

**RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
PUBLIC HEARING AND REGULAR MEETING OF THE
BOARD OF DIRECTORS**

FEBRUARY 25, 2019 (6:30 p.m.)

Visitor's / Depot Center
6730 Front Street
Rio Linda, CA 95673

AGENDA

The Board may discuss and take action on any item listed on this agenda, including items listed as information items. The Board may also listen to the other items that do not appear on this agenda, but the Board will not discuss or take action on those items, except for items determined by the Board pursuant to state law to be of an emergency or urgent nature requiring immediate action. The Board may address any item(s) in any order as approved by the Board.

The public will be given the opportunity to directly address the Board on each listed item during the Board's consideration of that item. Public comment on items within the jurisdiction of the Board is welcomed, subject to reasonable time limitations for each speaker. Public documents relating to any open session item listed on this agenda that are distributed to all or any majority of the members of the Board of Directors less than 72 hours before the meeting are available for public inspection at the District office at 730 L Street, Rio Linda, CA 95673. In compliance with the Americans with Disabilities Act, if you have a disability and need a disability-related modification or accommodation to participate in this meeting, please contact the District office at (916) 991-1000. Requests must be made as early as possible, and at least one full business day before the start of the meeting.

1. CALL TO ORDER, ROLL CALL and PLEDGE OF ALLEGIANCE

2. PUBLIC COMMENT

Members of the public are invited to speak to the Board regarding items within the subject matter jurisdiction of the District that are not on the agenda or items on the consent agenda. Each speaker may address the Board once under Public Comment for a limit of 2 minutes. (Policy Manual § 2.01.160).

3. PUBLIC HEARING

Pg. 1 3.1 Open Public Hearing

3.2 Ordinance No. 2019-01 An Ordinance of The Board of Directors Of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection

3.3 Public Comment

3.4 Close Public Hearing

4. ITEMS FOR DISCUSSION AND ACTION

Pg.5 4.1 Consider of Ordinance No. 2019-01 An Ordinance of The Board of Directors of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection for adoption.

5. CONSENT CALENDAR

Action items: Approve Consent Calendar Items

5.1 Minutes

January 28, 2019

The Board is being asked to approve the Minutes from the January 28, 2019 Regular Board meeting.

5.2 Expenditures

The Finance & Administrative Committee recommends the Board approve the January Expenditures.

5.3 Financial Reports

The Finance & Administrative Committee recommends the Board approve the January Financial Reports.

6. REGULAR CALENDAR

ITEMS FOR DISCUSSION AND ACTION

- Pg. 20 6.1 GM Report**
The General Manager Tim Shaw will provide his monthly report to the Board of Directors.
- Pg. 23 6.2 District Engineer's Report**
The District's Engineer Michael Vasquez will provide his monthly report to the Board of Directors.
- Pg. 27 6.3 Consider appointing a Board Member to fill the vacancy created by the resignation of Director Henrici.**
The Board will review all applications or other forms of expression of interest submitted by candidates. The Board may interview candidates in attendance at the meeting. After consideration of the candidates, the Board may vote to appoint an eligible candidate to serve on the Board until December 2020.
- Pg. 29 6.4 Consider Re-establishing District Financial Policies and completing Accounting Procedures.**
- Pg. 39 6.5 Consider approving a professional services agreement with Domenichelli and Associates for engineering design of the Well #16 groundwater pumping station.**
- Pg. 52 6.5.a Accept the Irrevocable Offer of Dedication for the Well #16 parcel.**
- Pg. 58 6.6 Consider approving Master Service Agreement with California Bank and Trust to enable Automated Clearing House (ACH) method of payment (fee free alternative for credit/debit card customers).**
- Pg. 102 6.7 Consider Resolution 2019-01 Nominating Director Paul Green to serve as ACWA JPIA Executive Committee.**
- Pg. 105 6.7.a. Consider Resolution 2019-02 to concur with Yuba Water Agency's nomination of Brent Haste to serve on ACWA-JPIA Executive Committee.**
- Pg. 109 6.8 Consider authorizing a revision to the District Policy on Termination of Service.**
- Pg. 113 6.9 Consider confirming any new Board Member assignments (committees and other) announced by the Chair pursuant to District Policy 2.01.065.**
- Pg. 115 6.9.a Consider Board authorization of the RWA Withdrawal Evaluation Ad Hoc Committee.**

7. INFORMATION ITEMS

7.1. DISTRICT ACTIVITY REPORT

- a. Water Operations Report
- b. Conservation Report

7.2 Reminders regarding mandatory Board Members' training and reporting requirements

7.2. BOARD REPORTS

- a. Report any ad hoc committees dissolved by requirements in Policy 2.01.065
- b. Regional Water Authority – Dills (primary), Shaw
- c. Sacramento Groundwater Authority – Green (primary), Harris
- d. LAFCO - Green
- e. Planning Committee – Dills, Harris
- f. Finance / Administrative Committee – Ridilla, Harris
- g. ACWA and ACWA/JPIA – Green (primary), Ridilla
- h. AD Hoc Committees
 - 1. MOU Negotiations – Dills, Harris
- i. Other Reports

8. DIRECTORS' AND GENERAL MANAGER COMMENTS

9. ADJOURNMENT

Upcoming meetings:

Planning Committee

March 1, 2019, Tuesday, 2:00 pm at the Visitor's/Depot Center, 6730 Front Street, Rio Linda, CA 95673.

Finance / Administrative Committee

March 11, 2019, Monday, 6:30 pm at the Visitor's/Depot Center, 6730 Front Street, Rio Linda, CA 95673.

Regular Board Meeting

March 18, 2019, Monday, 6:30 pm at Visitor's /Depot Center, 6730 Front Street, Rio Linda, CA 95673.



**Public Hearing
Agenda Item: 3.2**

Date: February 25, 2019

Subject: Ordinance No. 2019-01 The Board of Directors Of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection

Staff Contact: Timothy R. Shaw, General Manager

This is a Public Hearing for Ordinance No. 2019-01 The Board of Directors Of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection. The Board President will address the public regarding the fees and policy for Permanent Disconnection.

Comments:

Rio Linda/Elverta Community Water District

Ordinance No. 2019-01

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT TO ESTABLISH PERMANENT DISCONNECTION FEES AND POLICY FOR PERMANENT DISCONNECTION

WHEREAS, the Rio Linda Elverta Community Water District (the “District”) adopted Resolution 2013-08, implementing a minimum bimonthly water service fee (“inactive service fee”) for inactive customers on parcels which still have water immediately available to them; and

WHEREAS, the inactive service fee does not apply to parcels which do not have water immediately available to them; and

WHEREAS, permanently disconnected parcels do not have water immediately available to them; and

WHEREAS, the District finds that clarity is required for District water customers who desire to permanently disconnect from the District’s water system, making them no longer subject to inactive service fee; and

WHEREAS, California Water Code section 31024 authorizes the District to establish rules and regulations for the sale, distribution and use of water; and

WHEREAS, the District desires to consolidate the policies for imposition of the inactive service fee from Resolution 2013-08 with the policy (ordinance), providing policies, stipulations and requirements for customers who wish to permanently disconnect from the District’s water system; and

WHEREAS, the Sacramento County Rio Linda Elverta Community Plan established objectives to preserve groundwater quality. Objective PF-5 stipulates that parcels less than two acres should be connected to a public water system to limit the number of private wells; and

WHEREAS, the District is implementing the policy and fees for permanent disconnection to provide a clear process for District customer to follow when they wish to permanently disconnect from the District water system.

WHEREAS, the District published notice of the initial public hearing, including a general explanation of the matter to be considered, at least five (5) days before the hearing as required by California Water Code section 31027; and

WHEREAS, at least five (5) days before the public hearing, the District made data publicly available that indicates the estimated cost required to permanently disconnect a parcel from the District’s water system; and

WHEREAS, the above-described data sets forth reasonable cost estimates for permanent disconnection for parcels and establishes that the proceeds generated by the permanent disconnection fee do not exceed the total of the estimated costs.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE RIO LINDA ELVERTA COMMUNITY WATER DISTRICT HEREBY DETERMINES AND ORDAINS AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein.

Section 2. Rescinding Resolution 2013-08. The findings and requirements of Resolution 2013-08 are hereby incorporated into this Ordinance, whereby this Ordinance supersedes Resolution 2013-08. Resolution 2013-08 is hereby rescinded.

Section 3. Inactive Services Fee. All properties that are connected to the District's water system that have no water usage during a billing period (except those identified and specifically excluded by the District as redundant connections provided by the McClellan Air Force Base), and are deemed to be inactive customers by the District, shall be required to pay a minimum bimonthly water service fee ("inactive service fee") without further waivers, as follows: the current base rate of \$58.80, Surcharge #1, and Surcharge #2, currently \$19.00 and \$15.80 respectively, and any subsequent increases to these fee components which may be authorized from time to time by resolution of the District's Board of Directors.

Section 4 Vacant Unimproved Property/Parcels. Vacant unimproved property/parcel owners may apply to be excluded from the inactive service fee, If upon application and approval by the District, the owner of such vacant/unimproved parcel agrees in writing to forfeit the previously paid capacity fees, and further agrees that they will pay the capacity fees in affect at the time the owner requests to reconnect to the District's water system.

Section 5 Minimum Parcel Size Eligibility. In addition to the parcels described in Sections 3 and 4 above, parcels greater than two (2) acres in size may apply for disconnection in accordance with the subsequent Sections.

Section 6 Disconnection Fee. The District hereby adopts the Permanent Disconnection Fee set forth in Exhibit 1 attached hereto, to reflect the costs of permanently disconnecting a parcel from its water system, which may be amended from time to time to reflect current costs by resolution of the District's Board of Directors.

Section 7. Declaration of Policy. This Permanent Disconnection Policy is established to clarify procedures that District customers should take if they desire to permanently disconnect their parcel from the District's water system.

Section 8. Definitions. The following definitions apply to this Permanent Disconnection Policy, unless specified otherwise:

(a) "Customer" means the individual requesting permanent disconnection from the District's water system.

- (b) “District” means the Rio Linda/Elverta Community Water District.
- (c) “Policy” means the Permanent Disconnection Policy.
- (d) “Manager” or “General Manager” means the General Manager of the Rio Linda/Elverta Community Water District.

Section 9. Disconnection Procedures.

9.01 Written Request Required. Customers desiring permanent disconnection from the District’s water system shall submit a written request to permanently disconnect to the District’s General Manager. The written request shall include the Customer’s full name, phone number, e-mail, address, and APN number of the parcel to be permanently disconnected, and the date that permanent disconnection is requested.

9.01.01 Payment of Permanent Disconnection Fee. The Customer shall include a permanent disconnection fee of \$2,528.26 with the written request. The disconnection fee includes material, labor, and equipment hours to perform the disconnection and may be amended from time to time by resolution of the District’s Board of Directors.

9.01.02 Additional Information. The Customer shall be required to furnish such additional information as requested by the General Manager to permanently disconnect the parcel from the District’s water system.

9.02 Reconnecting to the District’s Water System. If the Customer or the owner of the parcel desires to reconnect to the District’s water system, the Customer or owner of the parcel shall follow the procedures for new service described in Chapter 4.07 of the District’s Policy Manual. The Customer shall pay the water service connection charges provided in Ordinance No. 2016-01.

9.03 Permanently Disconnected Parcels Not Subject to Inactive Water Service Fee.

9.03.01 Finding. The District finds that the District incurs no cost for providing water service to permanently disconnected parcels, as water service is not immediately available to those parcels.

9.03.02 Inactive Service Fee. Parcels which do not have water immediately available to them from the District’s water system are not subject to the inactive water service fee established pursuant to Resolution 2013-08.

Section 10. California Environmental Quality Act Compliance. Pursuant to California Public Resources Code section 21080(b)(8), the requirements of the California Environmental Quality Act do not apply to water disconnection fees, as the fee caused by this Ordinance is to meet operating expenses for permanently disconnecting a parcel from the District’s water system.

Section 11. Ordinance Effective Date. This Ordinance shall be effective thirty (30) days after the date of its second reading and adoption. A summary shall be published once, with names of members voting for and against the same in a newspaper of general circulation published in the County of Sacramento. A certified copy of the full text of this Ordinance shall be posted at the office of the Secretary of the District Board of Directors, 730 L Street, Rio Linda, CA 95673, with the names of those Board members voting for and against the Ordinance.

APPROVED AND ADOPTED by the Board of Directors of the Rio Linda/Elverta Community Water District on this 25th day of February, 2019.

AYES:
NOES:
ABSTAIN:
ABSENT:

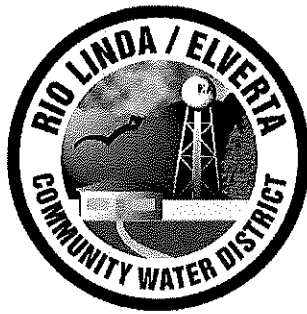
John Ridilla, President
Board of Directors

ATTEST:

Secretary/Clerk of the Board

EXHIBIT 1 – Service Abandonment Estimate

QTY	Description	Unit Price	Total
12	Labor		
	• 3 Distribution Operators, 4 hours each	\$60.00	\$720.00
	Equipment		
2	• Backhoe	\$95.00	\$190.00
4	• Vac Truck & Trailer	\$95.00	\$380.00
2	• Dump Truck	\$70.00	\$140.00
4	• Pickup Truck	\$75.00	\$300.00
	Materials		
1	• FCRC Repair Clamp	\$288.36	\$288.36
1	• Backfill Materials	\$61.50	\$61.50
1	• Paving Estimated 20 sq ft @ \$22.42 per sq. ft.	\$448.40	\$448.40
		Total	\$2528.26



Items for Discussion and Action Agenda Item: 4.1

Date: February 25, 2019

Subject: Ordinance No. 2019-01 An Ordinance of The Board of Directors Of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection for adoption

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

The January Finance and Admin Committee forwarded the Ordinance No. 2019-01 to be on the January 28, 2019 for the full Board to accept the first reading.

Current Background and Justification:

The Board accepted the first reading of Ordinance No. 2019-01 to Establish Permanent Disconnection Fees and Policy for Permanent Disconnection for adoption at the January 28, 2019 Board Meeting. The Notice of Public Hearing was printed in the "*The News*", a newspaper of local circulation, according to Water Code section 31027, for an ordinance establishing restrictions, prohibitions, and exclusions on water service, the District may publish a summary "at least 5 days prior to the board meeting at which the proposed ordinance ... is to be adopted.

Conclusion:

I recommend the Board adopt Ordinance 2019-01. I further recommend the Board direct staff to perform the required steps to complete the Ordinance 2019-01 adoption process.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:_____ Green:_____ Ridilla:_____ Harris:_____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 4.1

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Ordinance No. 2019-01 An Ordinance of The Board of Directors Of The Rio Linda/Elverta Community Water District To Establish Permanent Disconnection Fees And Policy For Permanent Disconnection for adoption

12/7/18 & 1/11/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other Water or special districts, District Engineer, Legal Counsel then laying out business cases, pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

12/10/18 & 1/14/19

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc Committees, to prepare board recommendations

Formal Legal Counsel Review

12/6/18 & 1/27/19

Legal Counsel should have enough time to review all potential legal matters for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

Rio Linda/Elverta Community Water District

ORDINANCE NO. 2019-01

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WHEREAS, the District finds that clarity is required for District water customers who desire to permanently disconnect from the District’s water system, making them no longer subject to inactive service fee; and

WHEREAS, California Water Code section 31024 authorizes the District to establish rules and regulations for the sale, distribution and use of water; and

WHEREAS, the District desires to consolidate the policies for imposition of the inactive service fee from Resolution 2013-08 with the policy (ordinance), providing policies, stipulations and requirements for customers who wish to permanently disconnect from the District’s water system; and

WHEREAS, the Sacramento County Rio Linda Elverta Community Plan established objectives to preserve groundwater quality. Objective PF-5 stipulates that parcels less than two acres should be connected to a public water system to limit the number of private wells; and

WHEREAS, the District is implementing the policy and fees for permanent disconnection to provide a clear process for District customer to follow when they wish to permanently disconnect from the District water system.

WHEREAS, the District published notice of the initial public hearing, including a general explanation of the matter to be considered, at least five (5) days before the hearing as required by California Water Code section 31027; and

WHEREAS, at least five (5) days before the public hearing, the District made data publicly available that indicates the estimated cost required to permanently disconnect a parcel from the District’s water system; and

WHEREAS, the above-described data sets forth reasonable cost estimates for permanent disconnection for parcels and establishes that the proceeds generated by the permanent disconnection fee do not exceed the total of the estimated costs.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE RIO LINDA ELVERTA COMMUNITY WATER DISTRICT HEREBY DETERMINES AND ORDAINS AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein.

Section 2. Rescinding Resolution 2013-08. The findings and requirements of Resolution 2013-08 are hereby incorporated into this Ordinance, whereby this Ordinance supersedes Resolution 2013-08. Resolution 2013-08 is hereby rescinded.

Section 3. Inactive Services Fee. All properties that are connected to the District's water system that have no water usage during a billing period (except those identified and specifically excluded by the District as redundant connections provided by the McClellan Air Force Base), and are deemed to be inactive customers by the District, shall be required to pay a minimum bimonthly water service fee ("inactive service fee") without further waivers, as follows: the current base rate of \$58.80, Surcharge #1, and Surcharge #2, currently \$19.00 and \$15.80 respectively, and any subsequent increases to these fee components which may be authorized from time to time by resolution of the District's Board of Directors.

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9.01.01 Payment of Permanent Disconnection Fee. The Customer shall include a permanent disconnection fee of \$2,528.26 with the written request. The disconnection fee includes material, labor, and equipment hours to perform the disconnection and may be amended from time to time by resolution of the District’s Board of Directors.

9.01.02 Additional Information. The Customer shall be required to furnish such additional information as requested by the General Manager to permanently disconnect the parcel from the District’s water system.

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9.03 Permanently Disconnected Parcels Not Subject to Inactive Water Service Fee.

9.03.01 Finding. The District finds that the District incurs no cost for providing water service to permanently disconnected parcels, as water service is not immediately available to those parcels.

9.03.02 Inactive Service Fee. Parcels which do not have water immediately available to them from the District’s water system are not subject to the inactive water service fee established pursuant to Resolution 2013-08.

Section 10. California Environmental Quality Act Compliance. Pursuant to California Public Resources Code section 21080(b)(8), the requirements of the California Environmental Quality Act do not apply to water disconnection fees, as the fee caused by this Ordinance is to meet operating expenses for permanently disconnecting a parcel from the District’s water system.

Section 11. Ordinance Effective Date. This Ordinance shall be effective thirty (30) days after the date of its second reading and adoption. A summary shall be published once, with names of members voting for and against the same in a newspaper of general circulation published in the County of Sacramento. A certified copy of the full text of this Ordinance shall be posted at the office of the Secretary of the District Board of Directors, 730 L Street, Rio Linda, CA 95673, with the names of those Board members voting for and against the Ordinance.

APPROVED AND ADOPTED by the Board of Directors of the Rio Linda/Elverta Community Water District on this 25th day of February, 2019.

AYES:
NOES:
ABSTAIN:
ABSENT:

John Ridilla, President
Board of Directors

ATTEST:

Secretary/Clerk of the Board

EXHIBIT 1 – Service Abandonment Estimate

QTY	Description	Unit Price	Total
12	Labor		
	• 3 Distribution Operators, 4 hours each	\$60.00	\$720.00
	Equipment		
2	• Backhoe	\$95.00	\$190.00
4	• Vac Truck & Trailer	\$95.00	\$380.00
2	• Dump Truck	\$70.00	\$140.00
4	• Pickup Truck	\$75.00	\$300.00
	Materials		
1	• FCRC Repair Clamp	\$288.36	\$288.36
1	• Backfill Materials	\$61.50	\$61.50
1	• Paving Estimated 20 sq ft @ \$22.42 per sq. ft.	\$448.40	\$448.40
		Total	\$2528.26



**Consent Calendar
Agenda Item: 5.1**

Date: February 25, 2019

Subject: Minutes

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

N/A -Minutes of Board meetings are not reviewed by committees.

Current Background and Justification:

These minutes are to be reviewed and approved by the Board of Directors.

Conclusion:

I recommend the Board review and approve (as appropriate) the minutes of meetings provided with your Board packets.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:_____ Green:_____ Ridilla:_____ Harris:_____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

**MINUTES OF THE
JANUARY 28, 2019
BOARD OF DIRECTORS REGULAR MEETING
OF THE RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT**

1. CALL TO ORDER, ROLL CALL and PLEDGE OF ALLEGIANCE

The January 28, 2019 meeting of the Board of Directors of the Rio Linda/Elverta Community Water District called to order at 6:30 p.m. at the Depot/Visitor Center located at 6730 Front Street, Rio Linda, CA. General Manager Tim Shaw took roll call of the Board of Directors. Director Dills, Director Harris, Director , Director Ridilla, Director Green and General Manager Tim Shaw were present. Director Dills led the pledge of allegiance.

2. PUBLIC COMMENT

No public comment.

3. CONSENT CALENDAR

3.1 Minutes

December 17, 2018

3.2 Expenditures

3.3 Financial Reports

No public comment on this item.

It was moved by Director Dills and seconded by Director Harris to approve the Consent Calendar. Directors Dills, Green, Harris and Ridilla voted yes. The motion carried with a unanimous vote of 4-0-0.

4. REGULAR CALENDAR

ITEMS FOR DISCUSSION AND ACTION

4.1 GM Report

GM Shaw provided his written report to the Board.

No public comment on this item.

The Board made no action on this item

4.2 District Engineer's Report

District Engineer Mike Vasquez provided a written report to the Board of projects in the works since the last meeting of the Board. The report highlighted topics of General District Engineering, Development Plan Review, Well 16 Equipping and Site Design Request for Proposals, Well 10 Hexavalent Chromium Treatment Project

No public comment on this item.

The Board made no action on this item

4.3 Consider approving fiscal year 2018-19 mid-year budget revisions

Preside Ridilla also mentioned to the Board the group health insurance and election budget line items were adjusted to the current projected costs and excess funds were reallocated to the Capital Budget.

The Finance/Admin Committee on January 14th discussed and directed tangible budget items. One such tangible budget item is the unspent 2015 AMI meter loan proceeds. The 2015 AMI meter loan from Holman Capital includes Terms and Conditions that were accepted by the Board. Among those terms are provisions that stipulate the Board must spend the loan proceeds within 3-years (terminating in 2018) and further stipulate that Holman Capital must approve the District requested uses of the proceeds for specified capital improvements.

In June of 2018, the Board following substantial consideration by the Finance/Admin Committee, approved partial allocation of the unspent 2015 AMI loan proceeds. The unspent proceeds were then approximately \$93,000. The Board authorized a portion of the \$93,000 for a new multi-function office printer and a share of the cost for new CUSI billing software. In June 2018, the Finance/Admin Committee recommended, and the Board agreed to preserve the remaining balance for funding water customer consumption software if the new billing software Customer Web Portal did not provide sufficient performance to obviate the need for additional consumption software. Holman Capital was informed and approved our loan proceed allocation and further approve the District's justification for extending the 3-year limit for allocating the unspent loan proceeds.

