONSHIP OF THIS DEPOSIT SERVICES AGREEMENT TO THE TREASURY MANAGEMENT SERVICES TERMS AND CONDITIONS

In the case of conflict between this Deposit Account Agreement and the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement, such Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County, exclusive of this Deposit Services Agreement, control and supersede the provisions of this Deposit Account Agreement.

In the case of conflict between this Deposit Account Agreement and Exhibit A or Exhibit B to the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, Exhibits A and B control and supersede the provisions of this Deposit Account Agreement.

#### WAIVERS AND PRECEDENTS

Our Agreement with you gives us rights and duties. If we don't take advantage of all our rights all the time that does not mean we lose them. For example:

- if we make funds available to you for withdrawal ahead of schedule, that does not mean we have to do it again,
- if we pay a check that is more than your account balance, that does not mean we have to do it again.

#### IDENTIFICATION NOTICE (USA PATRIOT ACT)

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

#### What this means for you

When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see other identifying documents like a driver's license or documents showing your existence as a legal entity.

#### Existing customers

Even if you have been a customer of ours for many years, we may ask you to provide this kind of information and documentation because we may not have collected it from you in the past.

#### Failure to Provide Information

If for any reason, any owner is unable to provide the information necessary to verify their identity, their account(s) may be blocked or closed, which may result in additional fees assessed to the account(s).

#### OWNER'S AUTHORITY

The County authorizes signers to transact business. On the Treasurer's Master, Treasurer's Checks, RMH/DTA, Payroll Tax, Clerk and Recorder, and Social Security Beneficiaries bank accounts, and any other accounts which the County may establish at the Bank, the authorized signers are the County Treasurer and the members of her staff whom she has designated in writing. On the Accounts Payable and Payroll accounts, the authorized signers are the Chair of the Board of County Commissioners and the County Clerk and Recorder, both of whose signatures are required. On the transactions requiring the signatures of the Chair of the Board of County Commissioners and the County Clerk and Recorder, the signers act with the advice and assistance of the County Treasurer and her staff. Authorization for all electronic payment types and information access is controlled by the Security Administrators designated by the County Treasurer in writing. All dual signature requirements are for the County's internal control purposes only. See: Required Signatures authorized by the County Treasurer and/or assigned staff.

#### AUTHORIZED ACCESS

The County authorizes signers to transact business. On the Treasurer's Master, Treasurer's Checks, RMH/DTA, Payroll Tax, Clerk and Recorder and Social Security Beneficiaries bank accounts, and any other accounts which the County may establish

In the Bank, the authorized signers are the County Treasurer and the members of her staff whom she has designated in writing. On the Accounts Payable and Payroll accounts, the authorized signers are the Chair of the County Commissioners, and the County Clerk and Recorder, both of whose signatures are required. On the transactions requiring the signatures of the County Treasurer and her staff, authorization for all Clerk and Recorder, the signers set with the advice and assistance of the County Treasurer and her staff. Authorization for all electronic payment types and information for the County Treasurer's electronic signature requirements are for the County's Secretary Administrators designated by the County Treasurer in writing. All dual signature requirements are for the County's internal control purposes. Release of information is only authorized by the County Treasurer and her assigned staff. The County does not allow assignment of an agent. Except as may be provided for in a written communication from the County Treasurer provided to the Bank or in a resolution of the Board of County Commissioners and provided to the County Treasurer by the Board of County Commissioners is authorized by the Bank: no County official or employee is authorized to designate a signer beyond the signers described above, and no one may be authorized to make electronic payment or access information, except as described above. YOU CANNOT TRANSFER AN ACCOUNT.

You may not transfer an account to someone else without our express written permission. This does not limit your right to express written permission. You may not transfer an account, may access your account by any permissible means. **CHANGE IN AUTHORIZED SIGNERS** Any owner, including one of the owners of a joint account, however, we add owners or authorizing signers to an account, Treasurer or her staff to make the change. Only under special circumstances have the right to require the signature of the County Treasurer and subject to prior approval by us may an owner remove an owner or authorized signer from an account. No change in owners or authorized signers is effective until we have received written notice of the change and have had adequate time to approve and act on it.

**ADJUSTMENTS** If we (or you, or you and us together) make an error on your account, we can fix the error without first notifying you. For example, if the dollar amount of your check is paid for the incorrect amount, we can fix the error without first notifying you. If we (or you, or you and us together) make an error on your account, we can fix the error without first notifying you. For example, if a deposit is added incorrectly, we can fix the error without any special notice to you, though such a correction will normally appear on your statement. We can fix the error without any special notice to you, though such a correction will normally appear on your statement. We can fix the error without any special notice to you, though such a correction will normally appear on your statement. We can fix the error without any special notice to you, though such a correction will normally appear on your statement.

**LIABILITY FOR CHARGES AND OVERDRAFTS** The account owner(s) is responsible to us to repay any overdraft might not adjust for charges and overdrafts. If there is more than one owner, each take it from your account. If there is more than one owner, each owner is separately, and all owners take it from your account. If there is more than one owner, each owner is separately, and all owners take it from your account. If there is more than one owner, each owner is separately, and all owners take it from your account.

**overdraft** occurs if you take more money out of your account than is available to you for withdrawal, or if it is available to you but is later reversed. This can happen for example, by writing a check without enough money in a checking account to pay the check, and we decide to cash it.

• by making a withdrawal from your account that exceeds your available balance;  
• by making a deposit, withdrawing money based on that deposit, and having that deposit reversed because the deposited item is later reversed.  
• when money is deposited on that deposit and the deposit is reversed.  
• when money is deposited on that deposit and the deposit is reversed.

**PAYMENT OF CHECKS** We will charge your account for a check on the day the check is presented to us for payment by any legal means, including electronic or earlier if we receive notice that a check drawn on your account will be presented for payment. This will affect your available balance, determination of whether you have sufficient funds in your account to pay the check.