The new CUSI billing software and associated Customer Web Portal are online and have been confirmed to obviate the need for further customer consumption presentment software. Accordingly, the Board must now allocate the remaining balance of unspent AMI loan proceeds. Such Board authorized allocation must then meet the approval of Holman Capital. The January 14th Finance/Admin Committee had a somewhat divisive discussion on the next, best steps. The Finance/Admin Committee directions were incorporated into one of the options (Option 2) of the capital budget. However, upon further analysis, the Committee direction and corresponding capital budget Option 2 does not meet the above described objectives and terms for the AMI loan restrictions. Option 2 allocates \$10,000 to replace the existing donated analog phone system with a digital voice over internet protocol (VOIP) phone system and place the remaining \$48,000 into the vehicle replacement fund for a future (unspecified date) vehicle(s) purchase. Staff reasonably believes that Option 2 will not receive approval by Holman Capital and does not comply with the restrictions of the municipal loan terms.

Capital budget revision Option 1 was prepared in response to the above described short-comings of Option 2. Clearly, the AMI meter loan terms places restrictions on allocation of unspent loan proceeds and further charges interest on the proceeds even though they remain unspent. Last June, when the Board authorized and Holman approved partial funding of the CUSI billing software, the remaining funding for the billing software was to come from capacity fees. Option 1 revises that approach. Option 1 in the capital budget designates the billing software cost share originally funded by capacity fees to be fully funded by AMI meter loan proceeds. This restores available funds in the capacity fees account, which is relatively less restrictive on the timing requirements for allocation. The AMI loan proceeds, after fully funding the CUSI billing software, are then allocated to vehicle replacement (for a purchase now, not someday in the future) and new office equipment (e.g. new phone system). The numbers balance summary is (using round numbers):

Revenue	Spending
\$93,000	\$43,000 CUSI Billing software (purchased/ not yet fully paid)
	\$30,000 vehicle replacement
	\$10,000 Multi-Function Printer (purchased Aug 2018)
	\$10,000 Office Equipment (e.g. new phone system)

Total \$93,000 in revenue	Total \$93,000 in spending
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No public comment on this item.

It was moved by Director Dill and seconded by Director Green to approve Option 1 of the FY 2018-19 Mid-Year budget revisions. Directors Dills, Green, Harris and Ridilla voted yes. The motion carried with a unanimous vote of 4-0-0.

4.4 Consider accepting the 1st reading of Ordinance No. 2019-01 - establishing an opt-out policy for inactive service fees and superseding Resolution 2013-08.

The Board is being asked to consider an Ordinance for an opting out policy/procedure with the inactive service fees established by Resolution 2013-08 in one government document, including a fixed amount cited as a “disconnection fee” for disconnecting the customers service line from the District’s water distribution main.

No public comment on this item.

It was moved by Director Dills and seconded by Director Green to approve the 1st reading of Ordinance No. 2019-01 Establishing an Opt-Out Policy for inactive service fee and superseding Resolution No. 2013-08. Directors Dills, Green, Harris and Ridilla voted yes. The motion carried with roll call vote of 4-0-0.

4.5 Consider approving a method for filling RLECWD Board Member Vacancy in accordance with Government Code §1780.

Director Mary Henrici resigned as Director of the RLECWD Board of Directors. Director Henrici’s letter of resignation stipulated an effective date of January 13, 2019.

California Government Code §1780 stipulates requirements for filling Board Member. The key elements of the requirements of Government Code 1780 the Board has 60-days from the effective date of vacancy to fill the position by appointment OR call for a special election. If the Board elects to fill the vacancy by appointment, and fails to comply with the stipulated time limits, the Sacramento County Board of Supervisors is empowered to fill the vacancy.

No public comment on this item.

It was moved by Director Dills and seconded by Director Harris to fill the RLECWD Board Member vacancy by appointment. Directors Dills, Green, Harris and Ridilla voted yes. The motion carried with a unanimous vote of 4-0-0.

4.6 Consider authorizing discontinuation of District paid credit/debit card convenience fees and directing staff on timing for transition.

The need to discontinue District payment of the convenience fee associated with customers who pay their bills with credit/debit cards has been discussed at several Finance/Admin Committee meetings spanning almost a year. The District should set a date when the District will no longer pay the convenience fees charged by the credit/debit card companies (in excess of \$20,000 per year, and provide notice of such to our customers who may have become accustomed to this practice and free (to them) service.

No public comment on this item.

It was moved by Director Dills and seconded by Director Ridilla to authorize the discontinuation of District paid credit/debit card convenience fees by (2) two billing cycles with a target date of June 1, 2019. Directors Dills, Harris, Green, and Ridilla voted yes. The motion carried with a unanimous vote of 4-0-0.

4.7 Consider authorizing minor revision to the District's Travel Reimbursement Policy to provide for consideration of total cost for meals instead of just the food charge limit.

The Board is being asked to consider the revised policy.

Limitation on Reimbursable Expenses

(Sections 2.20.410 – 2.20.440 amended by Resolution 2003-05 adopted on July 21, 2003)

Reimbursement for travel related expenses shall be for actual costs subject to the following limitations:

Reimbursement for meals not covered as part of the event or hotel registration fee shall be limited the following amounts: Breakfast - \$12.00; Lunch - \$15.00; Dinner - \$25.00;

- Exception to the meal limits -The meal limits above may be exceeded if the total cost of the meal is documented to be the lowest total cost option under the circumstance. For example: A modest breakfast in a hotel hosting a training event may be a savings to the District compared to a meal within the spending limits plus the cost of a taxi cab or rental car to travel to and from the restaurant. Documentation and review to support the exception must be submitted.

Use of a personal vehicle: The current Internal Revenue Service (IRS) mileage rate for business travel shall be the only personal vehicle use expense eligible for reimbursement;

Air and train travel shall be in an amount not to exceed the standard or coach fare;

Entertainment or non-business related events or expenses not provided as part of the conference fee shall not be eligible for reimbursement;

Alcoholic beverages are not eligible for reimbursement;

Meals and/or lodging provided in a private home are not eligible for reimbursement;

Travel related expenses for a spouse or companion shall not be eligible for reimbursement;

Rental vehicle reimbursement shall not exceed the midsize vehicle rate.

No public comment on this item.

It was moved by Director Dills and seconded by Director Green to approve the revisions to the District's Travel Reimbursement Policy to provide for consideration of total cost for meals instead of just the food charge limit . Directors Dills, Green and Ridilla voted yes. Director Harris abstained. The motion carried with a vote of 3-0-1.

4.8 Consider authorizing allocation of unspent 2015 AMI meter loan proceeds.

No public comment on this item.

It was moved by Director Dills and seconded by Director Ridilla to revise the funding for CUSI billing software to be 100% from the unspent AMI loan proceeds. Purchase new Ford F150 pickup, not to exceed a total (taxes, license fees, and preparation for District use) \$30,000 to be procured using the California State bid, AKA California Multiple Award Schedule (CMAS). Purchase(s) of \$10,000 in general office equipment (e.g. a new office phone system). Directors Dills, Green, Harris and Ridilla voted yes. The motion carried with a vote of 4-0-0.

5. INFORMATION ITEMS

5.1. DISTRICT ACTIVITY REPORT

- a. Water Operations Report
- b. Conservation Report

5.2. BOARD REPORTS

- a. Report any ad hoc committees dissolved by requirements in Policy 2.01.065.
- b. Regional Water Authority – Agenda, Executive Summary, written report provided.
- c. Sacramento Groundwater Authority – No Meeting
- d. LAFCO – Green – Green stated nothing to report meeting was canceled.
- e. Planning Committee – Dills, Harris – Minutes provided.
- f. Finance / Administrative Committee – Minutes provided.
- g ACWA/JPIA – Green, Harris
 - 1. ACWA and ACWA- JPIA Fall Conference, November 26th through 30th
Director Green provided a written report on information he brought back from the ACWA-JPIA Conference.
- h. AD Hoc Committees
 - 1. MOU Negotiations – Dills, Harris
- i. Other Reports

6. DIRECTORS' AND GENERAL MANAGER COMMENTS

Director Dills gave each of the Board Member notes from the RWA meeting. Director Dills stated it should be put on a future agenda to reconsider membership in RWA. Director Ridilla suggested putting before the Finance and Admin. Committee. The Board requested to form an Ad Hoc Committee to evaluate the Districts membership in RWA. President Ridilla suggested Director Dills and Green for the AD Hoc Committee.

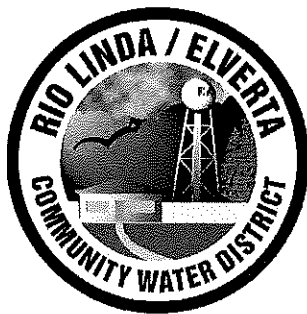
7. ADJOURNMENT

President Ridilla adjourned the meeting at 7:35 p.m.

Respectfully submitted,

Timothy R. Shaw, Secretary

John Ridilla, President of the Board



**Consent Calendar
Agenda Item: 5.2**

Date: February 25, 2019

Subject: Expenditures

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

The Finance and Administrative Committee recommends approval of the Expenditures for the month of January 2019.

Current Background and Justification:

These expenditures have been completed since the last regular meeting of the Board of Directors.

Conclusion:

I recommend the Board approve the Expenditures for January 2019.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:___ Green:___ Ridilla:___ Harris:___.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

**Rio Linda Elverta Community Water District
Other Accounts Expenditure Report
January 2019**

Type	Date	Num	Name	Memo	Amount
Liability Check	01/03/2019	EFT	QuickBooks Payroll Service	For PP Ending 12/31/2018 Paydate 01/04/2019	18,722.60
Liability Check	01/04/2019	EFT	CalPERS	For PP Ending 12/31/2018 Paydate 01/04/2019	2,001.87
Liability Check	01/04/2019	EFT	CalPERS	For PP Ending 12/31/2018 Paydate 01/04/2019	1,876.56
Liability Check	01/04/2019	EFT	California State Disbursement Unit	Employee Garnishment	397.50
Liability Check	01/04/2019	EFT	Nationwide	Employee Benefits	1,241.61
Bill Pmt -Check	01/04/2019	EFT	Adept Solutions	Computer Maintenance	1,109.00
Bill Pmt -Check	01/04/2019	EFT	Comcast	Phone/Internet	416.60
Bill Pmt -Check	01/04/2019	EFT	Republic Services	Utilities	87.36
Bill Pmt -Check	01/04/2019	EFT	Sprint	Field Communication	110.33
Bill Pmt -Check	01/04/2019	EFT	Voyager Fleet Commander	Transportation Fuel	1,043.25
Liability Check	01/04/2019	EFT	Internal Revenue Service	Employment Taxes	6,433.52
Liability Check	01/04/2019	EFT	Employment Development	Employment Taxes	1,285.98
Paycheck	01/04/2019	5750	Employee	For PP Ending 12/31/2018 Paydate 01/04/2019	92.35
Liability Check	01/04/2019	5751	Franchise Tax Board	Employee Garnishment	184.57
Check	01/04/2019	5752	RLECWD	Umpqua Bank Monthly Debt Service Transfer	16,500.00
Check	01/04/2019	5753	Community Business Bank	Meter Loan Payment	29,256.96
Check	01/04/2019	5754	Customer	Final Bill Refund	185.33
Bill Pmt -Check	01/04/2019	5755	ACWA/JPIA	Employee Benefits	23.50
Bill Pmt -Check	01/04/2019	5756	American Mobile Shredding	Office Expense	25.00
Bill Pmt -Check	01/04/2019	5757	Buckmaster Office Solutions	Office Equipment Expense	195.19
Bill Pmt -Check	01/04/2019	5758	Continental Utility Solutions	Computer Maintenance	1,500.00
Bill Pmt -Check	01/04/2019	5759	Corix Water Products	Distribution Supplies	1,548.37
Bill Pmt -Check	01/04/2019	5760	Elk Grove Security Systems	Security	84.00
Bill Pmt -Check	01/04/2019	5761	O'Reilly Automotive	Contruction Equip Maintenance	16.14
Bill Pmt -Check	01/04/2019	5762	Phelan, Michael	Retire Benefits: Lifetime	3,150.00
Bill Pmt -Check	01/04/2019	5763	Rio Linda Elverta Recreation & Park Dist	Meeting Expense	50.00
Bill Pmt -Check	01/04/2019	5764	Rio Linda Hardware and Building Supply	Shop Supplies	322.72
Bill Pmt -Check	01/04/2019	5765	Sierra Chemical Company	Chemical Supplies	811.80
Bill Pmt -Check	01/04/2019	5766	SMUD	Utilities	12,266.72
Bill Pmt -Check	01/04/2019	5767	UniFirst Corporation	Uniforms	237.85
Bill Pmt -Check	01/04/2019	5768	USA BlueBook	Shop Supplies	516.52
Liability Check	01/17/2019	EFT	QuickBooks Payroll Service	For PP Ending 01/15/19 Pay date 01/18/18	19,032.35
Liability Check	01/18/2019	EFT	CalPERS	For PP Ending 01/15/19 Pay date 01/18/18	2,011.32
Liability Check	01/18/2019	EFT	CalPERS	For PP Ending 01/15/19 Pay date 01/18/18	1,838.04
Liability Check	01/18/2019	EFT	AFLAC	Employee Benefits	651.04
Liability Check	01/18/2019	EFT	Internal Revenue Service	Employment Taxes	6,635.92
Liability Check	01/18/2019	EFT	Employment Development	Employment Taxes	1,371.52
Liability Check	01/18/2019	EFT	Employment Development	Employment Taxes	86.34
Liability Check	01/18/2019	EFT	Nationwide	Employee Benefits	1,253.07
Liability Check	01/18/2019	EFT	Kaiser Permanenete	Employee Benefits	342.43
Liability Check	01/18/2019	EFT	Principal	Employee Benefits	1,483.03
Liability Check	01/18/2019	EFT	Western Health Advantage	Employee Benefits	11,988.85
Bill Pmt -Check	01/18/2019	EFT	WageWorks	Employee Benefits	966.93
Bill Pmt -Check	01/18/2019	EFT	WageWorks	FSA Administration Fee	50.00



**Rio Linda Elverta Community Water District
Other Accounts Expenditure Report
January 2019**

Type	Date	Num	Name	Memo	Amount
Liability Check	01/18/2019	EFT	California State Disbursement Unit	Employee Garnishment	397.50
Check	01/18/2019	EFT	RLECWD - Capital Improvement	Current Monthly Transfer	42,000.00
Check	01/18/2019	EFT	RLECWD - SURCHARGE ACCOUNT 1	Current Monthly Transfer	42,500.00
Check	01/18/2019	EFT	RLECWD - Operating	Transfer funds for Security Deposits paid with Credit Card	1,200.00
Bill Pmt -Check	01/18/2019	EFT	Bankcard Center 2911	Computer, Office, Postage, Fees	670.85
Bill Pmt -Check	01/18/2019	EFT	Bankcard Center 7806	Office, Meetings	129.24
Bill Pmt -Check	01/18/2019	EFT	Verizon	Field Communication, Field IT	1,040.72
Liability Check	01/18/2019	5769	Teamsters Local #150	Union Dues	664.00
Check	01/18/2019	5770	Customer	Final Bill Overpayment Refund	18.11
Check	01/18/2019	5771	Customer	Final Bill Overpayment Refund	58.00
Check	01/18/2019	5772	Customer	Final Bill Overpayment Refund	69.21
Check	01/18/2019	5773	Postmaster	Bulk Mail Permit Refill	2,250.61
Check	01/18/2019	5774	Sacramento County Recorder	Lien Fees	56.00
Bill Pmt -Check	01/18/2019	5775	BSK Associates	Lab Fees	2,505.00
Bill Pmt -Check	01/18/2019	5776	Churchwell White LLP	Legal Fees	2,216.30
Bill Pmt -Check	01/18/2019	5777	CoreLogic Solutions	Metro Scan	134.75
Bill Pmt -Check	01/18/2019	5778	PG&E	Utilities	116.48
Bill Pmt -Check	01/18/2019	5779	Quill Corporation	Office Expense	98.74
Bill Pmt -Check	01/18/2019	5780	Sacramento County Utilities	Utilities	113.70
Bill Pmt -Check	01/18/2019	5781	Spok, Inc.	Field Communication	15.19
Bill Pmt -Check	01/18/2019	5782	Thrasher Bros Automotive	Transportation Maintenance	3,102.97
Bill Pmt -Check	01/18/2019	5783	BEC Appraisal & Consulting, Inc.	Capital Improvement: Well 16	1,400.00
Bill Pmt -Check	01/28/2019	EFT	WageWorks	Employee Benefits	15.00
Total 10000 - Bank - Operating Account					<u>250,176.41</u>

**Rio Linda Elverta Community Water District
Other Accounts Expenditure Report
January 2019**

10100 · Security Deposits

Type	Date	Num	Payee	Memo	Amount
Transfer	01/18/2019	EFT	RLECWD - Operating Account	December 2018 Security Deposits Applied	400.00

10100 · Security Deposits

400.00

Type	Date	Num	Payee	Memo	Amount
Check	01/02/2019	EFT	State Water Resources Control Board	Safe Drinking Water State Revolving Fund Loan Payment	230,677.32

10300 · Surcharge Account

230,677.32

Type	Date	Num	Payee	Memo	Amount
Transfer	01/19/2018	EFT	RLECWD - Operating	Transfer see operating checks number 5783	1,400.00

10455 · Capital Improvement Reserve

1,400.00



**Consent Calendar
Agenda Item: 5.3**

Date: February 25, 2019

Subject: Financial Reports

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

The Finance and Administrative Committee recommends approval of the Districts Financial Reports for the month of January 2019.

Current Background and Justification:

The financial reports are for the District’s balance sheet, profit and loss, and capital improvements year to date.

These financials are to be presented to the Board of Directors in order to inform them of the District’s current financial condition

Conclusion:

I recommend the Board approve the Financial Reports for January 2019.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: _____ Green: _____ Ridilla: _____ Harris: _____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

Rio Linda Elverta Community Water District
Balance Sheet
 As of January 31, 2019

ASSETS	
Current Assets	
Checking/Savings	
100 · Cash & Cash Equivalents	
10000 · Operating Account	
10005 · Operating Fund	297,864.25
10010 · Operating Reserve Fund	250,000.00
Total 10000 · Operating Account	547,864.25
10100 · Trust/Security Deposit Account	44,722.00
10450 · Capital Improvement	
10455 · Capital Improvement Fee Reserve	894,287.16
10460 · Vehicle Replacement Reserve	10,000.00
10465 · Cr6 Project	11,026.90
Total 10450 · Capital Improvement	915,314.06
10600 · LAIF GASB 45	16,253.79
Total 100 · Cash & Cash Equivalents	1,524,154.10
102 · Restricted Assets	
102.1 · Restricted Capital Improvements	
10700 · ZIONS Inv/Surcharge Reserve	496,314.17
Total 102.1 · Restricted Capital Improvements	496,314.17
102.2 · Restricted for Debt Service	
10300 · Surcharge 1 Account	567,264.07
10325 · Community Business Bank	83,266.61
10350 · Umpqua Bank	69,965.46
10350 · Surcharge 2 Account	489,672.17
Total 102.2 · Restricted for Debt Service	1,210,168.31
Total 102 · Restricted Assets	1,706,482.48
Total Checking/Savings	3,230,636.58
Accounts Receivable	487.50
Other Current Assets	
12000 · Water Utility Receivable	527,304.96
12200 · Accrued Revenue	0.00
12250 · Accrued Interest Receivable	1,662.64
15000 · Inventory Asset	95,018.40
16000 · Prepaid Expense	61,508.84
Total Other Current Assets	685,494.84
Total Current Assets	3,916,618.92
Fixed Assets	
17000 · General Plant Assets	712,766.63
17100 · Water System Facilities	20,717,058.49
17300 · Intangible Assets	373,043.42
17500 · Accum Depreciation & Amort	-8,702,559.39
18000 · Construction in Progress	1,250,105.87
18100 · Land	496,673.45
Total Fixed Assets	14,847,088.47
Other Assets	
19000 · Deferred Outflows	347,606.00
19900 · Suspense Account	0.00
Total Other Assets	347,606.00
TOTAL ASSETS	19,111,313.39

Rio Linda Elverta Community Water District
Balance Sheet
 As of January 31, 2019

LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	61,468.17
Credit Cards	1,866.96
Other Current Liabilities	618,323.32
Total Current Liabilities	<u>681,658.45</u>
Long Term Liabilities	
23000 · OPEB Liability	262,349.00
23500 · Lease Buy-Back	755,052.27
25000 · Surcharge 1 Loan	4,536,774.26
25050 · Surcharge 2 Loan	9,140.82
26000 · Water Rev Refunding	2,091,606.00
27000 · Community Business Bank	342,485.52
29000 · Net Pension Liability	1,033,555.00
29500 · Deferred Inflows-Pension	33,279.00
29600 · Deferred Inflows-OPEB	8,293.00
Total Long Term Liabilities	<u>9,072,534.87</u>
Total Liabilities	<u>9,754,193.32</u>
Equity	
31500 · Invested in Capital Assets, Net	7,519,910.46
32000 · Restricted for Debt Service	699,786.24
38000 · Unrestricted Equity	642,702.76
Net Income	494,720.61
Total Equity	<u>9,357,120.07</u>
TOTAL LIABILITIES & EQUITY	<u><u>19,111,313.39</u></u>

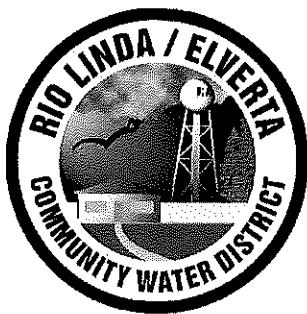
Rio Linda Elverta Community Water District
Operating Profit & Loss Budget Performance
 January 2019

19

	<u>Annual Budget</u>	<u>Jan 19</u>	<u>Jul 18-Jan 19</u>	<u>% of Annual Budget</u>	<u>YTD Annual Budget Balance</u>
Ordinary Income/Expense					
Income					
Total 40000 · Operating Revenue	2,664,429.00	231,939.66	1,549,974.59	58.17%	1,114,454.41
41000 · Nonoperating Revenue					
41110 · Investment Revenue					
41112 · Interest Revenue	400.00	117.32	309.90	77.48%	90.10
Total 41110 · Investment Revenue	400.00	117.32	309.90	77.48%	90.10
41120 · Property Tax	70,000.00	0.00	2,656.55	3.80%	67,343.45
Total 41000 · Nonoperating Revenue	70,400.00	117.32	2,966.45	4.21%	67,433.55
Total Income	<u>2,734,829.00</u>	<u>232,056.98</u>	<u>1,552,941.04</u>	<u>56.78%</u>	<u>1,181,887.96</u>
Gross Income	2,734,829.00	232,056.98	1,552,941.04	56.78%	1,181,887.96
Expense					
60000 · Operating Expenses					
60010 · Professional Fees	165,979.00	2,216.30	88,267.70	53.18%	77,711.30
60100 · Personnel Services					
60110 · Salaries & Wages	663,114.00	56,251.59	350,236.78	52.82%	312,877.22
60150 · Employee Benefits & Expense	408,099.00	34,785.02	230,288.19	56.43%	177,810.81
Total 60100 · Personnel Services	<u>1,071,213.00</u>	<u>91,036.61</u>	<u>580,524.97</u>	<u>54.19%</u>	<u>490,688.03</u>
60200 · Administration	257,595.00	31,208.09	174,058.42	67.57%	83,536.58
64000 · Conservation	6,748.00	0.00	5,733.00	84.96%	1,015.00
65000 · Field Operations	423,809.00	39,762.99	221,879.91	52.35%	201,929.09
Total 60000 · Operating Expenses	<u>1,925,344.00</u>	<u>164,223.99</u>	<u>1,070,464.00</u>	<u>55.60%</u>	<u>854,880.00</u>
69000 · Non-Operating Expenses					
69010 · Debt Service					
69100 · Revenue Bond					
69105 · Principle	133,163.00	0.00	53,163.00	39.92%	80,000.00
69110 · Interest	65,726.00	0.00	33,260.30	50.60%	32,465.70
Total 69100 · Revenue Bond	<u>198,889.00</u>	<u>0.00</u>	<u>86,423.30</u>	<u>43.45%</u>	<u>112,465.70</u>
69125 · AMI Meter Loan					
69130 · Principle	46,818.00	23,589.04	46,818.03	100.00%	-0.03
69135 · Interest	11,696.00	5,667.92	11,695.89	100.00%	0.11
Total 69125 · AMI Meter Loan	<u>58,514.00</u>	<u>29,256.96</u>	<u>58,513.92</u>	<u>100.00%</u>	<u>0.08</u>
Total 69010 · Debt Service	<u>257,403.00</u>	<u>29,256.96</u>	<u>144,937.22</u>	<u>56.31%</u>	<u>112,465.78</u>
69400 · Other Non-Operating Expense	2,000.00	0.00	0.00	0.00%	2,000.00
Total 69000 · Non-Operating Expenses	<u>259,403.00</u>	<u>29,256.96</u>	<u>144,937.22</u>	<u>55.87%</u>	<u>114,465.78</u>
Total Expense	<u>2,184,747.00</u>	<u>193,480.95</u>	<u>1,215,401.22</u>	<u>55.63%</u>	<u>969,345.78</u>
Net Ordinary Income	<u>550,082.00</u>	<u>38,576.03</u>	<u>337,539.82</u>		
Net Income	<u><u>550,082.00</u></u>	<u><u>38,576.03</u></u>	<u><u>337,539.82</u></u>		

CAPITAL BUDGET VS ACTUAL FISCAL YEAR 2018-2019
July 2018 through January 2019

	GENERAL		CONNECTIONS		CHROMIUM MITIGATION & NEW WELLS		VEHICLE REPLACEMENT	
	Annual Budget	YTD Actual	Annual Budget	YTD Actual	Annual Budget	YTD Actual	Annual Budget	YTD Actual
BEGINNING FUND BALANCE	\$ 1,426,064.00	\$ 1,426,064.00	\$ 129,988.00	\$ 129,988.00	\$ (454,317.00)	\$ (454,317.00)	\$ -	\$ -
FUNDING SOURCES								
Fund Transfers								
Operating Fund Transfers In	550,000.00	292,000.00	-	-	-	-	-	-
CIP Fund Intrafund Transfers	(10,000.00)	(10,000.00)	-	-	-	-	10,000.00	10,000.00
Surcharge 2 Surplus Repayment	-	-	-	-	435,752.00	-	-	-
Contributed Funding								
Capacity Fee Revenue	-	-	40,000.00	28,124.02	-	-	-	-
Contributed Facilities (Developers)	-	-	-	-	-	-	-	-
Grant Revenue	-	-	-	-	20,000.00	-	-	-
Loan Proceeds	35,212.00	-	18,055.00	-	2,468,239.00	-	30,000.00	-
Investment Revenue	350.00	392.08	-	-	-	-	-	-
Sale of Fixed Assets	-	-	-	-	-	-	-	-
TOTAL FUNDS AVAILABLE FOR CIP PROJECTS	2,001,626.00	1,708,456.08	188,043.00	158,112.02	2,469,674.00	(454,317.00)	40,000.00	10,000.00
PROJECTS								
A - WATER SUPPLY								
A-1 - Well 10 - Cr6 Treatment	-	-	-	-	40,000.00	-	-	-
A-2 - Well 16	-	-	-	-	2,448,239.00	2,800.00	-	-
A-3 - Well 17	28,000.00	-	-	-	-	-	-	-
A-4 - Miscellaneous Pump Replacements	40,000.00	-	-	-	-	-	-	-
Total A - WATER SUPPLY	68,000.00	-	-	-	2,488,239.00	2,800.00	-	-
B - WATER DISTRIBUTION								
B-1 - System Valve Replacements	30,000.00	-	-	-	-	-	-	-
B-2 - Paving Replacements	25,000.00	-	-	-	-	-	-	-
B-3 - Service Replacements	35,000.00	29,609.50	-	-	-	-	-	-
B-4 - Large Meter Replacements	5,000.00	-	-	-	-	-	-	-
Total B - WATER DISTRIBUTION	95,000.00	29,609.50	-	-	-	-	-	-
M - GENERAL PLANT ASSETS								
M-1 - Ice Machine	2,804.00	2,803.96	-	-	-	-	-	-
M-2 - Billing Software Upgrade	25,000.00	25,000.00	18,055.00	13,759.50	-	-	-	-
M-3 - Office Furniture & Equipment	10,212.00	-	-	-	-	-	-	-
M-4 - Truck	-	-	-	-	-	-	30,000.00	-
Total M - GENERAL PLANT ASSETS	38,016.00	27,803.96	18,055.00	13,759.50	-	-	30,000.00	-
C - CONTINGENCY								
C-1 - Contingency (10% of Est A,B,M, & FO)	20,101.60	-	1,805.50	-	248,823.90	-	3,000.00	-
TOTAL BUDGETED PROJECT EXPENDITURES	221,117.60	57,413.46	19,860.50	13,759.50	2,737,062.90	2,800.00	33,000.00	-
ENDING FUND BALANCE	\$ 1,780,508.40	\$ 1,651,042.62	\$ 168,182.50	\$ 144,352.52	\$ (267,388.90)	\$ (457,117.00)	\$ 7,000.00	\$ 10,000.00



**Items for Discussion and Action
Agenda Item: 6.1**

Date: February 25, 2019
Subject: General Manager's Report
Staff Contact: Timothy R. Shaw

Recommended Committee Action:

N/A this item is not reviewed by committee.

Current Background and Justification:

The General Manager will provide a written report of District activities over the period since the last regular Board meeting. The Board may ask for clarifications and may also provide direction in consideration of the reported activities.

Conclusion:

No Board action is anticipated for this item.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:___ Green:___ Ridilla:___ Harris:___.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.1

Date

Initial Potential Meeting Date

2/25/19

Circle High/~~Medium~~/~~Low~~ priority of Item and Identify if in line with Mission/
Goal/~~Strategic Planning~~ issues or state of emergency

GM Report

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other Water or special districts, District Engineer, Legal Counsel then laying out business cases, pros and cons, options and recommendations based on best information available, etc.

2/22/19

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

Legal Counsel should have enough time to review all potential legal matters for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19



Date: February 25, 2019

Subject: General Manager Report

Staff Contact: Timothy R. Shaw, General Manager

For the given month, I participated in the following reoccurring meetings and special events: My efforts toward the labor negotiations continued to escalate. To an extent, some of my efforts were expended to engage in dialog with the other designated negotiator for the District. The negotiations tone seemed to degrade through this reporting period. Aside from negotiations, the District achieved some important milestones since my last report, we have a signed irrevocable offer of dedication for the Well #16 parcel, and the Board will be considering a contract for the engineering design of the Well #16 groundwater pumping station.

1. On January 29th, I participated in a meeting with a custodial services provider, which was unsolicited, i.e. the District was not looking for new service. Staff is continuing to evaluate whether the minimal savings through a proposed new provider is worth the hassle and one-time expense of switching. We've also reached out to see if the existing provider will match the proposed increase in service level without increasing their charge.
2. On January 30th, I had a meeting (also unsolicited) with Inland Business machines. I was not interested in any new office equipment for Inland, but I was interested in what new products may be available. Inland made a full press, including contracts, which affirmed my aversion to any sort of engagement.
3. On January 30th (afternoon). I met with TelCom Data regarding a new Voice Over Internet Protocol (VOIP) phone system. TelCom is one of four options we are considering. At this point, the advantage of TelCom is their Samsung office phones. Of the other three proposers, we are realistically only considering one, which is similar to TelCom, with different phones and a different level of maintenance /installation acumen.
4. On February 6th, I met with several area water districts' General Managers to continue our discussions on the benefits of inter-agency cooperation and potential for consolidation of two or more of the agencies.
5. On February 7th, TelCom conducted a demonstration of their office phone VOIP system. All staff members participated.

6. On February 13th, The District Engineer, Operations Superintendent and I met to score the qualifications of the four respondents to the Well #16 engineering design project.
7. On February 13th (afternoon), I participated in the RWA Regional Water Reliability group meeting. The group has refined their estimates of member agency participation cost for phase 1. The refinements include a not to exceed estimate to account for member agencies deciding to opt out of participation.
8. On February 14th, AllWorx demonstrated their office phone VOIP system. Again all staff participated in the demonstration. After this, the second phone system demonstration, I solicited feedback staff (individually via e-mail) to gain individual opinions on a phone systems we'd likely own and operate for the next 15-years.
9. On February 15th I participated and voted in the RWA special meeting to consider authorizing an interim Executive Officer subsequent to the retirement of John Woodling. The primary RWA representative from RLECWD was unavailable for this special meeting. I voted, as did every other agency representative, to confirm the appointment of Rob Swartz. Rob had already been named as Interim Exec, Officer for SGA in a preceding SGA meeting, So, failure of RWA to confirm would have been problematic. Rob has declared he is not interested in a permanent appointment.
10. On February 21st I attended the ACWA Groundwater Committee meeting in Sacramento. I was most interested in hearing the legislative and regulatory updates portion of the agenda. Oddly, there were no updates on the Chrome 6 efforts by the State to re-establish the MCL. Stakeholder workshops for the MCL

Other initiatives in progress are:

None of the above illustrates how much time and effort I've spent on negotiations and the bid process for Well #16 design. Included with the later was an exploration of all the engineering, construction, construction management and compliance reporting associated with the SRF loan and project development from 2009 to 2013.



Items for Discussion and Action Agenda Item: 6.2

Date: February 25, 2019
Subject: District Engineer's Report
Staff Contact: Mike Vasquez, District Engineer

Recommended Committee Action:

N/A this item is not discussed at committees.

Current Background and Justification:

The District Engineer will provide a written report to the Board of Directors on engineering activities since the previous monthly meeting. The Board may ask for clarifications and may also provide direction in response to the report.

Conclusion:

There is no Board action anticipated for this item.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:___ Green:___ Ridilla:___ Harris:___.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.2

Date

Initial Potential Meeting Date2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

 District Engineer's Report

2/22/19**Staff Work Completed**

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other Water or special districts, District Engineer, Legal Counsel then laying out business cases, pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff WorkN/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc Committees, to prepare board recommendations

Formal Legal Counsel ReviewN/A

Legal Counsel should have enough time to review all potential legal matters for correctness and legality

GM Review2/22/19**Actual Meeting Date Set for Agenda Item**2/25/19

21 February 2019

DISTRICT ENGINEER'S REPORT

To: Tim Shaw, General Manager, Rio Linda / Elverta Community Water District

From: Mike Vasquez, PE, PLS, Principal Engineer (EKI), District Engineer (RL/ECWD)

Subject: **District Engineer's Report for the 25 February 2019 Board Meeting
(EKI Project No. B800130.00)**

The District Engineer is pleased to submit this brief update of duties and tasks performed for the period of 24 January 2019 to 21 February 2019:

1. General District Engineering:

- Prepared a District Engineer's Report for and attended the District Board Meeting on 1/28/2019.
- Met with the General Manager on 1/28/2019 to discuss general District Engineering assignments.
- Reviewed a Water Loss Control Staff Report from the State Water Resources Control Board on 1/29/2019. Senate Bill 555 (2015) requires that the State Water Resources Control Board develop performance standards for volume of water loss for urban retail water suppliers between January 2019 and July 2020.
- Met with the General Manager on 2/1/2019 to discuss review of the District's existing Water Master Plan and potential future update of the plan.
- Attended the District Planning Committee Meeting on 2/1/2019. Due to the Planning Committee being held only a few days after the 1/28/2019 District Board meeting, a District Engineer's report was not prepared for this meeting. The District Engineer's agenda item for this meeting was an opportunity for the Planning Committee Directors to engage in a brief questions and answers session with the District Engineer regarding general District engineering matters.
- Reviewed a letter from the District's Attorney to Elverta Associates, LLC requesting that Elverta Associates, LLC provide the Irrevocable Offer of Dedication for the land required for the Well 16 Project on 2/5/2019. Subsequently, a fully executed Irrevocable Offer of Dedication was received from the developer on 2/19/2019. The Irrevocable Offer of Dedication will be under a separate agenda item at the 2/25/2019 District Board Meeting.

Formerly known as Eifer & Kalinowski, Inc.

- Completed a Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission (FPPC). This form is filed annually and when assuming or leaving office.
- Continued to review work products and other deliverables provided by the previous District Engineer as needed.

2. Development Plan Review:

- No development reviews were performed during this period.

3. Well 16 Equipping and Site Design Request for Proposals (RFP):

- Received four proposals from the following consultants on 2/1/2019 in response to the RFP.
 - Water Works Engineers
 - Wood Rodgers
 - Domenichelli & Associates
 - Luhdorff & Scalmanini
- The proposal review committee consisting of the General Manger, Operations Superintendent, and District Engineer individually reviewed and ranked each proposal.
- The proposal review committee met at the District office on 2/13/2019 to discuss selection of the most qualified consultant. After review and consideration of the proposals submitted, the review committee deemed Domenichelli & Associates as the most qualified firm for this project.
- Informed all proposers that Domenichelli & Associates was deemed the most qualified on 2/13/2019.
- After Domenichelli & Associates was deemed the most qualified firm, the fee estimate they provided in a separate and sealed envelope was opened.
- Held conference calls with Domenichelli & Associates on 2/14/2019, 2/19/2019, and 2/20/2019 to review project work scope, schedule, and budget.
- Prepared a draft contract including scope of services between the District and Domenichelli & Associates to perform the project work.
- Coordinated with the General Manager on 2/20/2019 and 2/21/2019 to discuss next steps with this project.
- A recommendation for next steps regarding this project will be under a separate agenda item at the 2/25/2019 District Board Meeting.

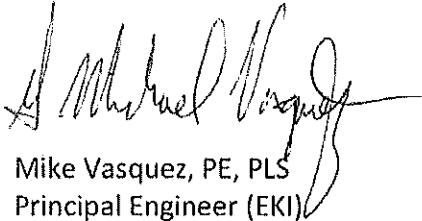
4. Well 10 Hexavalent Chromium Treatment Project:

- An updated quarterly report with project schedule and budget for the period of 12/1/2018 to 2/28/2019 is due and will be submitted to the Regional Water Authority by 3/18/2019.

Please contact me directly at the office (916) 905-2388, cell phone (530) 682-9597, or email at mvasquez@ekiconsult.com with any questions or require additional information.

Very truly yours,

EKI ENVIRONMENT & WATER, INC.



Mike Vasquez, PE, PLS
Principal Engineer (EKI)
District Engineer (RL/ECWD)



Items for Discussion and Action

Agenda Item: 6.3

Date: February 25, 2019

Subject: Appointing a RLECWD Board Member to fill the vacancy created by the resignation of Director Henrici

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

None

Current Background and Justification:

Director Mary Henrici resigned as Director of the RLECWD Board of Directors. Director Henrici's letter of resignation stipulated an effective date of January 13, 2019.

California Government Code §1780 stipulates requirements for filling Board Member Vacancies and the Sacramento County Elections Office publishes a guide, including sample forms, to assist Boards in complying/documenting the proper execution of the process. All requirements have been met to enable the Board to fill the vacancy via appointment.

There is no way to know in advance of the 2-25-2019 Board meeting how many candidates may express interest in being appointed to the Board. If two or more eligible candidates express interest, it would be appropriate for existing Board Members to discuss the relative merits of the candidates. Any interviews of the candidates must be done in open session.

If there are multiple eligible candidates and the Board feels it is necessary to deliberate about the selection in closed session, a closed session may be added to the agenda in accordance with the applicable statutes.

Conclusion:

I recommend the Board appoint an eligible candidate to fill the vacancy on the Board created by the resignation of Director Henrici.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: _____ Green: _____ Ridilla: _____ Harris: _____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.3

Date

Initial Potential Meeting Date2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Consider appointing a Board Member to fill the vacancy created by the resignation of Director
Henrici

1/11/19**Staff Work Completed**

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work1/14/19

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel ReviewN/A

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review2/22/19**Actual Meeting Date Set for Agenda Item**2/25/19

APPLICATION FOR APPOINTMENT TO A SPECIAL DISTRICT VACANCY

Instructions

If you are interested in serving on a special district Board of Directors, please complete this application and return it to: RLECWD Office 730 L Street, Rio Linda CA

Date Due: February 25, 2019

You will be advised by the district board if your appointment is confirmed. Thank you for your interest.

DISTRICT: Rio Linda Elverta Community Water District DATE: Feb. 22, 2019

NAME: Melvin E. Griffin AGE (optional): 82

RESIDENCE ADDRESS: 7300 Belcamp Street, Rio Linda, CA 95673

BUSINESS OR MAILING ADDRESS: Same

PHONE (DAYTIME): (916) 991-4315 PHONE (EVENING): Same

EDUCATION			
Institution	Major	Degree	Year
American River College	Business	Associates	1969
Lincoln University of Law	Law	None	1971-73

WORK/VOLUNTEER EXPERIENCE				
Organization	City	Position	From	To
Sacramento Housing & Redevelopment Commission	Sacramento County	Commissioner	2012	Present
Rio Linda Lions Club	Rio Linda	Member 25 Years \$ Terms as Pres.	1987	2012

STATEMENT OF QUALIFICATIONS:

Please briefly describe your qualifications and why you are interested in serving on the Board of Directors.

Mel Griffin, Applicant for Membership on the RLECWD Board of Directors:

I have lived in Rio Linda for most of my life, and have a vested interest in the welfare of the community and its residents. As a result of this interest I have been active in the community since the mid 1970's participating in several different organizations and activities.

My initial interest in serving on the Water District Governing Board came about in 1993 when there was considerable concern being expressed by a group of Elverta and Rio Linda residents about the District's financial situation. A member of that (1993) Board of Directors resigned, and I was asked by several community leaders to submit my resume for membership on the Board. I submitted my application and resume, and was selected by the remaining Board members from a group of 12 applicants. Subsequently, through the effort of Board Members and District Management, the issues were resolved, and the Water District Board operated in the best interest of the District and its residents. I am proud to have been a member of the Water District Board of Directors during that time. Our District did become recognized by other area water districts as a reasonably well managed and operating district with quality employees.

Subsequently some community residents were elected the membership of the Rio Linda-Elverta Water District Board of Directors, and their conduct and actions caused the near loss of our District.

Presently the current Water District Board of Directors seems to have the District operating effectively and have developed reasonable future operating plans. I would like to be a team member and part of that activity utilizing the experience of my prior experience on the Rio Linda-Elverta Comm. Water District Board of Directors, and many years of experience working with and for Public Agencies throughout California. Please read the attached Resume/Summary of my background.

CERTIFICATION:

I certify that the information contained in this application is true and correct. I authorize the verification of the information in this application.

Melvin E. Griffin
Signature

Feb 22, 2019

Date

RESUME of Mel Griffin

Applicant for membership on the: Rio Linda-Elverta Community Water District
Board of Directors (February 2019)

Melvin E. Griffin
7300 Belcamp Street
Rio Linda, CA 95673

Phone: (916) 991-4315
Cell: (279) 444-9697
E-mail: MgriffAssoc@aol.com

I am a lifetime resident of Sacramento County. Born in Galt and grew up in Rio Linda where we moved in 1939. My parents are also native Californians. Father was born 1891 in Wheatland, Yuba County, and my mother was born in Durham, Butte County. Grandfather Griffin was born 1830 in Macon County, Missouri, and came to California in the early 1840s with his family. They settled in the Red Bluff area.

I am an experienced consultant in workers' compensation, safety, and risk management.

I started in 1967 with the State Compensation Ins. Fund as a clerk, becoming a claims examiner in two years time. Recruited by the County of Sacramento in 1971 to develop and manage their self-insured workers' compensation program, and work in the County's safety program. Took the County's workers' compensation program to self-administration in 1975, and managed that program. In 1978 I established and managed the self-insured and self-administered workers' compensation program of the Self-Insured Fire Districts of Sacramento County, a joint powers authority, while still managing the County's program. In 1980 the City of Sacramento recruited me to establish and manage the self-administration of their self-insured workers' compensation program. In 1981 I became a workers' compensation consultant to public agencies including counties, cities, special districts, and joint powers authorities. I also helped in the safety and risk management programs for many of these agencies.

Prior to getting into workers' compensation I worked as a first floor supervisor and night manager for Weinstocks Dept. Store at Watt & El Camino Avenues, worked as a tobacco company sales representative, and managed a purchasing department for an electronics research & development company in Falls Church, VA that designed and manufactured electronic countermeasure devices for the U.S. Government. I served 3 years in the U.S. Army Corps of Engineers.

I am currently a member of the Sacramento Housing & Redevelopment Housing Commission. I was appointed by County Supervisor McGlashken in 2012. On the Commission I served as Vice Chairperson in 2014 and Chairperson in 2015, and was recently elected to be Vice Chairperson for 2019. I have been a member of the Sacramento Taxpayers Association Board of Directors (8 years) including three years as Treasurer of the organization. In the community I served for 11 ½ years on the Rio Linda-Elverta Community Water District Board of Directors. I also served four terms as President of the Rio Linda-Elverta Lions Club (a member for 25 years). I am a co-founder, past President, and current Director of the Grant Union High School Alumni Association, (Founded in 1984) and serve as their representative to the Twin Rivers USD. For the Twin Rivers USD I served on their Budget Advisory Committee, and their Bond Oversight Committee. I also served 4 terms as President of the Rio Linda-Elverta Chamber of Commerce during a 14 year period as a Director. I have been President or Chairperson of over 30 organizations, local & State wide, including the being the Head Coach of semi-professional football teams in the 1960s and 1970s in Sacramento. I am a Notary Public.

APPLICATION FOR APPOINTMENT TO A SPECIAL DISTRICT VACANCY

Instructions

If you are interested in serving on a special district Board of Directors, please complete this application and return it to: RLECWD Office 730 L Street, Rio Linda CA

Date Due: February 25, 2019

You will be advised by the district board if your appointment is confirmed. Thank you for your interest.

DISTRICT: Rio Linda Elverta Community Water District DATE: 2/24/19
 NAME: Jason Allen Green AGE (optional): 56
 RESIDENCE ADDRESS: 248 Arcano Way Rio Linda 95673
 BUSINESS OR MAILING ADDRESS: _____
 PHONE (DAYTIME): 916-716-6845 PHONE (EVENING): 916-991-1482

EDUCATION			
Institution	Major	Degree	Year
<u>Christian Brothers High School</u>			<u>1981</u>
<u>Sacramento City College</u>	<u>Mechanical Electrical Technology</u>	<u>2 year Certificate</u>	<u>1986</u>

WORK/VOLUNTEER EXPERIENCE				
Organization	City	Position	From	To
<u>Rio Linda/Elverta Historical Society</u>		<u>President</u>	<u>2018</u>	<u>Now</u>
<u>Rio Linda Grange</u>		<u>member</u>	<u>2015</u>	<u>Now</u>

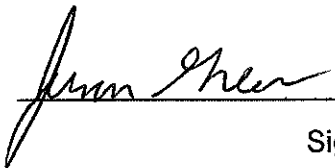
STATEMENT OF QUALIFICATIONS:

Please briefly describe your qualifications and why you are interested in serving on the Board of Directors.

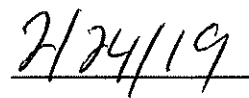
I've worked in construction as an electrician for close to 30 years
I'm a member of the Rio Linda Grange, Rio Linda / Elverta Historical Society, participated with Rio Linda / Elverta Visions and have been involved with numerous activities in the community.
As a member of the board I will do my best to represent the community and the Water District

CERTIFICATION:

I certify that the information contained in this application is true and correct. I authorize the verification of the information in this application.