**DEPOSITS** When you make a non-cash deposit to your account, we give you credit for that deposit, but that credit is provisional (temporary). If the deposit needs to be collected from another financial institution, we must be paid before the credit becomes final. After a credit is final it may still be reversed. Terms and Conditions of our account are subject to our current policies and procedures. All deposit receipts are issued subject to our current policies and procedures.

**Availability:** All deposit receipts are issued subject to our current policies and procedures. All deposit receipts are issued subject to our current policies and procedures. All deposit receipts are issued subject to our current policies and procedures.

**Deposits by Mail:** If you make a deposit by mail, we have to receive it and have time to record it before it becomes effective. (See our Funds Availability section.)

**Foreign Currency:** If you make a deposit in the form of a foreign currency, that deposit has to be converted into U.S. dollars. That takes time, there may be expenses, and your final credit will be adjusted to reflect the (exchange) into U.S. dollars. That takes time, there may be expenses, and your final credit will be adjusted to reflect the (exchange) into U.S. dollars.

**RETURNED DEPOSITED AND CASHED ITEMS** The funds you deposited to your account are subject to normal collection process even after we make the funds available to you for withdrawal (i.e. the check has "cleared"). If we do not collect the funds or we need to return the funds, your deposit will be reversed and become your responsibility.

**Check processing is getting faster as banks begin to process checks "electronically".** We are required by law to provide the notice in the following section ("SUBSTITUTE CHECKS AND YOUR RIGHTS"), which explains the difference between your original check (which might not be returned) and a substitute check, and your rights in the event the substitute check was still lost that would have been avoided if the original check was available.

**What is a substitute check?** Federal law permits banks to create substitute checks with "substitute checks". These checks replace original checks with a slightly reduced image of the front and back of the original check. You can use it the same way you would use the original just like the original check. Federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account from your account or that we withdrew money from your account more than once for the same

**Check processing is getting faster as banks begin to process checks "electronically".** We are required by law to provide the notice in the following section ("SUBSTITUTE CHECKS AND YOUR RIGHTS"), which explains the difference between your original check (which might not be returned) and a substitute check, and your rights in the event the substitute check was still lost that would have been avoided if the original check was available.

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**ENDORSEMENT STANDARDS**

The County will not hold the bank liable for the potential losses to the County that are the result of a poor check image caused by a deficiency in the written check. To the extent not prohibited by law - including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-110; and C.R.S. § 24-10-101, et seq. - the Bank will not be liable to third parties for losses resulting from a poor check image caused by a deficiency in the written check. Nothing in this Agreement shall be deemed a waiver of the County's rights under Colorado or Federal common law. This provision does not suggest that the County shall be liable to any third party for losses resulting from a poor check image caused by a deficiency in the written check, and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

**CHECKS**

**Post-Dated Checks.** We are not responsible to you if we pay a check before its date, even if we have notice that it is post-dated. If we, at our option, refuse to pay a check because it is post-dated before its date, you will have to pay, if applicable, the fee we charge for insufficient funds. If you want to be sure we do not pay on a check before its date, you must stop its payment by following our rules for stop payments in the STOP PAYMENTS section of this Agreement and follow our procedures for revoking a stop payment request or follow Positive Pay steps to report a stop payment exception item.

**State-Dated Checks.** A "state-dated" check is one that is brought to us for payment more than six months after its date. We may demand six months after its date, a check brought to us ("presented") after its date. If you do not want us to pay a state-dated check, you must place a stop payment order on the check, or report as a Check Legend. We are not required to honor any legends or a "legend" or "memo" we mean a message, such as "not valid for more than \$50" or "do not pay more than ten days after date." Equipment. If you don't buy your checks through us, you must get them approved by us or we will not be responsible. If your checks do not process correctly. See the section titled CHECK 21 for additional information on links and related issues.

**ENDORSEMENT STANDARDS**

The payee of a check (the person to whom a check is payable) must sign (endorse) the check on the back in the space shown in the picture below. If a check is transferred to someone else before it gets deposited or cashed, anyone else who holds the check before it gets deposited or cashed, anyone else who holds the check may also be required to sign the check.

Every bank that handles a check on its way to the bank that is asked to pay it also has to identify itself on the back of the check. The space for these banks is below the space shown for the payee and other "holders."

When you endorse a check, you must:

- (1) clearly sign your name;

- (2) use black or dark blue ink if possible;
- (3) never use a faint color, like red, pink or any pastel, or a gel ink (gels do not copy well);
- (4) sign near the top of the space provided or just below any other signature in that space;
- (5) keep any stamp within the area set aside for handwritten signatures;
- (6) keep any stamp within the area set aside for handwritten signatures.

- (1) clearly sign your name;
- (2) use black or dark blue ink if possible;
- (3) never use a faint color, like red, pink or any pastel, or a gel ink (gels do not copy well);
- (4) sign near the top of the space provided or just below any other signature in that space;
- (5) keep any stamp within the area set aside for handwritten signatures;
- (6) keep any stamp within the area set aside for handwritten signatures.

Here is a picture that shows you the correct endorsement area.

- (1) clearly sign your name;
- (2) use black or dark blue ink if possible;
- (3) never use a faint color, like red, pink or any pastel, or a gel ink (gels do not copy well);
- (4) sign near the top of the space provided or just below any other signature in that space;
- (5) keep any stamp within the area set aside for handwritten signatures;
- (6) keep any stamp within the area set aside for handwritten signatures.

Why is this important? If your endorsement of a check, or the endorsement of someone from whom you took the check, either:

- (1) causes a delay in a necessary notice to someone else, or
- (2) prevents someone from being identified quickly enough (and therefore cannot get notice or cannot get it in time) because it is not paid, it will then be up to you to try and recover from someone else who might be liable.

**INSUFFICIENT FUNDS AND OVERDRAFTS**

"Insufficient funds" means you don't have enough money in your account available to pay the withdrawal; you are attempting an insufficient funds "bribe" may include the following:

- pre-authorized withdrawal,
- internet bill payment,
- ATM cash withdrawal,
- ATM/lock card purchase,
- business banking transfer,
- telephone transfer, or

Our Options: When an item of yours overdraws an account, we can either pay or refuse to pay the item. If we get a batch of such items in a day (checks typically come in batches), and if one pays or refuses to pay them, in any order, or no order, for example, if one large check and six small checks are offered to us for payment, and the one large check would empty the account, we can:

- (1) pay the one large check and refuse to pay the six small checks;
- (2) pay the small checks and refuse to pay the large check;
- (3) pay all of them, creating an overdraft, or
- (4) pay some and reject others.