Signature



Date



Items for Discussion and Action Agenda Item: 6.4

Date: February 25, 2019

Subject: Re-establish District Financial Policies/Procedures

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

The Finance and Admin Committee forwarded this item onto the 2-25-2019 Board agenda with a recommendation for Board approval.

Current Background and Justification:

The absence of written finance policies/procedure eventually led to a variety of negative consequences. A summary of those consequences is included with the committee packets as excerpts from the independent audit report considered by the Board in July 2012. In response to the audit findings, which were substantive and daunting, The Board adopted Resolution 2012-12 (also included in the committee packets).

Subsequent to adoption of Resolution 2012-12 and the corresponding additions to the District Policy Manual, the Finance policies were deleted from the District Policy Manual. Based on my review of written explanation (lack thereof) and dialog with staff on why the policies were deleted, it appears to have been the intention of the District to move these Finance Policies into a separate policy manual, e.g. create a "RLECWD Accounting Procedures Manual". Evidently, creation of a new Accounting Procedures Manual, inclusive of the Financial Policies adopted in Resolution 2012-12 was initiated but not entirely completed. At this point, following review of Resolution 2012-12 and the background information, I believe the appropriate implementation of the finance policies was the District Policy Manual. Reportedly, the current independent auditor agrees with such conclusion.

Resolution 2012-12 and the corresponding sections of the District Policy Manual (now deleted) covered some high-level finance policies, e.g. stipulated reserve policies. However, these high-level policies do not comprehensively address ALL of the missing elements summarized in the FY 2010/2011 audit findings. Even if the District reinstates the policies prescribed in Resolution 2012-12, the District needs to address day to day financial procedures to preclude the consequences detailed in the audit findings when/if a small organization such as RLECWD experience turnover in Accounting Specialist (Bookkeeper) and/or General Manager.

After the February Finance/Admin Committee, while comparing some of the policies adopted in 2012, subsequent to the findings reported by the independent auditor in 2012, some of the District Financial Policies require updating prior to final adoption and incorporation into the District Policy Manual

Conclusion:

Subject to further review by staff and Legal Counsel, I recommend the Board authorize the re-instatement of the Financial Policies delineated in Resolution 2012-12. I recommend staff be directed to bring the final draft to a subsequent Finance Committee Meeting, and further direct staff to complete the Accounting Procedures Manual and report back to the Finance/Admin Committee on the status of completion for the Accounting Procedures.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: _____ Green: _____ Ridilla: _____ Harris: _____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.4

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Re-establish District Financial Policies/Procedures

Staff Work Completed

2/8/19

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

2/11/19

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

2-19-19 *nd*

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

Rio Linda / Elverta Community Water District

Resolution 2012-12

CREATING SEC. 3.09.140 DISTRICT INVESTMENT POLICY, 3.09.150 OPERATING AND RESERVE POLICY AND 3.09.160 WHISTLEBLOWER POLICY OF TITLE 3 FINANCE OF THE DISTRICT POLICY MANUAL

WHEREAS, In the 2009-10 audit findings the District's Auditor recommended that the District create policies on District Investment, Operating and Reserve Accounts and whistleblower protection.

WHEREAS, The General Manager has created these policies and they have been reviewed by the District's Auditor. These policies were approved by the Board of Directors at its June 18, 2012 meeting.

WHEREAS, It has been determined that these policies should be included in the District's policy manual;

NOW THEREFORE, BE IT RESOLVED, by the Rio Linda / Elverta Community Water District Board of Directors that the provisions of Section 3.09.140 District Investment Policy, 3.09.150 Operating and Reserve Policy and 3.09.160 Whistleblower Policy of the District Policy Manual (Title 3 Finance) are hereby added as noted below:

3.09.140 District Investment Policy

PURPOSE

This statement is intended to provide policy and direction to the Finance Officer of the District for the prudent and beneficial use of all funds and monies of the District without regard to source or restrictions. Any reference to portfolio shall mean the total of District cash and securities under management by the Finance Officer. Permitted investments shall be listed in Exhibit A.

AUTHORITY

The Government Code of the State of California (Government Code), primarily section 53601 and related subsections authorizes the types of investment vehicles allowed in a California local agency's portfolio. The investment vehicles emphasize preservation of capital and are a conservative set of investments. The authority to invest (as defined in the Government Code) is delegated to the local agency's legislative body for re-delegation to its finance officer. Under no circumstances is the local agency finance officer permitted to purchase an investment that is not specifically authorized by law and within the scope of investments delegated by the local agency's governing Board.

BASIC POLICY AND OBJECTIVES

The Rio Linda / Elverta Community Water District investment policy is a conservative policy guided by three principles of public fund management. In specific order of importance the three principles are:

- 1) Safety of Principal. Investments shall be undertaken in a manner which first seeks to preserve portfolio principal.
- 2) Liquidity. Investments shall be made with maturity dates that are compatible with cash flow requirements and which will permit easy and rapid conversion into cash, at all times, without a substantial loss of value.
- 3) Return on Investment. Investments shall be undertaken to produce an acceptable rate of return after first consideration for principal and liquidity.

FOLLOWING ARE OBJECTIVES:

DIVERSIFICATION The District shall maintain a portfolio of authorized investments with diversified maturities, issuers and security types to avoid the risk inherent in over investing in any one sector. The Finance Officer shall evaluate or cause to have evaluated each potential investment, seeking quality of issuer, underlying security or collateral, potential negative effects of market volatility on the investment and shall diversify the portfolio to reduce exposure and assure adherence to the Basic Policy and Objectives paragraph of this policy.

PRUDENT INVESTOR STANDARD Investments will be made with the same standard of care that persons of prudence, discretion and intelligence exercise when managing their own affairs, not for speculation, but for investment with particular consideration for safety of capital as well as probable income derived.

REPORTING REQUIREMENTS Each month the Finance Officer shall prepare and submit a report of investment transactions to the Board of Directors. This report will be sufficiently detailed to provide information for investment evaluation.

PERFORMANCE REVIEW An annual appraisal of the investment portfolio shall be conducted to evaluate the effectiveness of the District's investment program. The purpose of this review, in addition to evaluation of performance, is to provide the platform for recommendations of change and improvements to the portfolio to the Board of Directors.

GRANDFATHER CLAUSE Any investment held by the District at the time of this policy is adopted shall not be sold to conform to any part of this policy unless its sale is judged to be prudent by the Finance Officer.

CONFLICTS OF INTEREST The Finance Officer shall perform his/her duties under this Investment Policy in accordance with the provisions of Section 1126 of the Government Code as well as any other state law referred to in this policy.

EXCEPTIONS When the Finance Officer determines that an exception to one of the numerical limits is in the best interest of the District, such exception is permitted as long as it is consistent with applicable State and Federal laws. Exceptions to this policy shall be reported to the Board of Directors within five working days along with a detailed explanation for the variance.

CONFLICTS In the event any provision of this Statement of Investment Policy is in conflict with any of the statutes referred to herein or any other State or Federal statute, the provisions of each statute shall govern.

SAFEKEEPING All securities purchased may be delivered against payment and held in safekeeping pursuant to a safekeeping agreement. All financial institutions shall be instructed to mail confirmations and safekeeping receipts directly to the Finance Officer of the District.

EXHIBIT "A"

PERMITTED INVESTMENTS

	<u>Investment Type</u>	<u>Maximum Investment</u>	<u>Maximum Maturity</u>
1)	Investment pool authorized under CA Account Statutes governed by Government Code Sections 16429.1-16429.4	\$50 million ¹	Liquid
2)	California Asset Management Program (CAMP)	Unlimited	Liquid Account
3)	U.S. Treasury Obligations	Unlimited	5 Years
4)	Bank Savings Account	25%	Liquid Account
5)	Federal Agencies	75%	5 Years
6)	Commercial Paper	20%	180 Days
7)	Negotiable Certificates of Deposit	20%	180 Days
8)	Re-purchase Agreements	20%	180 Days
9)	Corporate Debt	25%	5 Years

ADDITIONAL LIMITS ON INVESTMENTS:

- 1) No notes.
- 3) U.S. Treasury Obligations are limited to Treasury Bills, Treasury Notes, and Treasury Bonds.
- 4) Bank Savings Accounts must be collateralized at 110% of account balance.
- 5) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

- 6) Must be a U.S. corporation with over \$500 million in assets. The commercial paper must be of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The District may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Additionally, District purchases may not exceed 10% per issuer.
- 7) Negotiable certificates of deposit must be issued by a nationally or state-chartered bank, a savings association, or a federal association (as defined by Section 5102 of the Financial Code), or a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases are limited to institutions which have long-term debt rated in the "A" category or higher, or the equivalent, by a nationally recognized rating organization.
- 8) The District will enter into repurchase agreements only with primary government securities dealers as designated by the Federal Reserve Bank of New York. Repurchase agreements shall be governed by a master repurchase agreement adopted by the Public Securities Association. All securities underlying repurchase agreements shall be delivered to the District's custodial bank, or be handled under a properly executed "tri-party" custodial arrangement. Collateral for repurchase agreements is restricted to U.S. Treasury issues or Federal Agency issues.

The underlying collateral must be at least 102% of the repurchase agreement amount. If the value of securities held as collateral slips below 102% of the value of the cash transferred, then additional cash or acceptable securities must be delivered to the third party custodian. Market value shall be recalculated each time there is a substitution of collateral. For repurchase agreements with terms to maturity of greater than three days, the value of the collateral securities shall be marked to market weekly by the custodian, and if additional collateral securities is required, then that collateral must be delivered within two business days. If a collateral deficiency is not corrected within two days, the collateral securities will be liquidated.

A perfect first security interest in the collateral securities, under the Uniform Commercial Code, shall be created for the benefit of the District. Collateral securities shall be held free and clear of any lien and shall be an independent third party acting solely as an agent for the District, and such third party shall be (i) a Federal Reserve Bank, or (ii) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus, and undivided profits of not less than \$50 million.

- 9) Purchases are limited to corporate and depository institution debt securities issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment shall be rated "A" or better by a nationally recognized rating service. District purchases may not exceed 10% per issuer.

Limits subject to change; established by State Treasurer.

3.09.150 Operating and Reserve Policy

BASIC POLICY AND OBJECTIVES

The Rio Linda / Elverta Community Water District reserve policy is a financial policy guided by sound accounting principles of public fund management. The policy establishes several reserve funds to minimize adverse annual budgetary impacts from anticipated and unanticipated District expenses.

The adequacy of the target reserve year-end balance ranges and/or annual contributions will be reviewed annually during the budgeting and rate setting process and may be revised accordingly as necessary. The following District reserve fund categories are established:

1 Capital Improvement Fee Reserve

- 1.1. Purpose: To provide funds for the orderly and timely expansion of the District facilities to meet future demand and to maintain and/or improve the District's existing level of service.
- 1.2. Target Balance: AB1600 does not designate a target reserve balance. A Government Code 66000 Compliance Report identifies the proposed capital projects necessary to maintain and/or improve services and the amount needed to fund those capital projects. In accordance with Government Code 66000, the balance shall not exceed the amount specified by that law.
- 1.3. Methodology/Rational: Virtually all development that occurs within the District requires the use of District facilities, plant and equipment for public services. This fee is established to insure the adequacy and reliability of such facilities, plant and equipment as development of undeveloped land occurs.
- 1.4. Use of Funds: The funds generated by the fee will be used to acquire, replace and/or construct various capital facilities, plant and equipment for the provision of water, security and administrative services
- 1.5. Funding: Annual contributions from developer fees will depend upon new construction within the District. Additionally, interest earnings will be accrued on and added to fund balance, using the District's earnings rate on investments. The District also currently contributes \$20,000.00 per month into this fund from operating income.

2. Surcharge Account

- 2.1. Purpose: This account was created to pay off the 2010 SRF Loan of \$7,499,045.00. This account will be closed after repayment of the loan 20 years from the project completion date.

- 2.2. Target Balance: The target balance increases and decreases with the construction project in progress. It will stabilize when the construction is complete and loan payment begins. Hence, there is currently no target balance.
- 2.3. Methodology/Rational: It has been determined by the State of California that the amount of \$19.00 per connection per billing period should be sufficient for the repayment of their loan.
- 2.4. Use of Funds: The funds will be used for repayment of SRF loan.
- 2.5. Funding: a fee of \$19.00 per billing cycle is charged to each active account and collected as a primary source of funds. A minimum of \$80,320 per billing cycle is deposited until the loan is paid off.

3. **Surcharge Reserve**

- 3.1. Purpose: To establish a reserve as required by our 2011 SRF funding agreement # SRF111CX107
- 3.2. Target Balance: The target balance is \$481,917.00 which is equivalent to 2 semiannual loan payments.
- 2.3. Methodology/Rational: There is \$88,352.00 put into this reserve every billing cycle. The current balance is \$353,408.00. The reserve should be up to the required amount in the next two billing cycles
- 2.4. Use of Funds: The funds will not be used. They are to remain in this account until the loan is paid off per our loan agreement.
- 2.5. Funding: \$88,352.00 is transferred into this account every billing cycle until it reaches its required amount.

4. **2003 Water Revenue Refunding Bonds Reserve Fund 2032**

- 4.1. Purpose: To establish a reserve as required by our 2003 Water Revenue Refunding Bonds
- 4.2. Target Balance: The target balance is \$242,484.00 which is equivalent to 2 semiannual loan payments.
- 4.3. Methodology/Rational: This fund is already fully funded and no additional monies are being deposited.
- 4.4. Use of Funds: The funds will not be used. They are to remain in this account until the bonds are paid off per our bond agreement.
- 4.5. Funding: This fund is already fully funded and no additional monies are being deposited.

5. 2003 Debt Service Fund

- 5.1. Purpose: To make semiannual bond payments on the 2003 bonds in the amount of \$3,970,000.
- 5.2. Target Balance: The amount equivalent to the amount payable on the bonds semi annually. There is approximately \$240,000.00 due per year on this bond issue.
- 5.3. Methodology/Rational: The District deposits \$20,000.00 per month in to this reserve from the Operating Fund in order to have sufficient funds to pay the bond payments when due.
- 5.4. Use of Funds: These funds are used exclusively to repay the 2003 Bond debt.
- 5.5. Funding: \$20,000 per month is put into this account to build up enough money for payment of the bonds when due.

6. Operating Fund

- 6.1. Purpose: To ensure cash resources are available to fund daily administration, operations and maintenance of providing water, wastewater, security and drainage services.
- 6.2. Target Balance: A minimum of six months of cash to fund District expenditures.
- 6.3. Methodology/Rational: The District is required to have sufficient cash flow to meet the next six months of budgeted District expenditures (Government Code Section 53646(b)(3)). The next six months of projected cash revenues can be included as a source of cash flow to satisfy this requirement. Revenues in excess of reserve contributions and expenditures resulting from expenditure savings or timing differences are also reflected in this fund.
- 6.4. Use of Funds: These funds will be used to pay for expenditures according to budget and expenditure authority.
- 6.5. Funding: Annual contributions will vary, depending upon other reserve requirements and current year expenditure requirements. Additionally, interest earnings will be accrued on and added to fund balance, using the District's earnings rate on investments.

7. Trust Account

- 7.1. Purpose: To collect deposits for new customer accounts. These deposits are refunded after one year of timely payment on their account.
- 7.2. Target Balance: The balance on this account fluctuates with the number of customers that have deposits with the District.
- 7.3. Methodology/Rational: The District requires a \$100.00 deposit for each parcel that is owned by a customer. There is a method of waiving the deposit. If the customer can provide us with a letter of credit from a current or previous utility provider that shows at least one year of history with no late payments or returned checks the deposit can be

waived. If a deposit is required the deposit gets returned to their account after one year of timely payment or when they move. If there is a deposit balance after paying the final bill upon leaving the property it is refunded in the form of a check.

- 7.4. Use of Funds: These funds will be used to pay the final bill on an account if it is left unpaid when the owner moves away.
- 7.5. Funding: The District requires a \$100.00 deposit for each parcel that is owned by a customer. If the customer can provide the District with a letter of credit from a current or previous utility provider that shows at least one year of history with no late payments or returned checks the deposit can be waived.

8. Secured Credit Card

- 8.1 Purpose: To provide a constant amount of money for the District credit cards to draw upon.
- 8.2. Target Balance: The balance on this account is \$15,000.00.
- 8.3. Methodology/Rational: The District had no credit when the current Management went to obtain a credit card for the company. The only way a card could be secured was to have a constant balance set aside for the company credit cards to draw upon and reimburse monthly.
- 8.4. Use of Funds: These funds are used to pay credit card expenses and reimbursed monthly.
- 8.5. Funding: The District initially funded this account with the amount of \$15,000.00.

9. LAIF GASB 45 Funding

- 9.1 Purpose: To provide a source of income to fund post retirement benefits.
- 9.2. Target Balance: Unknown. An Actuarial study needs to be performed to determine the appropriate amount to include in this account.
- 8.3. Methodology/Rational: This will be determined when the actuarial study is done.
- 8.4. Use of Funds: These funds are to be used to fund post retirement benefits costs.
- 8.5. Funding: The income to fund this account will come from the Operating Fund.

3.09.160 Whistleblower Policy

PURPOSE

Rio Linda / Elverta Community Water District (RLECWD) requires its Directors, Managers and Employees to observe high standards of professionalism and ethical conduct in maintaining financial records. This Whistleblower Policy (the "Policy") establishes standards and procedures to ensure that complaints and concerns ("Accounting Irregularity") regarding accounting or auditing matters are reported and handled in a manner that complies with management's objectives. In addition, this policy establishes procedures for:

1. The confidential, anonymous submission by Complainants of Accounting Irregularities regarding questionable accounting or auditing matters; and,
2. The treatment of Accounting Irregularities concerning accounting, internal account controls and auditing matters received by RLECWD from Complainants.

NO RETALIATION

No office, employee or other (the "Complainant") who in good faith reports an Accounting Irregularity shall suffer harassment, retaliation or adverse employment consequences. An employee who retaliates against someone who has reported an Accounting Irregularity in good faith is subject to discipline up to and including termination of employment. This Whistleblower Policy is intended to encourage and enable Complainants to raise serious concerns with RLECWD rather than seek resolution outside RLECWD.

PROCEDURE FOR REPORTING VIOLATIONS

1. It is the responsibility of all Directors, Managers and Employees to report all suspected Accounting Irregularities in accordance with this Policy. RLECWD maintains an open door policy and suggests that Complainants share their questions, concerns or complaints with someone who can address them properly. In most cases, the Complainant's supervisor is in the best position to address an area of concern. A Complainant's supervisor may be most knowledgeable about the issues and will appreciate being brought into the process. It is the supervisor's responsibility to help solve the problem.
2. If the Complainant is not comfortable speaking to his/her supervisor or is not satisfied with the supervisor's response, the Complainant is encouraged to speak with the General Manager. Supervisors and General Manager are required to report suspected Accounting Irregularities to the Board of Directors. The Board of Directors will create an Audit Committee which has specific and exclusive responsibility to investigate all reported violations. For suspected fraud or securities law violations, or when the Complainant is not satisfied or is uncomfortable with following RLECWD's open door policy, the Complainant should contact the General Manager directly.

RLECWD General Manager
P.O. Box 400
Rio Linda, CA 95673
(916) 991-1000
(916) 991-6616 fax

INVESTIGATION OF COMPLAINTS

1. The Audit Committee is responsible for investigating and resolving all reported complaints and allegations concerning Accounting Irregularities. The Audit Committee may retain independent legal counsel, accountants or other to assist in its investigation.

2. The Chair of the Audit Committee will notify the Complainant and acknowledge receipt of the reported suspected Accounting Irregularity within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted as a result of the investigation.
3. RLECWD shall retain records of complaints for a period of no less than seven years as a separate part of the records of the Audit Committee.

ACCOUNTING AND AUDITING MATTERS

The Audit Committee is responsible for addressing all reported concerns or complaints regarding accounting practices, internal controls or auditing. The General Manager is required to immediately notify the Board of Directors of any complaint of which he/she is aware and to work with the Committee until the matter is resolved.

ACTING IN GOOD FAITH

Anyone filing a complaint concerning a suspected Accounting Irregularity must be acting in good faith and have reasonable grounds for believing the information disclosed indicates an Accounting Irregularity. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

CONFIDENTIALITY

Complaints or submissions concerning a suspected Accounting Irregularity may be submitted on a confidential basis by the Complainant or may be submitted anonymously. All complaints or submissions will be kept confidential to all extent possible, consistent with the need to conduct an adequate investigation.

This Policy will become effective immediately upon approval of this Resolution.

Passed and Adopted this 16th Day of July 2012 by the following vote:

Ayes: Directors Frank Caron, Hood, Johnson, Trautman

Noes: None

Absent: Courtney Caron

Abstain: None

Gerald H. Trautman
President, Board of Directors

Attest:

Mary Henrici
Secretary of the Board

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS

June 30, 2011

Finding 2010-1: Other Post-Employment Benefits Accrual

Condition: In April 2004, the Governmental Accounting Standards Board issued Statement No. 45, *Accounting and Financial Reporting by Employers for Post-Employment Benefits Other than Pensions*, which was required to be implemented during the year ended June 30, 2010. The Statement requires that the District establish a liability for other post-employment benefits (OPEB) to be measured and reported according to certain parameters. Because the District did not have an actuarial study performed, an OPEB liability could not be recorded at June 30, 2010. Since the District is currently expensing the premiums paid for retirees as they are paid, the implementation of this Statement will result in the District being required to accrue an OPEB liability, which could be a significant amount. This Statement does not require the plan to be funded. In order to comply with generally accepted accounting principles, the District will need to have an actuarial valuation performed to determine the amount of liability to accrue.

Status: The District has not yet had the actuarial study performed, so an OPEB liability is not recorded as of June 30, 2011.

Finding 2010-2: Year-end Closing Procedures and Account Reconciliations

Condition: This year's audit and the District's closing process was delayed because of turnover in personnel, the lack of central oversight and the lack of resources dedicated to the close-out of the general ledger and preparing for the audit. The results were delays in producing closing entries, trial balances, schedules, reconciliations, account analyses, and other financial reports needed by management and the auditors and resulted in numerous audit adjustments. The large number of adjustments identified during the course of the audit indicates that the District does not have the internal controls in place to prevent or detect misstatements on a timely basis. To facilitate the closing process, a closing procedures checklist should be developed to ensure the District has all closing entries prepared before the start of the audit. The District needs to ensure that all balance sheet reconciliations and account balance analyses are prepared and reviewed. Areas where accounts and transactions were not adequately reconciled and evaluated for proper recording prior to the start of the audit fieldwork and areas that require improvement included the following:

- a. In preparing the reconciliations of accounts receivable and deposits payable from the billing system to the general ledger at June 30, 2010, the District had unreconciled differences of \$5,984 in accounts receivable and \$3,417 in deposits payable. In addition, the billing system showed a credit balance of \$5,444 in the surcharge receivables, which would indicate overpayments were made, that needs to be investigated. Reconciliation of the billing system to the general ledger should be performed throughout the year and at year-end so that such differences can be identified and corrected on a timely basis. Evaluation of the need for an allowance for doubtful accounts also needs to be performed at least annually. At June 30, 2010, receivables over 120 days past due totaled \$10,800.
- b. Until recently, the District had not been entering invoices in the accounts payable module as they were received, only as they were paid. As a result, the District had no way of knowing the amounts owed to vendors as of a given point in time. The District entered the invoiced owed but unpaid as of June 30, 2010 in preparation for the audit. Going forward, the District needs to generate an accounts payable trail balance and compare it to the general ledger on a regular basis.
- c. Procedures for accounting for long-term debt and related accounts needs to be established including: calculation and recording of interest payable on long-term debt, maintaining supporting documentation for the amounts recorded for the amortization of deferred amount on refunding and issuance costs related to the debt issuances of the District.
- d. The restricted net asset balances were not adjusted to agree to the corresponding restricted cash accounts. Procedures need to be established for adjusting restricted net assets to their proper balances.
- e. The District received land for well #14, but this land was not valued and recorded as an asset and contributed capital revenue in the general ledger. Procedures for identifying and quantifying donated assets need to be established.

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS (Continued)

June 30, 2011

- f. We noted that not all twelve months of cell tower lease revenue was recorded. The District needs to ensure the proper tracking of cell tower lease payments to ensure amounts are received on a timely basis or are accrued to ensure completeness of revenue.
- g. Prepaid expenses had not been adjusted since the prior fiscal year end. Procedures need to be established to ensure prepaid balances are expensed over the period for which the services were provided.
- h. The District had not performed a physical inventory count of its supplies inventory since June 30, 2009. Since a perpetual inventory system is not maintained, the inventory balance as of June 30, 2010 has not been revised. The District needs to ensure that a physical inventory count is performed at least annually so that the general ledger balance can be adjusted.
- i. A number of accrual adjustments were not reflected in the general ledger prior to the audit. These adjustments include accruing a receivable for the portion of the July water billings that relate to June, and May, accruing a liability for compensated absences and accruing the PERS retirement payments owed as of June 30.

We recommend that the District develop an accounting procedures manual to ensure continuity in processes when staff turnover occurs. Procedures should be in place to prepare the required reconciliations at year-end and throughout the year and post entries needed to close the books prior to the start of the audit.

Status: The District has addressed items b., f. and i. for the fiscal year 2010/11 audit. Unreconciled differences were noted between the billing system and the general ledger for the fiscal year 2010/11; however, we understand a reconciliation process has been put in place in fiscal year 2011/12. We also understand that a physical inventory of supplies has been taken during fiscal year 2011/12 to address item h. The remaining items still need to be addressed.

Finding 2010-3: Internal Controls and Separation of Duties

Condition: Certain procedures, which should be separated, are performed by the same person due to the District's small number of accounting staff. The lack of consistent segregation of duties is not unusual for small water districts; however, compensating controls need to be put in place to reduce the risk of misstatement or fraud. The following areas were identified where internal control deficiencies exist:

- a. The bookkeeper processes invoices, enters them into the accounts payable system, writes checks, has access to the general ledger, and receives the bank statements and reconciles the bank accounts, which is not an adequate segregation of duties. The previous long-time bookkeeper was also able to sign checks. To compensate for this lack of segregation of duties, the General Manager should receive all bank statements unopened and review them prior to forwarding to the bookkeeper. After completion of the monthly bank reconciliations by the bookkeeper, they should be reviewed and approved by the General Manager. Complete listings of checks written should be provided to the Board for review on a monthly basis.
- b. After accounts payable checks have been signed, they are returned to the bookkeeper, who prepares the checks for mailing. Signed checks should be mailed by someone not associated with the accounts payable function.
- c. Billing preparation, processing of customer payments, posting billing and payment information to customer accounts, making customer billing adjustments and follow-up on billing questions are all accomplished by the same employee, which is not an adequate segregation of duties. While a procedure is in place whereby the General Manager is to approve billing adjustments over \$100, the billing clerks have the ability to make these adjustments in the system without approvals. A review of all billing adjustments should be performed by the General Manager using the adjustment report generated from the system. The documentation of the authorization of billing write offs or adjustments needs to be maintained to document this approval.

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS (Continued)

June 30, 2011

- d. Currently all bank deposits are being made by the billing clerk, but this person also has access to the accounts receivable module, which is not an adequate segregation of duties. While it may not be feasible for physical bank deposits to be made by an individual who does not have access to the accounts receivable module, the bookkeeper, who does not have access to the billing system, should review the documents to ensure agreement of the deposit amount to the postings to customer accounts in the billing system and then compare the deposit slip to the bank statement.
- e. We noted that entries made to the payroll system, such as changes to the pay rates, were not being reviewed. We recommend that any payroll system changes be reviewed and approved by the General Manager. In addition, the General Manager should be reviewing the payroll registers and/or check stubs and documenting this review with an initial.
- f. Regular staff meetings should be held to identify and resolve issues and provide sound guidance.

The District needs to re-evaluate its internal control system to ensure adequate segregation of duties are in place, and reconciliation and review functions are taking place.

Status: Due to the timing of when this finding was first reported, the fiscal year was already past, so these internal controls have not yet been put into place.

Finding 2010-4: Financial Reporting

Condition: The District needs to establish a financial reporting system that includes the reporting of financial information to the Board on a regular basis. The District also needs to ensure that it complies with the California Government Code with regard to its investment reporting. The Government Code calls for quarterly reports on the District's financial holdings, a statement of compliance with the policy and a statement concerning the District's ability to meet its cash flow needs in the ensuing six months. We did not see where these investment reports were provided.

Status: Financial reports were not provided during fiscal year 2010/11; however, we understand that reports are being provided in fiscal year 2011/12.

Finding 2010-5: Organization of Accounting Records

Condition: We noted that the District's accounting records were disorganized making records difficult to locate for the audit, partly because of the records being confiscated by the District Attorney's Office. As a result, the District was not able to locate supporting invoices for 19 out of the 85 samples of expenses we selected for testing. We recommend the District develop accounting procedures for proper filing and storing of invoices and other accounting documentation.

Status: We noted an improvement in the maintaining of accounting records.

Finding 2010-6: Capital Asset Accounting

Condition: The District was unable to locate its capital asset listing and depreciation schedule and had to create one from the listing prepared by the prior auditor. The District needs to ensure it maintains its own capital asset listing and depreciation schedule, and that updates to the listing be made throughout the year.

The District records its capital asset additions as expenses instead of capital assets. The District needs to establish procedures to identify and record capital asset additions, including construction in progress, on the asset listing on a timely basis, to record depreciation expense and to track and record fixed asset disposals. We noted two vehicles were sold in fiscal year 2009/10, but these vehicles were not removed from the asset list. We also noted the District's capital asset listing still contained assets that had been disposed of years earlier and in several cases only a portion of the cost and accumulated depreciation of the assets was removed. Periodic inspections of capital assets need to be performed to ensure that recorded assets still exist. Reconciliations of the capital asset list to the general ledger need to be performed on a periodic basis, and adjustments to the general ledger need to be made timely.

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS (Continued)

June 30, 2011

We noted that the District's capital asset listing did not include intangible assets or land. As a result, amortization of the intangible assets was not calculated and recorded in the general ledger, which resulted in an audit adjustment being required. The District needs to ensure that a list of all land holdings, including those that were donated, and intangible assets is maintained as part of the capital asset listing.

Status: During the 2011 audit, we noted the District has now updated their capital asset listing. However, as part of the closing process, the District needs to reclassify capital assets from expense to capital assets and to include land and intangible assets on its asset listing.

Finding 2010-7: Surcharge Cash Account

Condition: We noted the District borrowed cash totaling \$37,500 from the restricted surcharge bank account to cover low or negative balances in the operating bank account. While we noted the funds were paid back to the surcharge account, any use or transfers of restricted funds should be reviewed and approved by management or the Board of Directors.

Currently when the capital improvements surcharge is collected, it is deposited into the operating bank account before being transferred to the surcharge bank account. Because revenues received in fiscal year 2010 exceeded the total funds deposited into the surcharge account by \$16,130, this implies that not all of the funds have been transferred from the operating bank account to the surcharge bank account. We recommend the surcharge amount collected for capital improvements be deposited directly into the surcharge bank account, if practicable to do so, or at a minimum, there be a quarterly reconciliation performed that compares revenues collected for the capital improvement surcharge with amounts deposited into the surcharge bank account to ensure surcharge receipts are recorded correctly, or whether a transfer needs to be made.

Status: The District believes it is not practical to deposit daily receipts into the surcharge account, but the District has plans to implement a process beginning in fiscal year 2011/12 where monthly, the billing system amounts are reconciled with the general ledger and the surcharge receipts for the month are transferred into the surcharge account from the District's operating account. In our fiscal year 2010/11 audit, we noted that revenues of approximately \$17,729 have not been recorded in the surcharge account. In addition, \$105,856 of expenditures were paid out of the surcharge account that do not appear to be qualifying expenditures. As a result, the operating account owes the surcharge account \$145,903 as of June 30, 2011.

Finding 2009-1: Organization of the District

Condition: The prior auditors observed the structure and the roles of the Board, management and employees and the effectiveness of the District's lines of communication. The prior auditors believed the District needs to review the tasks that have been assigned to the employees to ensure their completion but overall responsibilities of employees have not been formalized or properly defined. The prior auditors believed the District needs to rebalance the current workloads to ensure that the proper functions are performed by the proper employee, therefore ensuring proper internal control. Additionally, balanced workloads will ensure that employees have the appropriate time to dedicate to the accurate completion of their tasks and will also improve employee morale.

Status: The organization structure and workloads do not appear to have been revised since the prior audit. Special attention needs to be given to addressing the internal control issues identified in Finding 2010-3 as far as workload re-assignments.

Finding 2009-2: Develop an Organization Chart

Condition: The District does not have an organization chart. There is a natural tendency to dismiss the need for an organization chart in a small business where management deals more or less directly with each employee, and where all personnel know each other and are generally aware of each other's area of responsibility. However, without an organization chart, there may be confusion about who is really accountable for particular areas and to whom employees are responsible. The result could be that some areas of operations do not receive adequate attention or

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS (Continued)

June 30, 2011

that duplicative or contradictory actions are taken. A good organization chart can prevent such misunderstandings and also increase administrative efficiency and control in the following ways:

- Indicate whether there is appropriate allocation of operating and supervisory responsibility.
- Indicate whether there is an adequate separation of duties.
- Inform management, new employees, and others of the District's management and operating style.
- Provide information for management to monitor and inquire into operations and procedures, assign new duties or responsibilities that may arise, or make reassignments when employee turnover, promotions, operational needs, desire for better separation of duties, or other circumstances call for it.

The prior auditor recommended that management prepare and maintain a chart of organization in sufficient detail to indicate the District's major areas of operations, the person responsible for each area, and who each supervisor reports to as well as which employees report to each supervisor. The chart should be updated whenever there is significant employee turnover or changes in operations.

Status: An organization chart was not in place as of June 30, 2011. However, we noted management has recently developed an organization chart for Board approval.

Finding 2008-3: Budget

Condition: The auditor's opinions for the past three fiscal years have been issued with the contingency of a going concern. This states to the readers of the District's financial statements that the District's auditors have found substantial doubt about the District's ability to maintain operations at sufficient levels to remain in business. In response to their concerns, former management provided several updated budgets which were unclear in nature therefore ineffective. The fundamental purpose of budgetary control is to plan beforehand the most efficient operation and then maintain operations according to the budget.

Budgets stimulate early identification of operational problems and help ensure that timely decisions are made for resolving the problems. Budgetary control also results in better coordination and control of the District's efforts and in more effective use of the District's resources.

We believe that the District could more accurately evaluate operational performance by revising current budgeting procedures to provide for the following:

- Obtaining estimates of future operational data from field operations, and administrative personnel.
- Updating the current year's budget at least quarterly for operational changes.
- Communicating operational performance to appropriate personnel.

It is understood that the nature of the District's operations, as well as the uncertainties inherent in economic activity, makes predications of the future subject to frequent change. Thus, we recommend that the District perform periodic reviews for variances between actual and budgeted results and document the variances between actual and budgeted results. Budget variances may indicate possible problems that can be identified quickly and followed-up. Variances can also be caused by erroneous assumptions, not business or economic factors. If investigations of budget variances suggest that the budget is inaccurate, or if business conditions vary from expectations, the budget should be revised to reflect current conditions or more reasonable estimates.

Status: The District has been through numerous management changes over the past few years such that there has not been continuity in the managers preparing the budget and monitoring variances throughout the fiscal year. As discussed in the Finding 2010-4, the District needs to ensure it has an adequate financial reporting system in place such that sound management decisions can be made.

RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

SCHEDULE OF PRIOR YEAR FINDINGS (Continued)

June 30, 2011

Finding 2007-2: Accounting Policies

Condition: The prior auditor's review of internal controls brought to their attention the fact that the District has no current formal accounting policies and procedures. Having an up-to-date accounting policies and procedures manual will provide for efficient training of new staff, effective and timely financial reporting and consistency within the Administrative department. We recommend the District prepare an accounting policies manual that should address management's risk factors in relation to financial reporting.

Status: Because the District does not have an accounting policies and procedures manual, the departure of the long-time bookkeeper has made it difficult for successor bookkeepers to ensure continuity in accounting functions and to follow the work of the predecessor bookkeeper.



Items for Discussion and Action

Agenda Item: 6.5

Date: February 25, 2019

Subject: Consider Approving a Professional Services Agreement for Engineering Design and Bidding Services for the Well #16 Groundwater Pumping Station

Staff Contact: Timothy R. Shaw, General Manager, and Mike Vasquez, District Engineer

Recommended Committee Action:

This item did not go to any Board Member standing committee. As appropriate, a panel comprised of the District Engineer, General Manager and Operations Superintendent reviewed and ranked the four responses for engineering firms.

Current Background and Justification:

Staff completed the Request for Proposals (RFP) process. Proposals were received from four firms, and were reviewed by the proposal review committee consisting of the General Manager, Operations Superintendent, and District Engineer. The proposal review committee determined that Domenichelli & Associates, Inc. was the most qualified. The proposal review committee then opened the sealed fee estimate and determined that Domenichelli & Associates' fee was reasonably priced for the services to be provided.

Although Domenichelli & Associates' fee was determined to be reasonably priced, it should be noted that the District's previously prepared budget (Affinity) to perform the scope of services is insufficient. Domenichelli & Associates' fee is \$197,425, and the District's budget is \$104,519, a difference of \$92,906.

The overage, or difference between what Affinity estimated as the cost for engineering and Domenichelli's bid, was anticipated. Affinity prepared the cost estimates in February 2018 for the loan process. Affinity assumed Affinity would be completing their design and their cost estimate reflected such. Domenichelli cannot use any of the work product for the Affinity Well 16 efforts. Throughout the Affinity resignation, interim District Engineer, EKI transition, the Planning Committee has discussed the impact of the transitions of ultimate costs for design of Well 16. Future potential similar negative consequences have been precluded via the now established separation of duties between District Engineer and third-party design engineering firm.

The General Manager has informed Fieldman Rolapp and Opus Bank (municipal finance team) about the substantial difference between estimated cost for design in February 2018 and the actual cost being considered tonight. Opus understands the District's explanation, and Opus Bank will make a memo for their files. As discussed with Opus and Fieldman, the loan amount is fixed. If this \$92,906 overage cannot be sufficiently mitigated somewhere in the construction and/or engineering cost for Well #16 and/or Well #10. The feasibility of the second project (Well #10) may be at risk. We need to factor this into the Board's future decision on or before September 2019, when the Board will decide how much of the remaining \$3.7 million to draw from the construction account for the loan.

Approval of the professional services agreement enables the District to prepare plans and specifications to solicit bids for construction of the Well #16 Groundwater Pumping Station. The timing associated with this approval allows for design plans and specification to be 100% complete in August 2019, and will include a vetted engineer's estimate of probable construction costs to be used to determine next steps in assessing utilization of the Opus Bank loan for construction of hexavalent chromium mitigation facilities.

The draft agreement, including the scope of services, is included with your Board packet. The agreement is the District's standard form without changes.

Conclusion:

The General Manager and the District Engineer recommend that the Board approve the Professional Services Agreement with Domenichelli & Associates, Inc. for Engineering Design and Bidding Services for the Well #16 Groundwater Pumping Station and it is further recommended that the Board authorize staff to execute the agreement subject to receipt of all required documentation.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: ____ Green: ____ Ridilla: ____ Harris: ____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.5

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Consider Approving a Professional Services Agreement for Engineering Design and Bidding Services for
the Well #16 Groundwater Pumping Station

2/22/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

for standard
agreement-
reviewed repeatedly
by Legal Counsel
JH

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

**RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT
PROJECT: Well 16 Equipping Design and Bidding Services
PROJECT NO.: TBD**

AGREEMENT FOR CONSULTING SERVICES

THIS ENGINEERING SERVICES AGREEMENT ("Agreement") is made and entered into this 26th day of February, 2019, by and between the Rio Linda Elverta Community Water District, a county water district of the State of California ("District") and Domenichelli & Associates, Inc., ("Consultant") (each individually a "Party" and collectively the "Parties"). There are no other parties to this Agreement.

RECITALS

A. Consultant represents to District that it is a duly qualified and licensed firm experienced in providing professional engineering consulting services in support of the Well 16 Equipping Design and Bidding Services Project.

B. In the judgment of the Board of Directors of District, it is necessary and desirable to employ the services of Consultant to perform consulting services on the Well 16 Equipping Design and Bidding Services Project (the "Project").

C. Consultant has been selected as the most qualified to perform the services for the Well 16 Equipping Design and Bidding Services Project resulting from their submitted Proposal received on February 1, 2019, in response the District's Request for Proposals, dated December 18, 2018. A description of such services is attached hereto as **Exhibit A** Scope of Services ("Services").

D. All compensation shall be based on a time and materials not to exceed basis using billing rates and budget provided in the attached **Exhibit A** Scope of Services.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 18 of this Agreement, Sections 1 through 18 shall prevail.

Section 2. Term. This Agreement shall commence on the Effective Date and continue for three (3) years ("Term"), provided that either Party may terminate the Agreement by providing thirty (30) days written notice to the other Party.

Section 3. Effective Date. This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”). Consultant, however, shall not commence the performance of the Services until it has been given notice by District (“Notice to Proceed”).

Section 4. Work.

(a) *Services.* Subject to the terms and conditions set forth in this Agreement, Consultant shall perform the Services as described in **Exhibit A**. Consultant shall not receive additional compensation for the performance of any services unless they are approved by the District in writing.

(b) *Modification of Services.* Only the District’s General Manager may authorize extra or changed work. Failure of Consultant to secure such a written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further waives any and all right or remedy by way of restitution or quantum meruit for any and all extra work performed without such express and prior written authorization of the General Manager.

Section 5. Time of Performance. Consultant warrants that it will commence performance of the Services within thirty (30) calendar days of the Notice to Proceed, and shall conform to the requirements of the Scope of Services provided in **Exhibit A**. The time of performance is a material term of this Agreement relied on by District in entering into this Agreement.

Section 6. Payment. The District shall pay Consultant for all Services described in **Exhibit A**, which are performed and invoiced by Consultant.

Consultant shall submit monthly invoices to District for Services performed and expenses incurred during the preceding month. District shall pay Consultant within 30 days of receipt of each invoice. Each invoice shall identify all services performed and any expenses for which reimbursement is requested. Prior to payment, District may require Consultant to furnish supporting information and documentation for all charges for which payment is sought.

Section 7. Representations of Consultant. District relies upon the following representations by Consultant in entering into this Agreement:

(a) *Standard of Care.* District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby warrants that it is qualified to perform the Scope of Services as provided in **Exhibit A** and that all of its services will be performed in accordance with the generally accepted engineering consultant practices and standards, in compliance with all applicable federal, state and local laws.

(b) *Independent Consultant.* In performing the services hereinafter specified, Consultant shall act as an independent Consultant and shall have control of the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District, and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits

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District provides its employees. In the event District exercises its right to terminate this Agreement, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between District and Consultant.

(c) *Authority.* Consultant represents that it possesses the necessary licenses, permits and approvals required to perform the Services or will obtain such licenses, permits or approvals prior to the time such licenses, permits or approvals are required. Consultant shall also ensure that all sub-consultants are similarly licensed and qualified. Consultant represents and warrants to District that Consultant shall, at Consultant's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice Consultant's profession at the time the Services are rendered including registration for public works projects with the Department of Industrial Relations.

(d) *No Conflict of Interest.* Consultant represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement. Consultant further promises that in the performance of this Agreement, no person having such interest will be knowingly employed. If requested to do so by District, Consultant shall complete and file, and shall cause any person doing work under this Agreement to complete and file, a "Statement of Economic Interest" with the Sacramento County Clerk disclosing their financial interests.

(e) *Prevailing Wage.* Consultant agrees to pay all craftsmen and laborers required as part of the consulting services at least the minimum prevailing wage required by the Department of Industrial Relations of the State of California. Consultant understands and agrees that it is Consultant's responsibility to determine the minimum prevailing wage and to report compliance as required under California law.

Section 8. Conformity with Law and Safety. Consultant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. Consultant's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Consultant shall immediately notify the District's risk manager by telephone. If any accident occurs in connection with this Agreement, Consultant shall promptly submit a written report to District, in such form as the District may require. This report shall include the following information: (a) name and address of the injured or deceased persons; (b) name and address of Consultant's sub-consultant, if any; (c) name and address of Consultant's

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liability insurance carrier; and (d) a detailed description of the accident, including whether any of District's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Consultant shall immediately notify District. Consultant shall not store hazardous materials or hazardous waste within the District limits without a proper permit from District.

Section 9. Excusable Delays. Consultant shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a “Force Majeure” event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Consultant. Force Majeure does not include: (a) Consultant’s financial inability to perform; (b) Consultant’s failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Consultant’s failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Consultant.

Section 10. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

Section 11. Ownership and Disclosure of Work Product. District shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, specifications, surveys, copies of correspondence, maps, or other pertinent data and information gathered or computed by Consultant (“Work Product”) in the performance of and prior to termination of this Agreement by District or upon completion of the work pursuant to this Agreement. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of District, during the term of this Agreement and for a period of one hundred eighty (180) days following expiration of the term of the Agreement.

When this Agreement is terminated, Consultant agrees to return to District all documents, drawings, photographs and other written or graphic material, however produced, that it received from District, its Consultants or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

Section 12. Termination by Default. If a Party should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violates any of the terms of this Agreement (the “Defaulting Party”), the other Party shall give notice to the Defaulting Party and allow such Party ten (10) days to correct such deficiency. If the Defaulting Party does not correct such deficiency, the other Party may immediately terminate this Agreement by giving written notice of such termination, stating the reason for such termination. In such event, Consultant shall be entitled to receive payment for all services satisfactorily rendered, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by

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virtue of any breach of this Agreement by Consultant. If payment under this Agreement is based upon a lump sum in total or by individual task, payment for services satisfactorily rendered shall be an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any sustained by District by virtue of any breach of this Agreement by Consultant.

(a) Consultant shall deliver copies of all Work Product prepared by it pursuant to this Agreement.

(b) If District terminates this Agreement before District issues the Notice to Proceed to Consultant or before Consultant commences any Services hereunder, whichever last occurs, District shall not be obligated to make any payment to Consultant. If District terminates this Agreement after District has issued the Notice to Proceed to Consultant and after Consultant has commenced performance under this Agreement, District shall pay Consultant the reasonable value of the Services rendered by Consultant pursuant to this Agreement prior to termination of this Agreement. District shall not in any manner be liable for Consultant's actual or projected lost profits had Consultant completed the Services. Consultant shall furnish to District such financial information, as in the judgment of the District Manager, is necessary to determine the reasonable value of the Services rendered by Consultant prior to termination.

(c) Except as provided in this Agreement, in no event shall District be liable for costs incurred by or on behalf of Consultant after the date of the notice of termination.