We have all these options each time you might overdraw an account. What we do one time does not make that a rule you can rely on for the future.

**Our Fees:** We charge an insufficient funds fee, as stated in Exhibit A of the Treasury Management Services Terms and Conditions for each withdrawal (e.g., in-person, ATM, automatic payment or other paper or electronic withdrawal transactions) that exceeds your available balance on a given day. This fee is charged in the County's monthly Account Analysis statement.

**Your responsibility:** If you have an overdraft, you must deposit enough money into your account to pay the overdraft, you must do so immediately. If you state ownership of your account with someone else, you are responsible to us for the overdraft, whether or not you personally caused the overdraft, and benefited from it. You have the option to direct us to return funds for returned items, but you may still be charged on insufficient items that are returned. If you wish to request all overdraft items be returned, contact your branch or account or call U.S. Bank 24-Hour Banking.

Other sections: While many other sections of this booklet relate to these issues, these sections are particularly appropriate:

- Funds Availability
- Securi
- Security Interest in Accounts
- U.S. Bank Reserve Line Agreement

**REFUSING PAYMENT ON YOUR CHECKS**

You must fill in an amount (in words and numbers) correctly and clearly, and sign your name on checks you write. You should fill in the date and name a payee on your checks. If you don't name a payee, anyone can cash the check. If you fail to follow rules, we may refuse to honor your check.

When a check you write is presented to us by another bank, we will generally accept the endorsements on the check, because if an endorsement is missing or forged, we rights against this other bank that protect us. When a check is cashed if we are not comfortable with the endorsements on the check, we may require anyone who presents it. This is especially true if the person (other than an account owner presenting a check on his or her own account) or:

- pay a fee to cash the check if applicable, and
- give a fingerprint or thumbprint, and identification, as a condition of cashing a check.

If the presenter of the check refuses to comply with these requirements, or complies but later asserts that these requirements imposed on their legal rights, you understand and agree that imposing these requirements will not be considered a "wrongful distinction" of your checks.

**FUNDS TRANSFERS**

Unless we have entered into a specific written agreement with you that provides otherwise, payment orders you give to us for the transfer of funds out of the account by wire transfer or hands into the account, will be governed by the transfer of rights and obligations with respect to this paragraph. Your and our rights and obligations, will be governed by this paragraph. Your Management Service Agreement, Terms and Conditions signed by the County and the Bank on March 9, 2014, exclusive of this Deposit Account Agreement, and to the extent not specified in the Treasury Management Service Agreement Terms and Conditions, by Article 4A of the Uniform Commercial Code (UCC/4A), as enacted in the state in which you have your account with us.

We reserve the right to refuse to accept any payment order. Payment orders are accepted when they are executed by us.

**YOU AGREE THAT IF A PAYMENT ORDER OR CANCELLATION THEREOF IDENTIFIES THE BENEFICIARY BY BOTH NAME AND AN IDENTIFYING NUMBER, AND THE NAME AND NUMBER IDENTIFYING THE EXECUTION AND PAYMENT TO THE BENEFICIARY OR CANCELLATION MAY BE MADE SOLELY ON THE BASIS OF THE IDENTIFYING NUMBER, YOU ALSO AGREE THAT IF A PAYMENT ORDER IDENTIFIES AN INTERMEDIARY BANK OR THE BENEFICIARY'S BANK BY BOTH NAME AND AN IDENTIFYING NUMBER, ANY PERSONS, EXECUTION OF THE PAYMENT ORDER BY ANY BANK MAY BE MADE SOLELY ON THE BASIS OF THE IDENTIFYING NUMBER.**

We will give your notice of the acceptance of a payment order by posting the amount of the payment order by the outgoing payment order to the appropriate extended or modified, if the beneficiary's bank is located within the United States of America and the outgoing payment order is

other attempt to get money from your account by any means permitted that we refuse to permit because it is for more money than you have available in your account at that time.

**"Overdraft" means a transaction has caused the available balance on an account to become a negative number. An overdraft can happen, for example, if:**

- we pay a withdrawal item, that is more than your available or collected account balance;
- a deposit you made and on which we let you make withdrawals gets reversed; or
- a charge is made to your account that exceeds your available balance.

Our Options: When an item of yours overdraws an account, we can either pay or refuse to pay the item. If we get a batch of such items in a day (checks typically come in batches), and if one pays or refuses to pay them, in any order, or no order, for example, if one large check and six small checks are offered to us for payment, and the one large check would empty the account, we can:

- (1) pay the one large check and refuse to pay the six small checks;
- (2) pay the small checks and refuse to pay the large check;
- (3) pay all of them, creating an overdraft, or
- (4) pay some and reject others.

We have all these options each time you might overdraw an account. What we do one time does not make that a rule you can rely on for the future.

**Our Fees:** We charge an insufficient funds fee, as stated in Exhibit A of the Treasury Management Services Terms and Conditions for each withdrawal (e.g., in-person, ATM, automatic payment or other paper or electronic withdrawal transactions) that exceeds your available balance on a given day. This fee is charged in the County's monthly Account Analysis statement.

**Your responsibility:** If you have an overdraft, you must deposit enough money into your account to pay the overdraft, you must do so immediately. If you state ownership of your account with someone else, you are responsible to us for the overdraft, whether or not you personally caused the overdraft, and benefited from it. You have the option to direct us to return funds for returned items, but you may still be charged on insufficient items that are returned. If you wish to request all overdraft items be returned, contact your branch or account or call U.S. Bank 24-Hour Banking.