Section 13. Liability for Breach. Neither Party waives the right to recover damages against the other for breach of this Agreement including any amount necessary to compensate District for all detriment proximately caused by Consultant's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. District reserves the right to offset such damages against any payments owed to Consultant. District shall not in any manner be liable for Consultant's actual or projected lost profits had Consultant completed the Services required by this Agreement. In the event of Termination by either Party, copies of all finished or unfinished Work Product shall become the property of District. Notwithstanding the above, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

Section 14. Insurance Coverage. During the Term, the Consultant shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A. M. Best's rating of no less than A VII, and will provide the District with written proof of said insurance. Consultant shall maintain coverage as follows:

(a) *Professional Liability:* professional liability insurance for damages incurred by reason of any actual or alleged negligent act, error or omission by sub-consultant in the amount of One Million Dollars (\$1,000,000.00) combined single limit each occurrence and annual aggregate.

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If the Consultants prime agreement requires the sub-consultant to carry additional Professional Liability insurance the sub-consultant shall increase their Professional Liability insurance to meet the prime agreement's requirements for the duration of the Project.

(b) *General Liability.* Consultant shall carry commercial general liability insurance in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence, covering bodily injury and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each Project or the general aggregate shall be no less than Two Million Dollars (\$2,000,000.00).

(c) *Worker's Compensation Insurance and Employer's Liability.* Consultant shall carry workers' compensation insurance as required by the State of California under the Labor Code.

(d) *Automobile Liability Insurance.* Consultant shall carry Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

(e) *Policy Obligations.* Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(f) *Material Breach.* If Consultant, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Consultant, District may deduct from sums due to Consultant any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

Section 15. Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend, indemnify hold harmless and release District, and District's elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("District's Agents") from and against any and all actions, claims, loss, cost, damage, injury (including, without limitation, disability, injury or death of an employee of Consultant or its sub-consultants), expense and liability of every kind, nature and description that arise out of, pertain to or relate to acts or omissions of Consultant, or any direct or indirect sub-consultant, employee, Consultant, representative or agent of Consultant, or anyone that Consultant controls (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify District and District's Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of District or District's Agents, but shall apply to all other Liabilities. With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against District and District's Agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or

compensation payable to or for Consultant or its agents under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Section 16. Notices. Any notice or communication required hereunder between District and Consultant must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District: Rio Linda/Elverta Community Water District
 730 L Street
 Rio Linda, California 95673
 Attention: Timothy R. Shaw, General Manager
 Tel: (916) 991-8891

With courtesy copy to: Churchwell White LLP
 1414 K Street, Third Floor
 Sacramento, California, 95814
 Attention: Barbara A. Brenner, Esq.
 Tel: (916) 468-0950

If to Consultant: Domenichelli & Associates, Inc.
 1101 Investment Blvd., Suite 115
 El Dorado Hills, CA 95762
 Tel: (916) 933-1997

Section 17. Exhibits. All "Exhibits" referred to below or attached to herein are by this reference incorporated into this Agreement:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Exhibit A:	Scope of Services

Section 18. General Provisions.

(a) *Modification.* No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

(b) *Waiver.* No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

(c) *Severability.* If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

(d) *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(e) *Audit.* District shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to District under this Agreement.

(f) *Entire Agreement.* This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

(g) *Attorney's Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(h) *Time is of the Essence.* Time is of the essence in this Agreement for each covenant and term of a condition herein.

IN WITNESS WHEREOF, this Agreement has been entered into by and between District and Consultant as of the Effective Date.

DISTRICT:

Rio Linda Elverta Community Water District,
a county water district of the State of
California

By: _____
Timothy R. Shaw, General Manager

Date: _____

Approved as to Form:

By: _____
Barbara A. Brenner, District Counsel

CONSULTANT:

Domenichelli & Associates, Inc.

By: _____
Signature

By: _____
Name and Title

Date: _____

EXHIBIT A

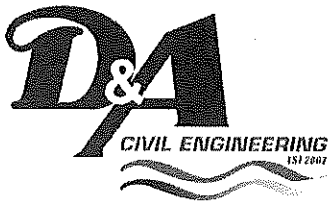
SCOPE OF SERVICES

Consultant shall perform and complete the services for the Well 16 Equipping Design and Bidding Services Project pursuant to their submitted Proposal received on February 1, 2019, in response to the District's Request for Proposals, dated December 18, 2018.

More specifically, consultant shall perform and complete the Scope of Services in accordance with the details and specifications described below and in the attached Scope of Services, which includes a Completion Schedule and description of the Compensation: See attached Scope of Services and Exhibit 1 – Conceptual Well 16 Site Plan and Connection to Distribution System.

In addition, the Scope of Services for the Well 16 Equipping Design and Bidding Services Project includes, but is not limited to, design of the following elements:

- New well pump (1500+/- gpm) and well pedestal;
- Onsite pump discharge and pump-blowoff piping;
- Surge tank (if needed);
- Chlorination facilities;
- Electrical facilities;
- Building to house chemical, electrical and controls, and storage;
- SCADA integration into District existing network, including mast for AMI and SCADA;
- Emergency generator;
- Off-site piping to the distribution system;
- General site preparation, paving, and fencing;
- Drainage provisions;
- Pump to waste roadside drainage swale on the north side of and parallel to U Street, to an existing culvert located at the northeast corner of the U Street and Dry Creek Road intersection;
- 8-foot tall CMU sound wall on the west, north, and east boundaries of the site;
- Wrought iron on the southern boundary;
- Remote gate.



DOMENICHELLI AND ASSOCIATES, INC.
CIVIL ENGINEERING

Scope of Services

The following scope provides a description of services and deliverables to be provided to the District for the Well 16 Equipping Project.

Task 1 – Project Management and Quality Control/Assurance

Task 1.1 Project Kick-off Meeting

A Project kick-off meeting will be held to review and refine the Project scope and schedule among other Project-related topics. This meeting will serve as a platform to better understand the District's current water system operations and constraints and discuss with District O&M staff their specific request regarding site functionality, system controls, equipment preferences, and the pros and cons of the Well 15 site which will serve as a base model for the Well 16 facility.

Task 1.2 Project Scheduling

A Preliminary Project Design Schedule is shown in Attachment A. D&A will work with the District to refine this schedule to meet their needs. The schedule allows for sufficient time to complete the design and permitting by August 2019.

Task 1.3 Coordination and Progress Reports

D&A will coordinate with District staff, utilities found on site, other Agencies, and our sub-consultants as required during the course of work. D&A will prepare and submit monthly progress reports along with invoices. The report will include progress to date, anticipated progress for the next period, schedule updates, design team and District action items, status of deliverables, exceptions to the schedule, if any and suggested solutions to bring the Project back on schedule as required.

Task 2 – Site Survey and Utility Investigation

D&A will send utility "A Letter" to the utilities identified through USA North database and those known to exist based on District knowledge. The information obtained will be reviewed and incorporated into the base maps. Follow-up utility "B&C Letters" will be sent to those utilities that will include the design plans requesting verification and/or documenting that there are no utility conflicts.

D&A will utilize the original site survey performed by AR Divers for the Project Design. The survey will be field verified and updated to include the Well 16 production well and any new or changed features. In particular, additional detail will be provided on the drainage swale. The survey may be expanded to include more of the downstream drainage features to ensure that the design does not adversely affect drainage.

Task 3 – Permitting

The following is the scope items related to project permitting. Our fee does not include any permit fees. D&A will assist the District with permit applications and processing. All fees associated with permits will be paid by the District.



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT

Equipping of Well 16 Project

Task 3.1 Well Permit/SWRCB Drinking Water Source Assessment

D&A will assist District staff with the District's permit amendment application to add well and appurtenances onto the District's existing water system permit by performing the following tasks:

1. Prepare SWRCB Drinking Water Source Assessment Plan (DWSAP) – We understand that the well location was sited to ensure that it would meet State requirements for separation now and in the future. The location takes into account future sewer facilities planned as part of the ESP. D&A will obtain all existing research conducted by Affinity Engineering and provide new information as needed to prepare the DWSAP
2. Prepare technical engineering report to support permitting of wellhead treatment (chlorination) – The technical report will utilize the information provided with the Well 16 Completion Report (Prepared by Wood Rodgers) along with past water quality information provided by BSK Laboratories. D&A provided a similar report for Well 15 that was used for successful permitting at that site
3. Attend one (1) meeting with District and SWRCB staff

Task 3.2 SWPPP

After reviewing the Project limits and scope, D&A believes that a Storm Water Pollution Prevention Plan (SWPPP) will be required for this site as the total Project area including the offsite piping is likely to exceed one (1) acre. D&A will provide a draft and final SWPPP document to be included with the contract specifications. It is recommended to develop the SWPPP during design to expedite Project permitting. Sara Rogers is currently linked with the District through the SWRCB SMARTS system. This will allow her to quickly enter the information required for the Project Notice of Intent and subsequent documentation.

Task 3.3 SMUD Application

Frisch Engineering will prepare draft and final application for site electricity service by SMUD and will support the District with the application process.

Task 3.4 Air Quality Control Board Permit

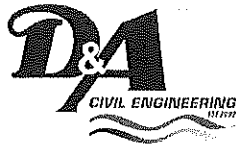
D&A will assist the District with the application of the Air Quality Control Board permit for the natural gas generator as part of the project.

Task 4 – Geotechnical Investigation

D&A will utilize Youngdahl Consulting Group to conduct the Geotechnical Investigation of the site and prepare a Geotechnical Report to be used for the design of the site grading and pavement, concrete slabs, control building, and CMU sound wall. The geotechnical investigation will include the following:

Boring Operations

Youngdahl proposes to further explore subsurface conditions by excavating 2 exploratory borings to a depth of up to 20 feet below existing grades. An experienced geologist or engineer will continuously observe the borings, log the subsurface conditions, collect representative soil samples, and transport all samples to laboratory for further visual examination and testing. Due care will be exercised while working at the site, but it should be realized that some surface disturbance is unavoidable and that complete restoration of any disturbed areas is not included in the scope of work.



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
Equipping of Well 16 Project

As required by law, Youngdahl will notify Underground Service Alert (USA) North to locate all underground utilities on the site. The procedures require a site reconnaissance prior to performing the fieldwork to mark the site and test location and a minimum of 2 working days' notice to the USA North services.

The Sacramento County Environmental Health Department charges permits on a base rate of \$426.00 plus \$216.00 per hour beyond their base time. Based on our experience on other Projects, we have allocated an additional 2 hours into this estimate. Additional time, if charged, will be billed above the estimate in this proposal.

Laboratory Testing

Youngdahl proposes to conduct a series of geotechnical laboratory tests on selected soil samples obtained from the exploration in order to evaluate the engineering and index properties of the site subsurface materials.

Report Preparation

Youngdahl will subsequently analyze all field exploration data, laboratory testing data, and research findings in order to develop conclusions and recommendations concerning the geotechnical aspects of the Project. The report will include our conclusions and recommendations regarding:

- Site preparation and grading
- Design criteria for footings and slabs-on-grade
- Seismic design criteria and liquefaction potential
- Underground utility construction
- Flexible pavement design
- Explanation of report limitations
- Recommendations for further geotechnical study, if necessary

Task 5 – Basis of Design Report

D&A has reviewed the Well 16 Completion Summary Report prepared by Wood Rodgers in June 2018, the water quality testing results performed by the District using BSK laboratory in November 2017, and the CEQA documents prepared in 2017. In addition, D&A has reviewed the survey completed for the well site by AR Divers in 2017. D&A will review any other additional existing documents provided by the District and prepare a Basis of Design Report (BODR) that will layout the basis of the Well 16 Equipping Project with at least the following:

1. Information gathered during the kick-off meeting and throughout the preliminary design process
2. Site base map and easement/right-of-way limits
3. Findings from the geotechnical investigation including sub-consultant recommendations
4. Pump vendor information regarding pump type and size
5. Basis of design of the electrical system, controls, instrumentation, and general integration into the District's SCADA system
6. Standby generator design criteria and any permit or regulatory requirements
7. 30% Preliminary design plans and specifications outline
8. Chlorination equipment and configuration
9. Waste discharge equipment and configuration
10. Evaluation of surge tank requirements

At the 30% design level, rather than a specification book, an outline of anticipated specifications will be provided along with design plans that will include draft layouts, preliminary sections, schematics, and hydraulic information.



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT

Equipping of Well 16 Project

The following plan sheets will be included in the 30% design submittal:

- G1 COVER SHEET
- G2 NOTES
- G3 ABBREVIATIONS & SYMBOLS

- C1 OVERALL SITE PLAN & SHEET KEY
- C2 PRELIMINARY SITE GRADING, PAVING & DRAINAGE PLAN
- C3 PRELIMINARY ACCESS ROAD GRADING & DRAINAGE
- C4 PRELIMINARY WELL SITE PIPING PLAN

- P1 PIPELINE PLAN (NO PROFILES INCLUDED)
- P2 PIPELINE PLAN (NO PROFILES INCLUDED)
- P3 PIPELINE PLAN (NO PROFILES INCLUDED)

Task 6 – Final Design

After the 30% design, D&A will prepare Project plans and specifications in 60%, 95%, and 100% submittals for the District to review and comment. Technical review meetings will be held after each submittal to discuss the District's comments. Since D&A prepared the plans and specifications for the Well 15 facility, we can easily utilize those existing AutoCAD file formats and details to quickly prepare the Well 16 facility plans. The following is a preliminary sheet list for the project.

- G1 COVER SHEET
- G2 NOTES
- G3 ABBREVIATIONS & SYMBOLS

- C1 OVERALL SITE PLAN & SHEET KEY
- C2 SITE GRADING, PAVING & DRAINAGE PLAN
- C3 ACCESS ROAD GRADING & DRAINAGE
- C4 WELL SITE PIPING PLAN
- C5 BUILDING & WELL PIPING PLAN
- C6 BUILDING PIPE SECTIONS & DETAILS
- C7 CHEMICAL FEED SYSTEM & DETAILS
- C8 CHEMICAL FEED SYSTEM ELEVATIONS
- C9 DETAILS
- C10 DETAILS
- C11 FENCE DETAILS

- P1 PIPELINE PLAN AND PROFILE SHEET
- P2 PIPELINE PLAN AND PROFILE SHEET
- P3 PIPELINE PLAN AND PROFILE SHEET
- P4 PIPELINE DETAILS
- P5 PIPELINE CONNECTION DETAILS

- A1 BUILDING ELEVATIONS
- A2 ARCHITECTURAL NOTES & DETAILS

- S1 GENERAL NOTES



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
 Equipping of Well 16 Project

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- S2 GENERAL NOTES
- S3 TYPICAL DETAILS
- S4 TYPICAL DETAILS
- S5 FOUNDATION AND ROOF PLANS
- S6 SECTIONS
- S7 DETAILS

- E1 ELECTRICAL SYMBOLS AND ABBREVIATIONS
- E2 INSTRUMENTATION SYMBOLS AND ABBREVIATIONS
- E3 WELL PUMP P&ID
- E4 CHEMICAL SYSTEM P&ID
- E5 MISCELLANEOUS SYSTEMS P&ID
- E6 ONE-LINE DIAGRAM AND SWITCHBOARD ELEVATION
- E7 WELL PUMP VFD CABINET
- E8 CONTROL PANEL ELEVATION AND LAYOUT
- E9 CONTROL PANEL WIRING DIAGRAMS
- E10 BUILDING LIGHTING AND RECEPTACLE PLAN
- E11 BUILDING POWER PLAN
- E12 BUILDING AREA ELECTRICAL PLAN
- E13 SITE ELECTRICAL PLAN
- E14 ELECTRICAL DETAILS
- E15 ELECTRICAL DETAILS 2

Task 6.1 60% Design Submittal

D&A will utilize the District's comments from the 30% design to produce 60% design level documents. The 60% design level submittal will include a draft of the technical specifications and design plans that include revisions to the previously submitted plans, additional sections, and special and typical details.

Task 6.2 95% Design Submittal

D&A will use District comments from the 60% design to produce 95% and 100% design level documents. This submittal will include final technical specifications and design plans that include revisions to the previously submitted plans, plus added detail to plans, additional sections and special and typical details to assemble a biddable set of documents. 95% design plans and specifications will be considered biddable documents. We anticipate only minor comments and revisions to complete the 100% bid documents. References to District Standard Drawings and Specifications will be made as appropriate.

Task 6.3 100% Design Submittal

After all comments and revisions have been addressed, D&A will provide 100% bid documents. Specifications will be prepared at the 60%, 95%, 100% and bid level submittals using Construction Specifications Institute (CSI) and District formatting as required. The technical specifications will be generated from District standard specifications or D&A standard specifications as required. The front-end specifications (Division 0 and 1) will utilize the District standard that will be updated as required for Project-specific information.

Frisch Engineering will provide electrical design for the Project. They will produce electrical drawings and specifications for new (~350 Hp) vertical turbine well pump station similar to Well 15 and the revisions defined in the 30% preliminary design. The station design will include a new utility service, meter main switchboard, and VFD pump control panel.



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
 Equipping of Well 16 Project

A PLC control panel will be designed similar to Well 15 or to include non-proprietary equipment as decided during the pre-design portion of this Project. There are benefits to each and Frisch will advise on their experience in this election.

Task 7 – Bid Support Services

D&A will support the District during the bidding process by performing the following activities:

Task 7.1 Pre-Bid Meeting

- Coordinate and conduct mandatory pre-bid meeting
- Prepare and distribute meeting minutes

Task 7.2 Bidding Support

- Maintain bidders list
- Create and distribute Project Dropbox or Box link that allows bidders to easily download bid packages and addenda at no cost
- Prepare responses to bidder’s inquiries during bid period
- Prepare and distribute addenda
- Review construction bids received and prepare a recommendation to District regarding bid responsiveness, bidder capabilities, and contract award
- Prepare conformed sets of plans and specifications for construction as directed by District

Services not included:

- Engineering Services during Construction are not included at this time. These services will be negotiated following final design.
- Boundary or property acquisition services. It is our understanding that the property has been acquired by the District and does not require additional documentation or agreement services.
- All fees associated with permits.



RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
Equipping of Well 16 Project

Fee Estimate

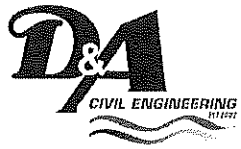
The following fee proposal provides an overview of the level of effort by team members during each task of the Well 16 Equipping Project, as well as sub-consultant costs and reimbursable expenses.



Domenichelli & Associates, Inc.

**RLECWD Well 16 Equipping Project
PROPOSED Fee Estimate**

	Billing Rates & Hours					Total	Expenses	Sub-Consultants				Estimated Fee
	QA/QC	Project Mgr	Engineering	Engineering	Drafting			Geotech	Surveying	Electrical	Structural	
	Joe D.	Sara R.	Daryl H.	Christine R.	Jim C.			Youngdahl	AR Divers	Frisch Eng	Burne Eng	
	185	165	145	125	100	D&A labor	\$ 5,000					
1 Project Management												
1.1 Project Kick-Off Meeting	3	3	3	3		\$ 1,860						\$ 1,860
1.2 Project Schedule	2	8		8		\$ 2,690						\$ 2,690
1.3 Coordination and Progress Reports		40				\$ 6,600						\$ 6,600
2 Topographic Survey						\$ -						
2.1 Update Survey		4		4		\$ 1,160		\$ 5,250				\$ 6,410
2.2 Utility Coordination		4		12		\$ 2,160						\$ 2,160
3 Permitting						\$ -						
3.1 Well Permit/ SWRCB Drinking Water Source Assesment		8	4	24		\$ 4,900						\$ 4,900
3.2 SWPPP		8		16	8	\$ 4,120						\$ 4,120
3.3 Smud Application		8		8					\$ 2,100			\$ 4,420
3.4 Air Quality Control Board Permit		8		16		\$ 3,320						\$ 3,320
4 Geotechnical Investigation		2		4		\$ 830		\$ 7,324				\$ 8,154
5 Basis of Design Report	4	12	30	60	20	\$ 16,570			\$ 6,573			\$ 23,143
6 Final Design						\$ -						
6.1 60% Design Submittal	8	16	36	80	200	\$ 39,340			\$ 14,847	\$ 5,670		\$ 59,857
6.2 95% Design Submittal	8	16	36	40	100	\$ 24,340			\$ 8,915	\$ 5,355		\$ 38,610
6.3 100% Design Submittal	8	16	20	24	20	\$ 12,020			\$ 3,360	\$ 3,171		\$ 18,551
7 Bid Support Services						\$ -						
7.1 Pre-Bid Meeting		4	4	4		\$ 1,740						\$ 1,740
7.2 Bidding support		12	4	8		\$ 3,560					\$ 662	\$ 4,222
8 Expenses (Printing, travel, etc)						\$ -	\$ 5,000			\$ 1,670		\$ 6,670
Sub-Total	0	0	0	0	0	\$ -	\$ 5,000	\$ 7,324	\$ 5,250	\$ 37,464	\$ 14,858	\$ 69,895
Total Hours	33	169	137	311	348	\$ 125,210						\$ 197,425



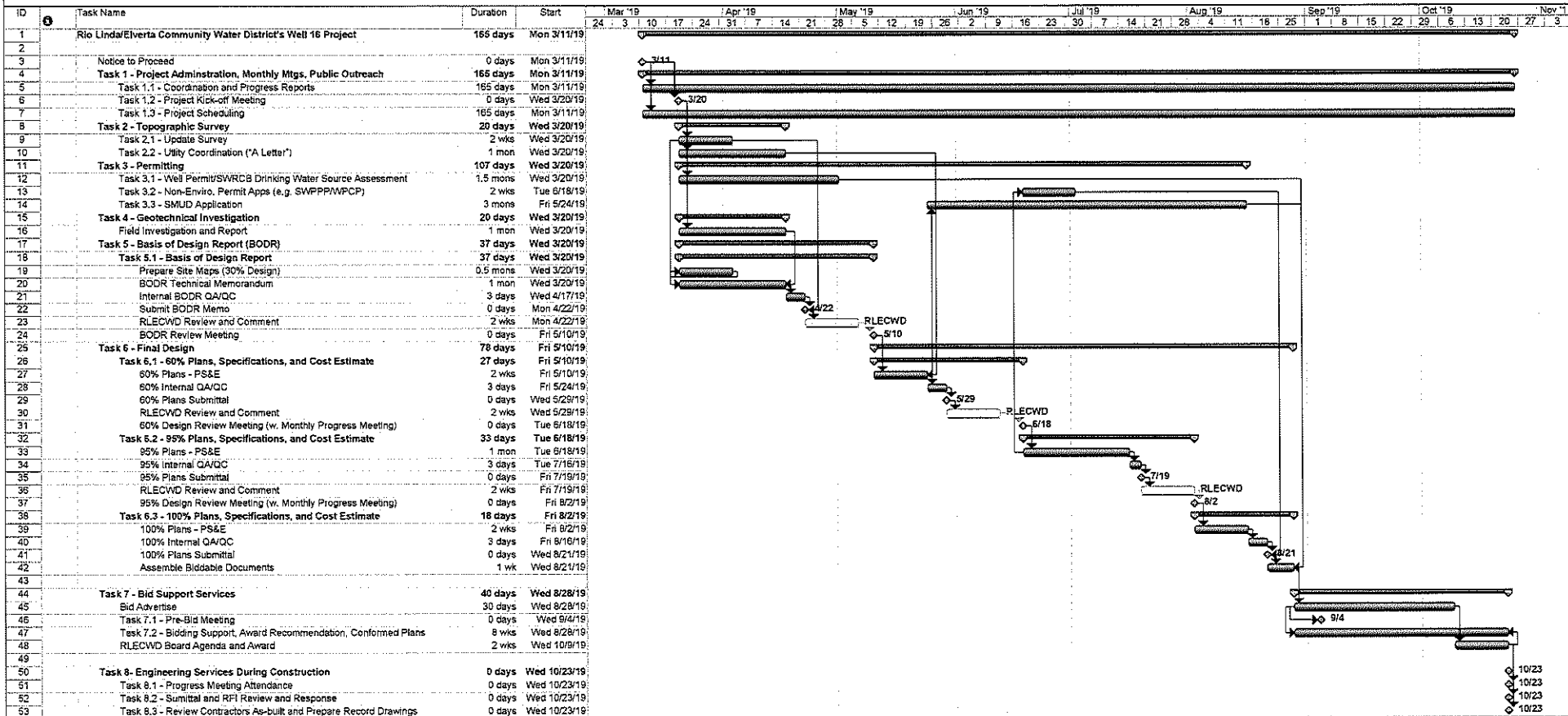
RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT
Equipping of Well 16 Project

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Design Schedule

The following provides the preliminary design schedule for the Well 16 Equipping Project. The schedule will be updated as required once the notice to proceed is received.