Other sections: While many other sections of this booklet relate to these issues, these sections are particularly appropriate:

- Funds Availability
- Security Interest in Accounts
- U.S. Bank Reserve Line Agreement



you may be cancelled, amended or modified. We must receive your cancellation in a reasonable time prior to the time we execute the outgoing payment order. Payment orders sent by Fedwire will be subject to the Federal Reserve's Regulation J, and payment orders sent via other payment systems will be subject to the rules, conventions and data transmissions received from, made for or on behalf of you pursuant to or in connection with a payment order.

**YOU AGREE THAT IF A PAYMENT ORDER, OR ANY OTHER INSTRUMENT OR AUTHORIZATION RELATING TO THE ELECTRONIC FUND TRANSFERS ACT OF 1978 (EFT) IS EFFECTIVE FROM TIME TO TIME, CONSTITUTE A SUCH PAYMENT ORDER, CANCELLATION OR AUTHORIZATION SHALL BE DETERMINED PURSUANT TO UCC4 AND THIS AGREEMENT TO THE FILL IN A FOREIGN CURRENCY CANNOT BE COMPLETED, THE EXCHANGE RATE THAT EFFECT AT THE TIME OR THE DAY THE RATE IS MADE.**

**WITHDRAWAL RIGHTS, OWNERSHIP OF ACCOUNT, AND BENEFICIARY DESIGNATION**

The County authorizes signers to transact business. On the Clerk and Recorder, Treasurer's Checks, RMH/DTA, Payroll Tax, at the Bank, the authorized signers are the County Treasurer and the members of her staff whom she has designated in writing. On the Accounts Payable and Payroll accounts, the authorized signers are the Chair of the Board of County Commissioners, the County Clerk and Recorder, both of whose signatures are required. On the transactions requiring the signatures of the Chair and Recorder, the signers are with the advice and assistance of the County Treasurer and her staff. Authorization for all electronic payment types and information access is controlled by the Security Administrators designated by the County Treasurer in writing. All dual signature requirements are for the County's internal control purposes only. See, Required Signatures section of this Agreement. Release of information is only authorized by the County Treasurer and her assigned staff.

The following rules govern the withdrawal rights of deposit accounts with the various titles given to them. By "withdrawal rights" we mean who has access to the funds in the account for all purposes. These withdrawal rights will control, for example, whose instructions we must follow, whose checks we must pay, and whose withdrawal requests we must honor. These withdrawal rights do not control who actually owns the funds, as between multiple parties to an account.

**ACCRUAL OF EARNINGS CREDIT**

The County shall earn an Earnings Credit on all its accounts at the Bank.

The applicable earnings credit rate shall be indexed to the Average Federal Rate (A-FR) with a floor of 40 basis points, as stated in the Response to RFP, Exhibit B, page 54 to the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014. The County's Bank will not carry forward excess earnings in a given month and the County may choose to be invested on a quarterly basis, however, the quarterly collected balances to be used for the calculation of Earnings Credits Bonus as documented in Exhibit B, page 54. Federal law prohibits Bank from paying excess earnings credit to the County. If the County's earnings credit is insufficient to offset the amount due hereunder, the County agrees to pay such amount to the Bank upon demand. The County authorizes the Bank to invoice the County for any and all fees, expenses or other charges owed by the County to the Bank under Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014. If either the Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014 or the Treasury Bank and Douglas County on March 9, 2014, or the termination date stated in Paragraph II.5-B thereof, on a pro-rata basis, County will forego any remaining balance of the Earnings Credit Bonus. Thus, if this Agreement is terminated half way through the 3 year term, County will not be eligible for STOP PAYMENTS.

Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts drawn on your account.

**Electronic Funds Transfers**

You can stop payment of certain types of electronic transactions. Please see the Electronic Banking Agreement section of this brochure for details.

**Checks and drafts**

If you want to stop payment of a check, you must stop by a U.S. Bank branch or call U.S. Bank 24-hour Banking. Writing us will take too much time and we will not have time to act on your request before the check is paid. We will need the following information:

- (1) the account number the check is written on;
  - (2) the check number;
  - (3) the dollar amount;
  - (4) the date; and
  - (5) the name of the person you wanted to pay.
- This information must be exact and correct. If it is not, we will not be responsible if the item is paid.
- Who can stop a payment and for how long?**
- (1) Any owner can stop payment of any check on the account whether that owner wrote the check or not (and assuming the item can still be stopped).
- (2) A stop payment order is effective for six months or longer, as determined by you at the time the stop payment order is placed. You must renew it prior to the expiration of the stop payment effective period or the item could get effective period ends.

(3) Only the owner who made the stop payment order can release it.

(4) You must give us sufficient notice so that we have a reasonable period of time to act upon your request and verify that the item has not been paid.

**Effect of a stop payment**

When you stop payment of a check, you may still be obligated to the payee, and the payee may still have the right to collect on the check or the underlying transaction. The County will not hold the Bank liable for the potential losses to the County that are caused by the Bank's honoring a stop payment order. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-10; and C.R.S. § 24-10-101, et seq. -- the Bank will not be liable to third parties for losses related to its honoring stop payment orders. Nothing in this Agreement shall be deemed a waiver of the County's rights under Colorado Constitution, Colorado Revised Statutes, or Colorado federal common law. This provision does not suggest that the County shall be liable to any third party for losses caused by the Bank's honoring a stop payment order, and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

**What if we don't stop payment?** We cannot stop payment of a check that has already been paid. If you ask us to stop payment of a check and we pay it anyway, we gain whatever rights the payee has against you. This means, if the check should have been paid, collect from you. Therefore, if we pay an item that should have been stopped, before we recredit your account, you will have to prove to us that by our payment you have suffered a loss and the cause is our failure to stop the payment.

**What kinds of checks does this NOT apply to?** This section does not apply to items not drawn on your account, such as letter's checks, official (cashier's) checks, and accepted checks (e.g., certified checks). We have no responsibility to honor your request to stop payment of items not drawn on your account. The County will not hold the Bank liable for the potential losses to the County that are caused by the Bank's honoring a stop payment order on items not drawn on the County's account. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-10; and C.R.S. § 24-10-101, et seq. -- the Bank will not be liable to third parties for losses related to its honoring stop payment orders on items not drawn on the County's account. Nothing in this Agreement shall be deemed a waiver of the County's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado federal common law. This provision does not suggest that the County shall be liable to any third party for losses caused by the Bank's honoring a stop payment order on items not drawn on the County's account, and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

Fee To stop a payment you must pay our fee, the amount of which is disclosed in the Exhibit A of the Treasury Management Terms and Conditions.