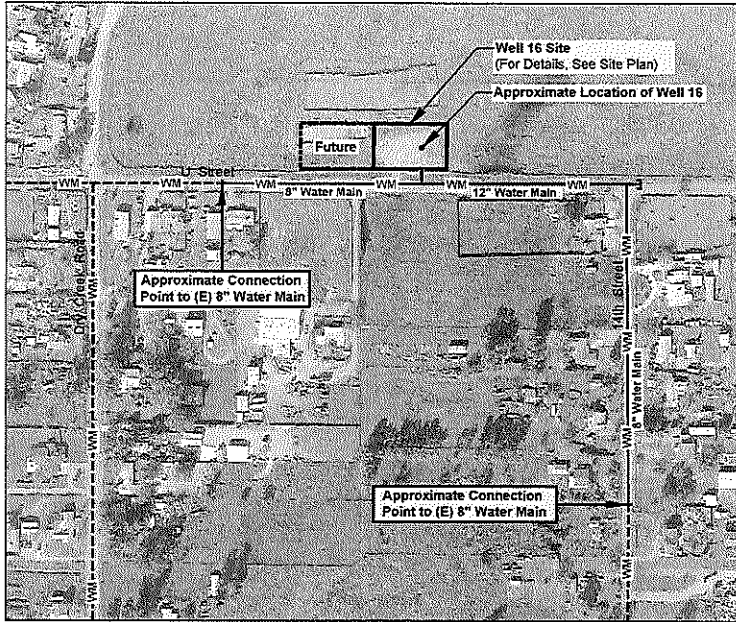
Design, Bid Support, and Engineering Support During Construction for Equipping of Rio Linda/Eiverta Community Water District's Well 16
 Design Schedule
 February 1, 2019



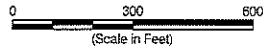
Project: Design Schedule - Draft
 Date: Thu 1/31/19

Task Progress Summary External Tasks Deadline

Split Milestone Project Summary External Milestone



Site Location Map



Legend:

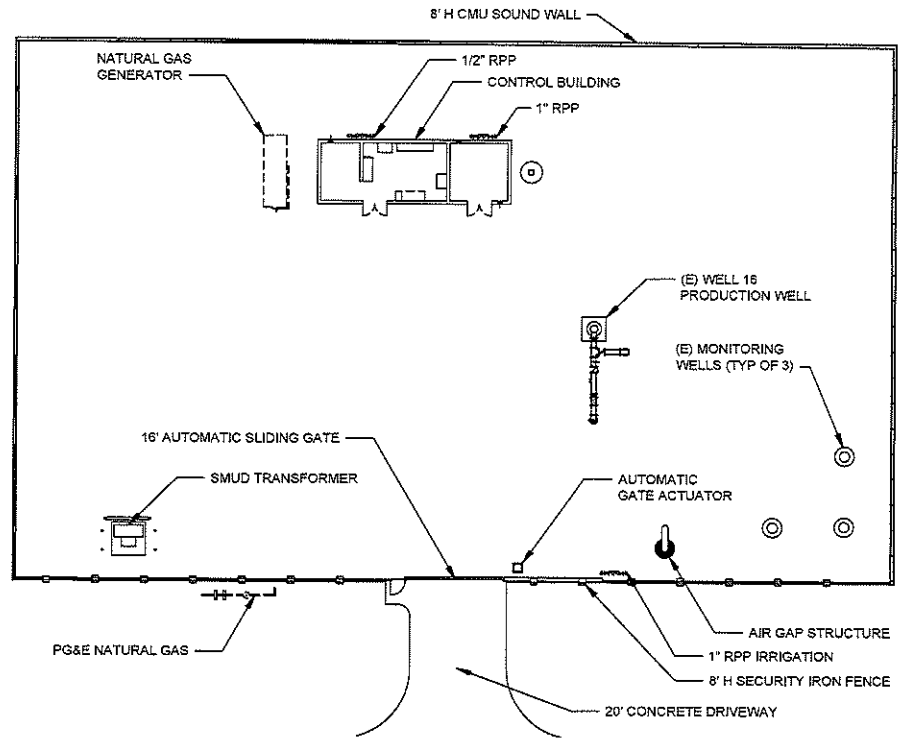
- WM --- (E) Water Main
- WM — 8" Water Main
- WM — 12" Water Main
- WM — Capped or Blind Flange

Abbreviations:

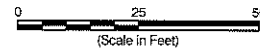
- CMU = Concrete Masonry Unit
- E = Existing
- H = Height
- RPP = Reduced Pressure Principle Back Flow Preventer
- WM = Water Main

Notes:

1. All locations are approximate.
2. Basemap source: Google Earth Pro, date of imagery 1 February 2018.



Conceptual Well 16 Site Plan



Conceptual Well 16 Site Plan and Connection to Distribution System

Rio Linda/Everta Community Water District
 Rio Linda, CA
 December 2018
 EKI Baseline \$1.00



Exhibit 1

2018/12/05 15:03:39 C:\Users\jrcasado\AppData\Local\Temp\kafPublish_14604\Exhibit 1.dwg Export1





Items for Discussion and Action
Agenda Item: 6.5.a

Date: February 25, 2019

Subject: Resolution 2019-03 Accepting the Irrevocable Offer of Dedication for the Well #16 parcel.

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

This item was not discussed at February committee. The signed irrevocable offer was not received until after the February Committees had met. However, this item has thoroughly been discussed at Board and Committee meetings for more than a year. To wit, Resolution 2019-03 was originally considered in draft form at the May 2018 Board meeting.

Current Background and Justification:

The latest efforts to obtain the irrevocable offer of dedication for the Well #16 parcel entailed a letter from Legal Counsel to the property manager. These efforts were obviously fruitful.

The recording of the deed will come just in time for the District to proceed with the Well #16 groundwater pumping station design and construction.

I recommend the Board acknowledge and thank Legal Counsel for her persistent efforts and completion of a job well done.

Conclusion:

I recommend the Board approve Resolution 2019-03 to accept the irrevocable offer of dedication for the Well #16 parcel and further authorize all documentation and steps necessary to record the deed. I also recommend the Board direct staff to begin the lot line adjustment stipulated in the Property Dedication Agreement with the parcel owner.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: ___ Green: ___ Ridilla: ___ Harris: ___

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.5.a

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Resolution 2019-03 Accepting the Irrevocable Offer of Dedication for the Well #16 parcel.

Staff Work Completed

2/22/19

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel) then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

May 2018
ML

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

RESOLUTION NO. 2019-03

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE RIO LINDA/ ELVERTA
COMMUNITY WATER DISTRICT ACCEPTING AN IRREVOCABLE OFFER OF
DEDICATION OF WELL 16 SITE**

WHEREAS, Elverta Associates, LLC, a California limited liability corporation, owns an approximately 1.11 acre well site located in Sacramento County, commonly known as Well 16 site (“Property”) which is more fully described in the Irrevocable Offer of Dedication and Grant Deed (“Offer of Dedication and Deed”), attached as Exhibit A; and

WHEREAS, California Government Code 27281 requires the legislative body of the Rio Linda Elverta Community Water District (“District”) to authorize acceptance of an irrevocable offer of dedication by execution of a certificate of acceptance; and

WHEREAS, the District has reviewed the Offer of Dedication and Deed and determined it is satisfactory and ready for acceptance; and

WHEREAS, the District desires to accept the Offer of Dedication and Deed in order to confirm the use of the of the Property as a well site.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Rio Linda/Elverta Community Water District as follows:

1. The Board of Directors hereby finds and determines that the recitals above are true and correct and are hereby incorporated into this Resolution as though fully set forth herein.
2. The Board of Directors accepts Elverta Associates, LLC’s Irrevocable Offer of Dedication and Grant Deed, attached as Exhibit A hereto, and incorporated by this reference.
3. The Board of Directors hereby authorizes the General Manager to execute the Certificate of Acceptance attached to the Irrevocable Offer of Dedication and Grant Deed on behalf of the Rio Linda/Elverta Community Water District.
4. Upon General Manager’s execution of the Certificate of Acceptance, the Board of Directors directs the General Manager to cause recordation of this Resolution, the Irrevocable Offer of Dedication and Grant Deed, and any such other documents and instruments as may be necessary or convenient to accept the Irrevocable Offer and Grant Deed, with the Office of the Clerk-Recorder of the County of Sacramento.

APPROVED AND ADOPTED by the Board of Directors of the Rio Linda / Elverta Community Water District on this ____ day of ____ 2019. By the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

John Ridilla
President, Board of Directors

Timothy R. Shaw
Secretary of the Board of Directors

Recording requested by and when recorded
return to:

Rio Linda Elverta Community Water District
730 L Street
Rio Linda, CA 95673

Exempt from recording fees (Gov. Code §§ 6103, 27383)

Space above this line for recorder's use only

IRREVOCABLE OFFER OF DEDICATION AND GRANT DEED

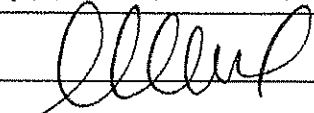
FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Elverta Associates, LLC ("Grantor") does hereby make an irrevocable offer of dedication and grants to the Rio Linda Elverta Community Water District, a California county water district ("District"), that certain real property situated in said District as more particularly described on EXHIBIT A attached hereto and incorporated herein by the reference (the "Property") together with all improvements thereon.

This Offer of Dedication shall be irrevocable and shall be binding on the Grantor, its heirs, executors, administrators, successors and assigns.

Executed this 18 day of FEB, 2019

GRANTOR:

ELVERTA ASSOCIATES, LLC

By: 

Name: Michael B. Earl
Manager

Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ORANGE)

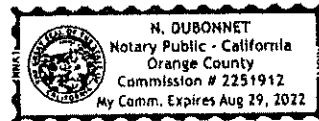
On February 18, 2019 before me, N. DUBONNET, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared MICHAEL B. EARL
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



CERTIFICATE OF ACCEPTANCE

This is to certify that the Rio Linda Elverta Community Water District, a California county water district, hereby accepts the Property as defined in the Irrevocable Offer of Dedication and Grant Deed to which this Certificate of Acceptance is attached. This acceptance is made pursuant to the authority conferred by Resolution No. _____ of the Board of Directors adopted on _____, 2018, and the Grantee consents to the recordation of the Irrevocable Offer of Dedication and Grant Deed to which this Certificate of Acceptance is attached by its duly authorized officer.

By: _____
Timothy R. Shaw, Secretary of the Board of Directors

Date: _____

04/24/2018
7483.100
dwk

EXHIBIT "A"
DESCRIPTION OF
WELL SITE

A portion of that real property situated in the County of Sacramento, State of California, being a portion of Section 16, Township 10 North, Range 5 East, Mount Diablo Meridian and being a portion of the Lands of Elverta Associates, LLC a California Limited Liability Company as described in that certain Grant Deed recorded November 4, 2004, in Book 20041104, at Page 2355, Official Records of Sacramento County, described as follows:

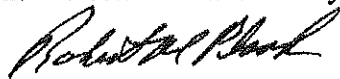
Beginning at a point from which the southeast corner of said real property as described in that certain Grant Deed recorded November 4, 2004, in Book 20041104, at Page 2355, Official Records of Sacramento County bears the following three (3) courses:

1. South 00°05'59" West a distance of 5.05 feet;
2. South 89°53'57" East a distance of 445.17 feet;
3. South 89°54'28" East a distance of 1320.47 feet;

Thence from said **True Point of Beginning** North 89°56'42" West a distance of 364.76 feet; thence North 00°05'55" East a distance of 133.32 feet; thence South 89°42'00" East a distance of 364.76 feet; thence South 00°05'59" West a distance of 132.04 feet; to the Point of Beginning

Containing 1.11 acres, more or less.

This legal description was prepared by me or under my supervision pursuant to Section 8729 (2) of the Professional Land Surveyors Act



Robert M. Plank, PLS 5760

License Expiration Date: 06-30-2018



Date: 04/24/18

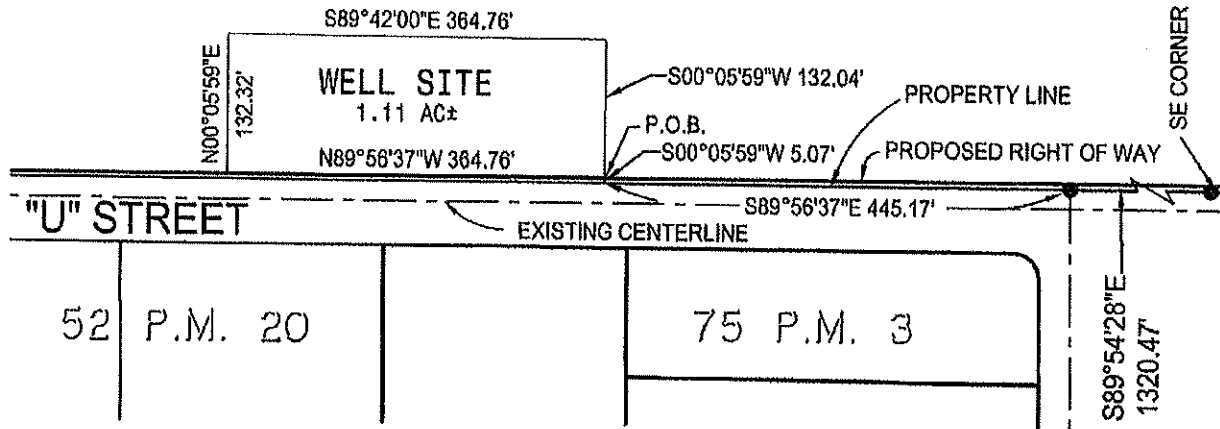
Description prepared by:

MACKAY & SOMPS CIVIL ENGINEERS, INC.

1552 Eureka Road, Suite 100, Roseville, CA 95661

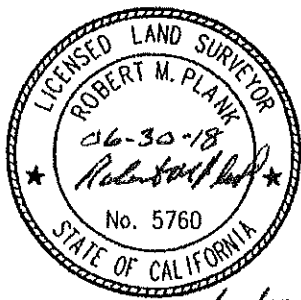
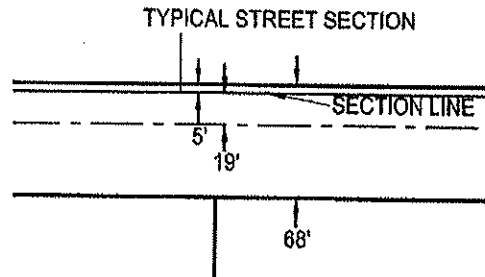
P:\7483\survey-MS\mapping\desc\WELL SITE\WELL SITE.docx

LANDS OF
ELVERTA ASSOCIATES, LLC
200441104 O.R. 2355



LEGEND

- P.O.B POINT OF BEGINNING
- FOUND
- P.M. PARCEL MAP
- O.R. OFFICIAL RECORDS OF SACRAMENTO COUNTY



SHEET 1 OF 1

EXHIBIT "A-1"
WELL SITE
ELVERTA ASSOCIATES, LLC
SECTION 21, T. 10 N. R. 5 E., M.D.M.

COUNTY OF SACRAMENTO STATE OF CALIFORNIA

MACKAY & SOMPS
ENGINEERS PLANNERS SURVEYORS
1652 Eureka Road, Suite 100, Roseville, CA 95661 (916) 773-1189

DWK	1"= 160'	04/19/2018	7483.100
DRAWN BY	SCALE	DATE	JOB NO.

IF A DISCREPANCY EXISTS BETWEEN THIS EXHIBIT AND THE ASSOCIATED DESCRIPTION, THE DESCRIPTION HOLDS. THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY.

04/24/18



Items for Discussion and Action
Agenda Item: 6.6

Date: February 25, 2019

Subject: Master Service Agreement with California Bank and Trust to Enable ACH Payments

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

This item was not discussed at committee. This item arose after the February standing committees had met.

Current Background and Justification:

Although we have been coordinating with California Bank and Trust regarding the transition to Automated Clearing House (ACH) payment method as a fee free alternative to credit/debit card payments by customers, California Bank and Trust only recently sent the District this Master Services Agreement, which contains clauses that must be reviewed by Legal Counsel prior to Board approval of the agreement.

Unfortunately, the District has already begun steps to transition to ACH payment method, e.g. Waterways newsletter and direct letters to credit card recurring payment customers. Apparently, California Bank and Trust is unfamiliar with the contract consideration process a public agency Board must conduct, i.e. the bank just assumed the GM could sign the agreement.

I sent the agreement to Legal Counsel on 2-21-2019, However, it is an 81-page document, and it may be infeasible for Legal Counsel to complete her review in time for Board consideration at the 2-25-2019 meeting. Accordingly, if the Board is inclined to approve the agreement, I recommend such approval stipulate, "subject to review and approval of Legal Counsel.

Conclusion:

Subject to review and approval of Legal Counsel, I recommend the Board approve the Master Service Agreement with California Bank and Trust to enable processing of ACH payments by the District's customers.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:___ Green:___ Ridilla:___ Harris:___.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.6

Date

Initial Potential Meeting Date2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Master Service Agreement with California Bank and Trust to Enable ACH Payments

Staff Work Completed2/22/19

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel) then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff WorkN/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review2/21/19

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review2/22/19**Actual Meeting Date Set for Agenda Item**2/25/19

Treasury Management Master Services Agreement (“MSA”)

Effective October 2018



Zions Bancorporation, N.A. is a member of the Federal Deposit Insurance Corporation (FDIC). Zions Bancorporation, N.A. operates through multiple divisions that use the trade names shown above. These trade names or divisions of Zions Bancorporation, N.A. are not separate FDIC-insured banks. The FDIC coverage extended to deposit clients is that of one insured bank. Zions Bancorporation, N.A. changed its name from ZB, N.A. on September 30, 2018. Except for that name change, this October 2018 edition is the same as the May 2017 edition of this Agreement. Not all services for an account offered at one division are necessarily available at another division. Certain transactions between accounts at our different divisions (including but not limited to cut-off times and settlement times) may be deemed and processed by us as transactions between separate financial institutions.

As a client of Zions Bancorporation, N.A., your deposits are insured by the FDIC to at least \$250,000 per depositor, for each account ownership category. To learn more, please visit the FDIC’s website, www.fdic.gov/deposit.

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This Treasury Management Master Services Agreement (the "**Agreement**"), together with all Summary of Services, and the Specifications sets forth the terms and conditions of the Treasury Management services (the "**Services**") offered by Zions Bancorporation, N.A. ("**the Bank**", "**we**" and "**us**") to each Company that is a signatory to a Summary of Services ("**you**"). The Bank operates through its divisions, including: Amegy Bank of Texas, California Bank & Trust, The Commerce Bank of Oregon, The Commerce Bank of Washington, National Bank of Arizona, Nevada State Bank, Vectra Bank Colorado, and Zions Bank (each a "**Division**"). The Division through which you are contracting is indicated on each Treasury Management Summary of Services that you have or shall hereafter execute.

By executing a Summary of Services or using any Service, now or in the future, you agree to be bound by the terms and conditions of this Agreement, each Summary of Services, and any Specifications. Any Service described herein may have been marketed to you under a brand name that differs from how the Service is titled in this Agreement, a Summary of Services, or any Specification, or exhibit. Service availability may differ between Divisions.

SERVICE-SPECIFIC PROVISIONS

1. Account Reconciliation Service

1.1 The Service. We offer both full and partial Account Reconciliation Services, as well as a deposit reconciliation Service.

- (a) "Full" Reconciliation - if you provide us with your check issuance data prior to the Cutoff Time in accordance with our guidelines, we will provide you with one or more reports regarding your Account activity.
- (b) "Partial" Reconciliation - we provide you with information about the checks that have paid against your Account.
- (c) "Deposit" Reconciliation - we provide you with a report of paper credit items. Reports are available online for viewing, printing and downloading.

You agree to use only checks and deposit slips that meet our specifications and to provide us with a sample of your checks and/or deposit slips upon our request. Your sole and exclusive remedy for any error, damage or loss in any way connected with this Service, however arising, shall be limited (at our option) to either a re-performance of the Service for the period in question or a refund or credit of an appropriate portion of the fees associated with this Service.

2. ACH Positive Pay Service

2.1 The Service. If you request this Service, we will suspend any ACH entry initiated by a third party to your designated Accounts if that entry does not meet your pre-established ACH filters, and we will present the suspended ACH entry to you electronically. You must then instruct us whether to permit or return the entry. You authorize us to act in accordance with your permit/return default election if we do not receive your instruction for any reason by the Cutoff Time.

Note: We may, but are not required to, not suspend certain entries by Bank, its affiliates, its service providers, or designated third parties (e.g. Bank's preferred Merchant Services Provider).

3. Balance Reporting and Payments ("Treasury Internet Banking")

3.1 Overview. Treasury Internet Banking provides a web browser-based suite of electronic Services that allow you to manage your banking activity online. If you request this Service and it is available,

we will grant access to your Administrator to establish, maintain and delete Authorized User access and perform other administrative tasks with respect to your use of this Service.

Treasury Internet Banking allows you to enroll in the following Services: (a) Information Reporting Service, (b) e-Statement Service, (c) Stop Payments Service, (d) Payments Services, and (e) Mobile Treasury Internet Banking (each described below). Enrollment in some Services requires additional acceptance or underwriting.

- 3.2 Information Reporting Services.** This Service consists of several reporting modules. The Balance Reporting module, for example, allows you to access current and previous day balances, transaction and float information, historical information, and information on certain pending transactions. You also can elect to receive images of items deposited or posted to your Account the previous day. The special reports feature enables you to access various reports online on the day we generate the information.

Since certain information and transactions are not processed by us until after the close of our Business Day, some transactions may not be reflected by our system until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our Information Reporting Services. If you are unable to access our system for any reason, please contact your treasury services representative for assistance.

- 3.3 e-Statements Service.** Our e-Statement Service makes periodic Account statements and certain other notices and disclosures (each herein a "**Statement**") for your enrolled Accounts available to you electronically rather than by mail. The term "**e-Statement**" means any Statement that we make available to you electronically through this Service.

- (a) Request and Authorization for e-Statements. By enrolling in the e-Statement Service, you request and authorize us to make the following Statements available to you electronically rather than by mail: (i) any Statement that we may elect to give to you, and (ii) any Statement that we are required to provide to you by current law or by any law adopted in the future.

If an Account has more than one owner or authorized party, then (i) making e-Statements for an enrolled Account available to any one owner or authorized party shall constitute delivery to all owners and authorized parties and (ii) the Account may be enrolled, or its enrollment modified or cancelled, by any one owner or authorized party. We shall have no obligation or liability to any owner if we act upon the instructions of any one owner or authorized party.