**DORMANT ACCOUNTS AND ESCHEAT**

A dormant account is an account that has been inactive. Generally, subject to state law, "inactive" means there has been no deposit, withdrawal or other communication from you about the account for the period of time as follows:

- (1) 12 months for a checking account;
  - (2) 24 months for a savings account including writing options.
- This does not apply to a time deposit (certificate of deposit) unless it matures and does not renew. It will then be converted to a savings account. We charge a dormant account fee. The amount and frequency is disclosed in our Consumer Pricing Information brochure. If your account has a zero balance, we reserve the right to close it.
- Escheat is the term that is used to describe the process of transferring an account balance to the state government in which your branch is located after an account has been dormant for a long time and if our attempts to find you fail.

The time period after which funds must eschew to the state varies from state to state. Once the funds are transferred to the state, you may be able to recover such from the state itself, but not from us. We also charge a reasonable fee to transfer funds to the state, which is disclosed elsewhere.

#### TELEPHONE TRANSFERS

Telephone transfers are governed by the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement. Therefore, this section is inapplicable to Douglas County.

If you have more than one account with us, including a credit card or open end loan account, you can transfer funds between your accounts by telephone. You will need to have a PIN number, and enter your account numbers, and other qualifications, but if you meet them,

- (1) you can transfer funds between your accounts by calling our telephone transfer service, and
- (2) transfers may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing or by other means.

A transfer made by telephone is not immediately completed. It may take as long as one business day to do the bookkeeping, verify the transaction, and make the transfer.

#### REQUIRED SIGNATURES

Except as set forth below, required signatures are governed by the U.S. Bank Treasury Management Services Terms and Conditions signed by the Bank and the County on March 3, 2009.

**Signature Comparison.** We process certain items mechanically, based on information encoded on checks and other transaction items, and we are not required to examine items and debit drawn on your account. We collect your signature to obtain your agreement to the rules we establish for your account, but this does not create any responsibility on our part to verify signatures on items and other charges to your account.

**Number of Signatures.** You agree that if you

- (1) have an account in which more than one signature is authorized to complete a transaction;
- (2) authorize someone to transact some but not all transactions on your account;
- (3) authorize someone to transact business on your account for limited purposes and no others; or
- (4) use checks that require two or more signatures,

such arrangements are strictly between you and the other person(s) you authorize, whether we have notice of your arrangement (including in a form we provide you) or not. You cannot assert a claim against us for permitting a transaction so long as any one of the owners or authorized persons sign or initiate the transaction, even if a person exercises more authority than you have given.

#### CHANGES TO OUR AGREEMENT WITH YOU

We may change any term of this Agreement upon 120 days advance written notice to the County Treasurer. If we so notify the County Treasurer in writing at least 120 days in advance that the terms of your account have changed and you continue to have your account after the effective date of the change, and provide written consent to the change in terms, which shall not be unreasonably withheld, you have agreed to the new terms. For

consumer customers, rules governing changes in interest rates are provided for separately in the Truth-in-Savings disclosure or in another document.

#### CLOSING YOUR ACCOUNT

*This section does not apply to an active time deposit account.*

If you intend to close your account: If you intend to close your account with us, you should tell us; simply transferring all the money in your account and re-opening your account balance to \$0.00 is insufficient notice and may result in additional fees charged to your account.

If you close your account,

- (1) you are still responsible for transactions you arranged for, including those that arrive after the account is closed;
- (2) you should pay special attention to pre-authorized electronic deposits to your account and payments from that account; you should re-route the deposits to another account and make other arrangements for the payments, with us and the other institutions involved;
- (3) you should not close your account until all the transactions you arranged for have been cleared, and you should leave enough funds to clear them and the fees that might be due; and
- (4) if it is an interest-bearing account, accrued interest will not be paid.

We can close your account: Closing an account will be treated as terminating the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement, and will be governed solely by the termination provisions of the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement.

**STATEMENTS AND NOTICES** Statements and notices will be governed by the applicable provisions of the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement.

We will periodically make available to you a statement of your checking or savings account showing the transactions that occurred in the period covered by the statement. If you elect to not receive or review your statement, you are still responsible for having access to the information provided in the statement and complying with this section. At our option, a statement will not be sent in any statement period in which service charges, fees, reversals, refunds or interest are the only transactions on the account. When other activity exists, such as a deposit or withdrawal, a statement will be sent and will include all transactions which have occurred since the last statement. At a minimum, all accounts will receive a quarterly statement.

Regardless of how frequently a statement is sent, monthly service charges and other account fees will continue to be directly invoiced to the County, and may not be debited against any of the County's accounts at the Bank. The applicable earnings credit rate shall be indexed to the current Average Federal Funds Rate (+/-) with a floor of 40 basis points, as stated in the Responses to RFP, Exhibit B, page 54 to the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014. The County's earned credit could exceed total

changes in a given month. Bank will not carry forward excess earnings credits; however, the County may choose to be invoiced on a quarterly basis, allowing quarterly collected balances to be used for the calculation of Earnings Credit Bonus, as documented in Exhibit B, page 54. Federal law prohibits Bank from paying excess earnings credit to the Bank. If the County's earnings are insufficient to offset the amount due hereunder, the County agrees to pay such amount to the Bank upon demand. The Customer authorizes the Bank to invoice the County for any and all fees, expenses or other charges owed by the County to the Bank under Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014. If either the County or the Bank exercises its right to terminate the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014 (upon to the termination date stated in Paragraph 11.5-B thereof, on a pro rata basis, County will forgo any remaining balance of the Earnings Credit Bonus. Thus, if this Agreement is terminated half way through the 3 year term, County will not be eligible for half of the \$10,000 Earnings Credit Bonus.

Your address: You must give us your correct address, and if you move or change your address, you must keep us advised. You are responsible for messages and statements we send to the most recent address you have given us.

If you agree to accept mail electronically, you must give us your accurate email address and keep us up to date with any changes to your address. You are responsible for keeping your email functioning properly, or advising us if it does not work so we can make substitute arrangements.

**Your Duty to Examine Your Statement.** As used in this section, the term "problem" means any error, alteration, counterfeit check, or unauthorized transaction (including, but not limited to, forged or missing signatures and excluding consumer electronic banking transactions) related to your account. Because you are in the best position to discover any problem, you agree to promptly examine your statement and report to us any problem on or related to your statement. You agree that we will not be responsible for any problem that:

- (1) you do not report to us in writing within a reasonable time not to exceed 30 calendar days after we mail the statement to you or transmit it to you electronically;
- (2) results from a forgery, counterfeit or alteration so clever that a reasonable person cannot detect it (for example, unauthorized checks made with your facsimile or other mechanical signature device or that look to an average person as if they contain an authorized signature); or
- (3) as otherwise provided by law or regulation.

You agree to waive any rights to recovery you may have against us if you do not provide notice to us in the manner and within the time required by this Agreement. You may not start a legal action against us because of any problem unless: (a) you have given us the above notice and (b) the legal action begins within one year after we send or make your statement available to you. If you make a claim against us in connection with a problem, we reserve the right to conduct a reasonable investigation before re-crediting your account and you agree to fully cooperate in such investigation. Within 30 days of the date of mailing, you agree to complete and return an affidavit of forgery on the form we provide you along with any other information we may request.

You further agree to file a police report if we request. If you refuse to sign such an affidavit or fail to return the affidavit and other requested documentation within 30 days of the date we mail it to you, you agree that we may consider the matter resolved and reverse any provisional credit provided. At our sole discretion, we may, but are not obligated to, provisionally credit your account during the investigation for all or a portion of the amount claimed. Any provisional credit to your account may be reversed if you fail to fully cooperate in our investigation or if as a result of our investigation, we determine that the charge to your account was proper. To the extent permitted by law, you agree to pay any fees assessed or accrued against your account during the investigation or that may arise upon reversal of any provisional credit.

For problems involving a consumer electronic banking transaction, please refer to the "Electronic Banking Agreement" sections of this brochure.

This time period for you to examine your statement and report problems to us are without regard to our level of care or the commercial reasonableness of our practices, and without regard to whether cancelled checks are supplied to you.

#### TIME DEPOSITS

A time deposit is more commonly known as a certificate of deposit or a CD. With a time deposit, you agree to keep your deposit with us for a specified period of time, or agree to give a required notice and we agree to pay you interest at an agreed upon rate, or an agreed formula for a rate, for that period of time. We are not required to permit an early withdrawal from a time deposit, and if we do, it will be on condition that you pay an early withdrawal fee and penalty. The amount of that penalty will be disclosed to you when you open such an account.

All the features of your time deposit will be disclosed to you when you open the account. You can call our 24-Hour Banking or visit your local U.S. Bank branch to find out what CD products and terms we offer.

#### LIMIT OF LIABILITY

We process millions of transactions every day, with the help of complicated technology and other computers. If we make a mistake and charged you more than we should have, or failed to give you credit you were due, we will correct the error, so long as you give us sufficient and timely notice and an opportunity to fix it. You agree - to the extent allowed by law - to waive any indirect, incidental, special, consequential and punitive damages for errors or mistakes we make in good faith. This includes damages that might otherwise be available in a tort or contract action, and whether the consequences are foreseeable or not.

#### ELECTRONIC MESSAGES AND AGREEMENTS

The matters covered by this section are governed by the Treasury Management Services Terms and Conditions signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement.

Many customers use the Internet and email as their primary form of communication with us. For example, we offer Internet Banking and the ability to obtain periodic account statements online.

You agree that we may make agreements with you by electronic means. Your authorization and consent to such an agreement, or your delivery of instructions, may be made by use of certain numbers, codes, marks, signs, personal identification numbers (PINs), public or private keys or other means, acceptable to you and to us, to establish your identity and acceptance of the electronic communications. All electronic communications that meet these requirements will be deemed to be valid and authentic and you intend and agree that those electronic communications will be given the same legal effect as written paper communications signed by you. You agree that electronic copies of communications are valid and you will not contest the validity of the originals or copies, absent proof of altered data or tampering.

You are not required to accept electronic communications; we want you to be aware that this is an option for you to accept. We will never ask you for sensitive account information, such as, passwords, PINs, Social Security numbers or account numbers via email. If you receive an email that appears to be from U.S. Bank asking for this type of information, immediately forward the email in its entirety (not as an attachment) to fraud\_help@usbank.com.

#### **LEAVES, GARNISHMENTS AND OTHER LEGAL PROCEEDINGS**

If the Bank receives a court order or writ of execution requiring it to place a hold on one of the County's accounts or requiring the Bank to pay monies out of one of the County's accounts to a third party, or receives a garnishment or levy that requires the Bank to place a hold on one of the County's accounts or to pay monies out of one of the County's accounts to a third party, and the Bank reasonably believes that it will not be protected if the court order, writ of execution, garnishment, or levy is ignored, the County agrees that the Bank may place a hold on the account up to the amount of the claim stated in the court order, writ of execution, garnishment, or levy. The Bank may not place a hold on an account in excess of the amount stated in the court order, writ of execution, garnishment, or levy. Any such hold will remain in place only so long as reasonably necessary to resolve the claim stated in the court order, writ of execution, garnishment, or levy. Assuming compliance with this section, the Bank shall have no liability for dishonored transactions due to the hold.

This Deposit Account Agreement does not affect the Bank's common law right of setoff.

The County will not hold the Bank liable for the potential losses to the County that are caused by the Bank's honoring such legal process in accordance with the provisions of this section. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-10; and C.R.S. § 24-10-101, *et seq.* -- the Bank will not be liable to third parties for losses related to its honoring such legal process in accordance with the provisions of this section. Nothing in this Agreement shall be deemed a waiver of the County's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or Federal common law. This provision does not suggest that the County shall be liable to any third party for losses caused by the Bank's honoring such legal process in accordance with the provisions of this section,

and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

#### **ACCOUNT INFORMATION**

The Bank will not disclose or share any information concerning the County or its financial affairs or its accounts at the Bank or its financial transactions without express prior written authorization by the County Treasurer herself. However, the Bank may be required to provide information about the County and the County's account when and as required or permitted by law for other purposes, such as, for example:

- (1) reporting of interest the County earns to federal and state tax authorities;
- (2) reporting of cash transactions that are at reportable limits;
- (3) investigating and reporting of transactions that the Bank reasonably determine to be suspicious; and
- (4) responding to subpoenas, court orders, or government investigations, but only if the County has first been provided at least 15 days prior written notification of such subpoena, court order, or governmental investigation, along with a copy of the subpoena, court order, and written demand from the government investigator.

#### **SETOFF**

The Bank's right of setoff is the right of setoff established by Colorado common law.

#### **SECURITY**

The parties' security responsibilities are solely those set forth in the Treasury Management Services Terms and Conditions, including Exhibit B hereto, signed by U.S. Bank and Douglas County on March 9, 2014, exclusive of this Deposit Account Agreement.

It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give him or her full use of your money. An account number can be used by thieves to encode your number on a false demand draft which looks like and functions like an authorized check.

If you furnish your access device and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized.

Your account number can also be used to electronically remove money from your account. If you provide your account number in response to a telephone solicitation for the purpose of making a transfer (to purchase a service or merchandise, for example), payment can be made from your account even though you did not contact us directly and order the payment.

You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

We reserve the right to place a hold on your account if we suspect irregular, fraudulent, unlawful or other unauthorized activity involving your account. We may attempt to notify you of such a hold, but we are not required to provide notice prior to placing the hold. You agree that we may maintain such a hold until all claims against you or us to the funds held in your account, whether civil or criminal in nature, have been resolved fully in our sole satisfaction.

#### **DISPUTE RESOLUTION**

The County does not consent to arbitration. All disputes that cannot be resolved by the parties will be tried in the District Court, County of Douglas, State of Colorado. This Agreement shall be deemed to have been made in Colorado and shall be construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. The Bank expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

**Jury Trial Waiver.** To the fullest extent permitted by law, the Bank and the County hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with this Deposit Account Agreement. The Bank and the County represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.

**Jurisdiction and Venue.** The Bank and the County consent to the jurisdiction of the courts of the State of Colorado, waive any argument that such venue is inconvenient, and agree to bring litigation commenced in connection with this Deposit Account Agreement in either the District Court of Douglas County or the United States District Court, District of Colorado.

#### **ATTORNEY'S FEES**

The County will not be liable for attorney's fees, each party will bear their respective costs and expenses associated with any litigation under this Agreement.

### **FUNDS AVAILABILITY: YOUR ABILITY TO WITHDRAW FUNDS - ALL ACCOUNTS**

Most Douglas County deposits will be done via remote image depositing, which allows for a majority of ACH converted items to be available next day. The Treasury Management Services Terms and Conditions, including Exhibit B hereto, signed by the County and the Bank on March 3, 2009, exclusive of the Deposit Account Agreement, and the Bank's Premier Availability Schedule define the availability rules. Therefore, this Funds Availability section is inapplicable to Douglas County. The County acknowledges, however, that even after the item has "cleared", we have made funds available to you, and you have withdrawn the funds, you are still responsible for items you deposit that are returned to us unpaid and for any other problems involving your deposit. See our Returned Deposited and Cashed Items section.

#### **OTHER ACCOUNTS**

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the day the deposited item would have been available, which will usually be the first business day after the day of deposit.

#### **BUSINESS ACCOUNT ISSUES**

All other sections of this booklet apply to consumer and business accounts alike (except when a rule specifically says it will apply to consumers). These next six apply to accounts used primarily for business purposes.

#### **EARNINGS CREDIT**

Douglas County's Earnings Credit rate is established at indexed Average Federal Funds Rate with a floor of 40 basis points, per the U.S. Bank Treasury Management Services Terms and Conditions signed by the County and the Bank on March 9, 2014, exclusive of this Deposit Account Agreement, and will not change for the duration of the agreement reflected in the U.S. Bank Treasury Management Services Terms and Conditions signed by the County and the Bank on March 9, 2014, exclusive of this Deposit Account Agreement.

Fees for services used by you may be assessed in full to your accounts or may be offset through account analysis by applying earnings credit to your service charges to determine a single monthly net service charge. Your earnings credit rate is established by us as described above and will change from time to time. Your net service charge could be zero if your earnings credit equals or exceeds your total charges in a given month. Federal law prohibits us from paying excess earnings credit to you. If your earnings credit is not sufficient to offset the amount due hereunder, you agree to pay such amounts to us upon demand.

#### **WAIVER OF NOTIFICATION OF REDEPOSITED CHECKS**

When you deposit checks to your account, you have a right to be notified whenever a check you deposit is returned unpaid. We offer a plan (to businesses who elect it) whereby we will automatically redeposit checks returned unpaid due to insufficient funds. To simplify collection of these items, you give up this right to notification for those items we redeposit. If these items are returned unpaid a second time, you will receive standard notification.

We may withhold the availability of funds represented by a redeposited check. We will notify you of such delay.

#### **FACSIMILE SIGNATURES**

You may wish to use a facsimile signature stamp or other mechanical signature device to sign checks or other orders relating to your accounts. If you do, we will, without contacting you, debit your account for items bearing an imprint that looks substantially like your authorized mechanical signature, whether or not such items bear the actual facsimile signature stamp. You agree to notify us and give us a sample imprint if you plan to use such a device. If you do not give us a sample, this section still applies to your use of the device. You are responsible for the

security of any mechanical signature device. We will not be responsible for payment of unauthorized items bearing an imprint from, or similar to, your authorized mechanical signature.

**DEPOSITS**

**Truncation, Substitute Checks, and Other Check Images:** If you truncate an original check and create a substitute check or other replacement document, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check. The County will not hold the Bank liable for the potential losses to the County that are caused as a result of any truncated check transaction the County initiates. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-110; and C.R.S. § 24-10-101, *et seq.* -- the Bank will not be liable to third parties for losses as a result of truncated check transactions the County initiates. Nothing in this Agreement shall be deemed a waiver of the County's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or federal common law. This provision does not suggest that the County shall be liable to any third party for losses caused by truncated check transactions that the County initiates, and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

**Deposit Preparation, Sorting, and Endorsements:** You agree to properly prepare, sort, and endorse all deposits according to requirements specified in any applicable user guides and Federal Regulation CC. The County will not hold the Bank liable for the potential losses to the County that are caused as a result of any deposit preparation, sorting, and endorsements the County performs. To the extent not prohibited by law -- including Colorado Constitution, Art. XI, § 1; C.R.S. § 29-1-110; and C.R.S. § 24-10-101, *et seq.* -- the Bank will not be liable to third parties for losses as a result of any deposit preparation, sorting, and endorsements the County performs. Nothing in this Agreement shall be deemed a waiver of the County's rights under the Colorado Constitution, Colorado Revised Statutes, or Colorado or federal common law. This provision does not suggest that the County shall be liable to any third party for losses as a result of any deposit preparation, sorting, and endorsements the County performs, and this provision does not constitute a waiver, express or implied, of any defense the County may have, but for this provision, to any claim brought against the County by any third party.

[Redacted]

<b>U.S. Bank® 24-Hour Banking</b>	
Cincinnati Metro Area:	(513) 632-4141
Denver Metro Area:	(303) 585-8585
Milwaukee Metro Area:	(414) 765-4636
St. Louis Metro Area:	(314) 425-2000
Minneapolis/St. Paul Metro Area:	(612) US BANKS (612) 872-2657
Portland Metro Area:	(503) US BANKS (503) 872-2657
All Other Areas:	800-US BANKS 800-872-2657
TDD:	800-685-5065

**U.S. Bank Fraud Liaison Center**  
 877-595-6256  
 TDD: 800-685-5065

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

**U.S. BANK NATIONAL ASSOCIATION**


By: [Signature]  
 Title: Loan Underwriter

ATTEST:  
 By: [Signature]  
 Title: Regional Admin Asst

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO,

[Signature]  
 Ronald A. Partridge, Chair

ATTEST:  
[Signature]  
 Melissa F. Seltzer  
 Deputy Clerk



[Signature]  
 David A. Holbert  
 Treasurer

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

APPROVED AS TO CONTENT:

[Signature]  
 Douglas J. DeBord  
 County Administrator

Date: 1/24/14

APPROVED AS TO LEGAL FORM:

[Signature]  
 Meredith P. Van Horn  
 Assistant County Attorney

Date: 1/24/14

APPROVED AS TO FISCAL CONTENT:  
[Signature]  
 Andrew Copland  
 Director of Finance

Date: 1/24/14

## Exhibit D

### Insurance

#### Insurance.

1. The Bank agrees to procure and maintain with insurers with an A- or better rating as determined by A.M. Best's Key Rating Guide, at its own expense, the following policies of insurance:

(a) **Workers' Compensation Insurance & Employers Liability** to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and Employers' Liability insurance with the following limits:

Workers' Compensation:	Statutory
Employers' Liability:	\$1,000,000

(b) **Commercial General Liability** insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) aggregate. This insurance will apply as primary insurance. The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy will contain a severability of interests provision.

(c) **Commercial Automobile Liability** insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence with respect to each of Bank's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy will contain a severability of interests provision.

(d) **Financial Institution Bond (Fidelity Bond)** with a minimum bond amount of TWENTY FIVE MILLION DOLLARS (\$25,000,000.00). Including but not limited to employee dishonesty, loss due to robbery, burglary, misplacement, mysterious unexplainable disappearance, loss while in armored motor vehicle or by insured's messenger, forgery or fraudulent material alteration, intended forgery, counterfeit money, dishonest or fraudulent entry of data or changes to data.

2. **Certificates of Insurance.** The required Commercial General Liability, Commercial Automobile Liability policies will name Douglas County, its officers and employees as additional insured and provide for a waiver of subrogation in favor of Douglas County Colorado. The required Workers' Compensation policy will name Douglas County as a Certificate Holder. Proof of the required Financial Institution Bond shall be provided to Douglas County. The certificate(s) of insurance and proof of bond will be attached to this agreement as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect. Any notices, within 20 days of cancellation, termination, or material change will be sent to:

**EXHIBIT D (continued)**

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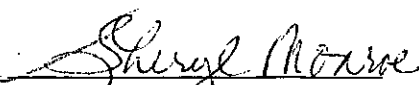
Sheryl D. Monroe  
Douglas County  
Risk Management  
100 Third Street  
Castle Rock, Colorado 80104

3. **Right to Review, Revise and Reject.** Douglas County reserves the right to request and receive a certified copy of any policy and any endorsement(s) thereto. Douglas County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverage, and endorsements. Additionally, Douglas County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally. Failure on the part of the Bank to provide insurance policies within ten (10) working days of receipt of the written request will constitute a material breach of contract upon which Douglas County may immediately terminate this contract.

4. **Failure to Procure or Maintain Insurance.** The Bank will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance or bonds, or its failure to procure or maintain insurance or bonds in sufficient amounts, durations, or types. Failure on the part of the Bank to procure or maintain policies providing the required coverage, conditions and minimum limits will constitute a material breach of contract upon which Douglas County may immediately terminate this contract.

5. **Deductibles and Coinsurance.** The Bank agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention. The Bank will indemnify Douglas County, in full, for any amounts related to the above.

6. **Governmental Immunity.** The parties hereto understand and agree that Douglas County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* as from time to time amended, or otherwise available to Douglas County, its officers, or its employees.

Approved by:   
Sheryl D. Monroe  
Risk Manager