Your consent in this Agreement is in addition to, and does not replace, any other consent for electronic delivery or notice that you may have previously given us, and will survive any future consent you may hereafter give to us. We may at any time and for any reason elect to deliver or otherwise give notice of any Statement by U.S. mail or other commercially reasonable method in addition to, or instead of, our e-Statement Service.

- (b) Format. You may choose to have your e-Statements made available to you (i) as PDF documents through our Balance Reporting Service, and/or (ii) by any other means that we may offer from time to time (for example we may offer certain electronic file transfer options). Access to your e-Statements through our Balance Reporting Service is controlled by entitlements administered either by the Bank or by your company's Balance Reporting Service Administrator.

- (c) Prompt Review of e-Statements. Your e-Statement will be dated the day it is first made available to you through our Balance Reporting Service or such other means that you have selected (the “e-Statement Date”). You must promptly review your e-Statements and any accompanying items and notify us in writing (within the applicable time periods specified in this Agreement and Deposit Account Agreement) of any error, unauthorized signature, lack of signature, alteration or other irregularity (collectively “irregularities”).

Any time periods within which you must notify us of irregularities on your Statements shall begin on the e-Statement Date regardless of when you access the e-Statement. You are responsible for checking frequently to determine if new e-Statements have been made available. You will not receive separate notices informing you when e-Statements have been issued. You are responsible for contacting us if you are not able to access your e-Statements or if you are not receiving your e-Statements. We may, but are not obligated, to send Statements by U.S. Mail or other method if we learn that your e-Statements are not being accessed.

- (d) Cancelling Enrollment; Termination; Suspension; Amendment. You may cancel your enrollment in the e-Statement Service at any time. Your cancellation notice must include a request to resume paper Statements if you wish to start receiving them again. (Cancelling enrollment will not automatically restart paper Statements.)

3.4 Stop Payments Service. This Service allows you to place stop payment requests for a specified period of time, cancel a stop payment request, and review current stop payment requests. You must designate all of the following information (or such lesser combination as we may specify at the time): Account number, check number, EXACT amount of check (dollars and cents), payee name(s), and issue date. We will have no liability for paying a check on which you have placed a stop payment request when any required information is missing or inaccurate. Your stop payment request will expire automatically after the period of time you designate (up to the maximum period we permit, which shall not be less than 12 months; if you do not designate a period, we will apply the standard period established in our sole discretion). If a single check or series of checks have been lost or stolen, you must notify us of the loss or theft and close the Account, because stop payment requests may be insufficient to protect you and the Bank. If you fail to notify us of the loss or theft of checks, you may become liable for their unauthorized use. Please note that this Service is not effective in stopping the payment of checks that have been converted to electronic transactions by the payee.

It is your responsibility to determine, through any of the methods we have made available, the status of the check prior to placing a stop payment request. We recommend that you not issue any replacement check for two (2) Business Days after placing any stop payment request with us. If the check for which the request is being placed has already cleared, and you reissue the check, the Bank has no liability for paying either or both checks. You agree that we may rely conclusively on any stop payment request placed through this feature on the Accounts that you use with this feature. We have no duty to verify the authenticity of a stop payment request or the authority of the person placing it, and a stop payment request on a check is effective regardless of who signed the check. A stop payment request made after the Cutoff Time will be considered placed on the next Business Day.

Additional terms appear in your Deposit Account Agreement.

3.5 Payments Service. This Service provides one mechanism for communicating Automated Clearing House (ACH) Entries, Fedwire wire transfer and internal book transfer requests to us. For Fedwire Wire Transfers and ACH credit payments initiated through our Payments Service:

- (a) We require that you utilize the Service's Dual Control functions unless you execute a waiver and indemnification agreement acceptable to us.
- (b) We will notify you of the acceptance, execution or rejection of a Wire Transfer Order by making such information accessible to you online through the Service. You agree that such notice is acceptable under the applicable state's version of the Uniform Commercial Code ("UCC").

3.6 Mobile Treasury Internet Banking Service ("Mobile TIB"). This Service offers mobile-optimized access to select Treasury Internet Banking ("TIB") functions via a mobile device application (the "TIB App"). Mobile TIB is available to individuals that (i) you have enrolled as Authorized Users within your standard TIB service, (ii) have also been enrolled in the Mobile TIB Section of your TIB service, and (iii) have also downloaded the TIB App to their mobile devices.

- (a) Enrollment of Company in Mobile TIB Service. We will activate the Mobile TIB module within your TIB service.
- (b) Enrolling Authorized Users of the TIB Service into Your Mobile TIB Service. Only persons who are Authorized Users of your TIB may be enrolled in your Mobile TIB. Enrollment in Mobile TIB is performed through your TIB Service. You shall instruct us to configure your TIB to use one of the following methods of enrolling Authorized Users (Please note that Central Enrollment will be used unless instructed otherwise):
 - i. **"Self-Enrollment"** by the Authorized User through the Mobile TIB page of his or her TIB Account;#
 - ii. **"Central Enrollment"** by your Administrator for all of your Authorized Users; or *
 - iii. **Either Self-Enrollment or Central Enrollment.** #. *

Notice Regarding Self-Enrollment. If you permit self-enrollment under (i) or (iii), then all Authorized Users for your TIB have the ability to self-enroll in your Mobile TIB. you cannot limit which Authorized Users will be able to self-enroll in Mobile TIB.

* Warranty Regarding Central Enrollment. For each Authorized User that your Administrator centrally enrolls under (ii) or (iii), you warrant that the Authorized User will go to the Mobile TIB page of his or her TIB Account and accept the Mobile TIB service User Terms (described below). If the Authorized User fails to do so, you shall indemnify Bank under the Section entitled "Indemnification and Release". See also the next Subsection.

- (a) Mobile TIB Service User Terms and Online Privacy Notice. Each Authorized User enrolled in your Mobile TIB must accept Bank's Mobile TIB Service User Terms ("**User Terms**"). The User Terms will be automatically presented to Authorized Users during self-enrollment/prior to his or her initial access of the Mobile TIB module, and enrollment will not be completed until the User Terms are accepted by online acknowledgement.

If your Administrator centrally enrolls an Authorized User in Mobile TIB, you are responsible for ensuring that the Authorized User goes to the Mobile TIB page of his or her TIB Account to accept the User Terms. To prompt the Mobile TIB page to present the User Terms for acceptance, the Authorized User may need to request a profile update. Acceptance and enrollment are not complete until the Authorized User has responded affirmatively to a prompt for online acknowledgement.

In addition to the enrolled Authorized Users, you yourself also hereby accept the User Terms as amended from time to time. (Under the User Terms, both you and the Authorized User are deemed to be “users”.) You also hereby accept Bank’s Mobile App Privacy Notice posted within the TIB App. We recommend that you tell Authorized Users to only use mobile devices that are (i) owned by you and (ii) restricted in use to your business purposes. You agree to indemnify us against all claims by, and losses or damages suffered by, you or any third person that would not have arisen if the mobile device was so owned and restricted.

- (b) Downloading the TIB App. The TIB App will be available for download at such sites as we may from time to time arrange. A person does not need to be an Authorized User to download the TIB App, but a person will not be able to activate and use the TIB App without being an Authorized User who has been enrolled in Mobile TIB. We may from time to time require that your Authorized Users download updates to or replacements of the TIB App.
- (c) Functionality of the Mobile TIB Service. Using the TIB App, an Authorized User can perform the select functions that are displayed in its menus. We may add, delete or change those functions and menus at any time without prior notice. You are responsible for training Authorized Users in the proper use of Mobile TIB, and for all transactions and instructions made by Authorized Users.
- (d) Security Procedure for Mobile TIB. In addition to the provisions stated in this Agreement, you hereby agree that the following is a commercially reasonable security procedure for accessing your Mobile TIB service and authorizing instructions to us (including payment orders): (i) logging in with the Access Credentials of an Authorized User who is enrolled in Mobile TIB, and (ii) not accepting any instruction via Mobile TIB that could not be authorized via TIB using the same Access Credentials. You represent that the foregoing security procedure is commercially reasonable for your particular needs, considering the size, type and frequency of your Accounts and treasury internet banking activities. You acknowledge that your enrollment in Mobile TIB is not a required part of Bank’s TIB service. Any instruction received by us in good faith and in compliance with the foregoing security procedures shall for all purposes be effective as your authorized instruction, even if you did not in fact authorize or send it. (Please see, without limitation, the Section entitled “Security Procedure and User Guides”.

If you no longer want a person to be enrolled in Mobile TIB, you are responsible for un-enrolling that person from Mobile TIB. Notify Bank AT ONCE if you have any information that the security of any Access Credentials might be compromised. You acknowledge that Mobile TIB service involves electronic transmission of information across wireless networks that are not under our control. You agree that we are not responsible for the privacy, security, accuracy or availability of your wireless data transmissions.

- (e) Fees. We do not charge a separate fee for the TIB App, or for enrolling in, or for using the Mobile TIB Service. We will send you reasonable prior notice if we decide to adopt such separate fees. Any transaction conducted using the Mobile TIB Service, however, is subject to the same fees that would apply if the transaction was conducted using the TIB Service. You and your Authorized Users should check with their mobile communication services providers regarding any charges (e.g., connection and data charges) that they may assess. We are not responsible for such third party charges that you or your Authorized Users may incur.
- (f) Miscellaneous. We do not guarantee functionality or availability of your TIB App or Mobile TIB service on any mobile device, on any communication network, in any geographic region, or at any time. In no event, regardless of cause, shall we be liable for your inability to access the

Mobile TIB Service or to execute any mobile transaction. You agree to use the Mobile Service only from within the United States of America.

4. Cash Vault Service.

- 4.1 The Service.** This Service provides you with an efficient way to deposit and place orders for coins and currency.
- 4.2 Deposits.** You will contract separately with an armored car service acceptable to us to pick up your deposits (including cash, coins, checks, and/or food coupons) and deliver them to one of our bank vaults or to a cash vault processor provided or designated by us (collectively, the "CVP") for credit to your designated Account. The armored car service will act as your agent, and neither we nor the CVP will be liable for any damage, destruction, theft or unexplained loss of any deposit prior to its receipt by the CVP.

We or the CVP may reject any shipment that we or it considers unacceptable or irregular (e.g. shipment bags that have holes or are not properly sealed). Any shipment receipt provided by the CVP shall not be deemed an acknowledgment of the contents of any shipment. Your deposits will not be deemed to be accepted for deposit by us until they are received, counted and reconciled against your deposit tickets by the CVP and we are notified that the shipment has been verified as correct by the CVP. We may charge your Account with us for adjustments made by the CVP (e.g., for counterfeit currency).

For deposits received before the Cutoff Time on a Business Day, you will receive provisional credit on that Business Day. For deposits received after the Cutoff Time or on a day other than a Business Day, you will receive provisional credit on the next Business Day. We may make adjustments to your Account at any time if we discover counterfeit currency, contaminated currency, or discrepancies resulting from mis-strapped denominations.

- 4.3 Cash Delivery.** You may use this Service to request a delivery of cash. A request for a delivery received prior to the Cutoff Time will be delivered on the next Business Day. All deliveries will be made by armored car service. The armored car service will be considered your agent for all purposes connected with the Service, even if we have assisted you in selecting or obtaining the armored car service. Cash will be deemed received by you when given to the armored car service. The armored car service's written receipt of delivery will be conclusive evidence of the amount and date of the cash provided by us. We assume no risk, and you will hold us harmless from any loss, occurring after the armored car service takes possession of the cash for delivery to you.
- 4.4 Your Instructions.** You authorize us to accept Service instructions from any signer on your Account and/or from any other person you designate for that purpose. We also may act upon any online or telephone instructions that are made in accordance with our prescribed security procedures. We may refuse any Service instruction that we cannot confirm to our satisfaction.
- 4.5 Smart Safe Service.** You may use this Service to deposit Currency (defined below) from a vault approved by us to receive verified credit or provisional credit to your Accounts in accordance with such procedures as we determine from time to time. Any required adjustments to provisional credit provided to your Account will be debited as required based on the verified count, in accordance with such procedures, and at such time(s), as we determine from time to time.

The responsibility to deposit Currency is ultimately your obligation and the obligation of the Third Party Vendor (defined below). Currency deposited in a side-drop that may be part of the vault unit will be deposited to us or our designated correspondent bank.

- (a) Using the Service. You agree to: (i) follow the vault's operations, maintenance and use instructions as provided by your Third Party Vendor for depositing United States currency, United States coins, and checks drawn on United States banks (collectively, "**Currency**"); (ii) report "*said to contain*" information as may be available based on the vault used; (iii) contract with a vault vendor (approved by us) designated in the Specifications (a "**Third Party Vendor**") to maintain and service their vault; and (iv) pay us the fees we quote for the processing and accounting of the Currency deposited in the vault. In the event of a Third Party Vendor's insolvency, a stolen or damaged vault unit, counterfeit currency, contaminated currency, or other events causing the loss of, or fitness of, the currency from the vault, we are not liable and any provisional credit will be debited accordingly.

In the event that there are recurring shortages in deposits relating to Third Party Vendor count of any Currency, the parties hereto shall fully cooperate with one another (and, to the extent required under the Third Party Vendor agreements, the Third Party Vendor) in conducting an investigation of any question relating to the shortage, or the cause thereof, to the extent reasonably possible. Any such investigation may, at our election, be conducted by us or the Third Party Vendor. Each party agrees that if it finds any discrepancy, overage or shortage in the deposits, it shall use commercially reasonable efforts to immediately notify the other party of such event.

- (b) Permissible Items. You may only use the Service to deposit Currency, and only into approved localized depository vaults maintained in accordance with Third Party Vendor requirements and subject to the terms and conditions of this Agreement.
- (c) Customer's Representations. When using this Service, you make the following representations and warranties with respect to the Currency and information provided regarding the contents of the localized depository vault transmitted and/or reported to us by your Third Party Vendor: (i) the Currency deposited in the vault was not obtained by any illegal or fraudulent means or in violation of any law, rule or regulation, (ii) the information input into the vault by you accurately represents the amount of Currency deposited into the vault; and (iii) you have not taken any action that would obscure, alter or impair the capture or transmission of Currency information, or that may misrepresent the true value of Currency within the vault.
- (d) Hours of Operation and Deposit Timing. You may use the Service to deposit Currency at the times listed in the Specifications. Business Day Vault Cutoff Times (which we may change from time to time in our sole discretion upon providing you notice) are designated in order to receive content information timely for accounting purposes. Deposit information received from the Third Party Vendor vault will be deemed by us as deposited according to the current Bank approved Third Party Vendor processing schedule. Deposit information received on or after the Cutoff Time on a particular Business Day, or on a non-Business Day, may be deemed by us as received as of the next Business Day. We are not responsible for the unavailability of the Service or any damages that may result from its unavailability for any reason, including our own fault, act or omission. If the Service is not available for any reason or a deposit cannot be processed by means of the Service, you may deposit your Currency directly at any of our branches, if applicable.
- (e) Rejected Currency. If the vault rejects the Currency due to fitness of the Currency or other reason, then you should deposit the Currency in the vault side-drop. If the Currency is found to be counterfeit or contaminated based on Federal definitions during validation, any provisional credit provided to you based on "*said to contain*" information will be debited by the Third Party Vendor before being deposited to us. We may notify you by email (or other notification service

deemed reasonable by Bank) if we are unable to or decline to process a deposit, in whole or in part.

- (f) Indemnification. In addition to the other indemnification requirements set forth in this Agreement, you agree to indemnify, defend, and hold us and our affiliated companies and their respective officers, directors, agents and employees harmless from and against any and all actions, proceedings, liabilities, losses, costs, expenses, damages, including injury or death (including those by third parties), attorney fees and claims, including (without limitation) warranty claims that result from or arise in connection with: (i) any misuse of this Service or the vault by you or your employees or agents; (ii) your breach of the terms and conditions of this Service (including without limitation any covenant, representation or warranty made by you); (iii) actions by third parties (such as the Third Party Vendor) that delay, alter or corrupt the reporting or transmission of deposit information to us; (iv) our acts or omissions that are in accordance with this Agreement, your agreement(s) with the Third Party Vendor or your instructions; (v) your negligence; (vi) your willful misconduct or the misconduct of your employees, agents, or the Third Party Vendor; (vii) robberies or attempted robberies; (viii) other acts of physical violence of any nature or any kind related to an attempt on the part of any person(s) to remove, damage or destroy the contents of the vault or the vault itself. This provision shall survive the termination of this Agreement.
- (g) Limitations on Liability. In addition to any limitations on its liability as contained in the Section entitled "Limitation of Liability -- General", we will not be liable to you for any of the following, unless the liability or loss is a result of our gross negligence or willful misconduct: (i) any damages, costs or other consequences caused by or related to our actions or omissions that are in accordance with this Agreement as it pertains to this Service, your agreement with the Third Party Vendor, or your instructions; (ii) any unauthorized actions initiated or caused by you or your employees or agents or the actions of the Third Party Vendor; (iii) the failure of third persons or vendors (including the Third Party Vendor) to perform satisfactorily, other than persons to whom Bank has delegated the performance of its specific obligations hereunder; (iv) any counterfeit, altered or contaminated currency deposited in the vault; (v) any party's (including the Bank or the Third Party Vendor) lack of access to the vault, or the Internet or inability to transmit or receive vault data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems; (vii) actions by third parties, such as system failures or the introduction of a virus, that delay, alter or corrupt the reporting or transmission of vault content information to the Bank; or (viii) any of the matters for which you are obligated to indemnify us.

Our liability for errors or omissions with respect to the data that we receive from your Third Party Vendor will be limited to correcting the errors or omissions once validated. Correction will be limited to adjusting your Account accordingly. Third Party Vendor will need to notify you and/or us of the nature of the error, along with the recommended or necessary resolution as appropriate, in a timely manner from when the issue was first discovered.

5. Check Imaging Service

- 5.1 **The Service.** We will provide to you scanned images of your designated Account statements, canceled checks (front and back), and/or other processed items, on CD ROM, through file transmission, or through our internet banking service. We will arrange for you to receive a license for software and services from an imaging vendor so that you can view the CD or transmission file images.

- 5.2 **Errors, Retention of Information.** You acknowledge that scanning technology is subject to error, such as distortions. You agree to notify us promptly of any Service errors or problems. We may destroy the original items within 30 days of their receipt. We will attempt to reprocess the information and/or provide another CD or transmission file, but assume no liability for our inability to produce better copies.

6. Collection Draft Services

- 6.1 **The Service.** We provide collection draft deposit and payment Services. The term “**Drafts**” refers to auto drafts, oil and gas drafts, bearer bonds and coupons, claims drafts, items denominated in foreign currencies, and other domestic drafts that do not clear as cash items through the ordinary check clearinghouse system or Federal Reserve system. It also includes documents, securities, instructions, instruments and the like that accompany a Draft and are to be received by you before acceptance or payment of the Draft.
- 6.2 **Deposit Service.** We will forward the Drafts you deposit with us for collection. You may only deposit Drafts that are properly payable to you and in a form and of a type approved by us. We may refuse any Draft in our sole discretion.

Ordinarily, an Account is not given credit for a Draft until we receive finally collected funds for the item. If we provisionally credit your Account for any Draft, we may charge the amount back against your Account if we do not receive payment for any reason (or payment is reversed). You are responsible for ensuring that we are provided with the correct address for processing each Draft to ensure timely receipt and payment by the Draft's payor. We will not be responsible for confirming or correcting addresses. Our sole responsibility with respect to any Draft is to exercise the ordinary care of a collecting bank in forwarding the Draft for collection and settling with you when final payment is received by us. We may discontinue providing this Service at any time upon notice to you.

- 6.3 **Drafts Payment Service.** We will process Drafts that you issue for payment through us. All Drafts must be in a form consistent with applicable law and acceptable to us. You must provide us with a sample Draft form for our approval before the Service begins and before you make any change in the form that might affect our Service.

Drafts received by us for payment after the Cutoff Time or on a day other than a Business Day may be deemed received on the following Business Day. We will present Drafts to you in the manner agreed upon by you and us. If you fail to designate a method or we cannot use a designated method for any reason, we may present Drafts to you: (a) in person; (b) by notifying you by telephone, fax, or email that the Drafts are available for your review at our premises; (c) by sending images of the Drafts to you electronically or by fax; or (d) using any other method reasonably calculated to notify you of the Drafts awaiting your review. Sending notice to you that a Draft is being held for review at our premises shall constitute presentment for purposes of calculating the time of presentment and the time by which you must instruct us to pay or not pay the Draft.

If we allow you to remove presented Drafts from our premises for review, you must execute a trust receipt acceptable to us and return the Draft to us by the designated Cutoff Time on the next Business Day. We may place an administrative freeze on your Account for the amount of the Drafts that you remove from our premises and may pay the Drafts if they are not returned to us in a timely manner.

You must advise us to pay or refuse a Draft no later than the designated Cutoff Time: (a) on the Business Day following the day it is presented to us if the Draft is payable on demand, or (b) on the day payment is due pursuant to the terms on the face of the Draft. If payment is due on a day other than a Business Day, your instruction must be communicated to us by the Cutoff Time on the preceding

Business Day. We may charge your Account for the Draft on that preceding day. Your instruction must be communicated to us in the manner we approve and actually received by us.

We may pay Drafts in any order. Our election to pay a Draft without sufficient available funds in your Account will not obligate us to do so on other occasions, and we may discontinue doing so without cause or prior notice. If we do not receive your instruction to pay or return a Draft by the Cutoff Time, we may pay or return the Draft, unless we have agreed upon a specific procedure in such situations. We may return and mark dishonored Drafts "Refer to Maker" or with another appropriate designation. If a Draft is processed and presented to us as a cash item (e.g., by a Federal Reserve Bank or clearinghouse), and we do not recognize that it is a Draft, we may process the Draft like an ordinary check without presenting it to you first.

- 6.4 **Indemnification and Hold Harmless.** Should you elect to receive originals or facsimile copies (either electronically or by fax) of the contents of your collection Draft envelopes in lieu of a personal, in-bank inspection of the contents of said envelopes, you hereby agree to indemnify and hold us harmless from any and all losses, claims, exclusions, damages, expenses (including without limiting the generality of the foregoing, attorney's fees and court costs) or causes of action of whatsoever nature by, through, or under you, or anyone else that may arise from such removal or the release and/or transmittal via facsimile of such records to you by us, for your use and benefit,

7. Controlled Disbursement Service.

- 7.1 **The Service.** We can arrange for you to draw checks on a designated Disbursement Account (defined below) that you open with us and will transfer available collected funds from a separately designated Account with us (the "**Funding Account**") to the Disbursement Account to cover those checks and any adjusting debit and credit entries. We may (but are not required to) also agree to permit other types of debits to your Disbursement Account, in which case we may also transfer available collected funds to the Disbursement Account to cover those transactions. (Checks drawn on the Disbursement Account, and other debits permitted against the Disbursement Account, are called "**Controlled Disbursement Items**".) Wire Transfer and ACH transactions, other than the funding credits and adjusting debits created by us, are not permitted in the Disbursement Account and therefore are NOT included in the definition of "**Controlled Disbursement Items**."
- 7.2 **The Disbursement Account.** You will complete and submit documentation provided by us to open a zero balance controlled disbursement checking account (the "**Disbursement Account**") with us. We do not review items drawn on or debits to the Disbursement Account and assume no responsibility for any fraud or errors related to such items or debits on that Account (e.g., forged or altered items, misencodings, missing endorsements, counterfeit items, legends or notations, postdated items, unauthorized debits or other irregularities).
- You will maintain sufficient collected funds in your Funding Account to pay all Controlled Disbursement Items.
- 7.3 **Check Format.** You will only use checks for the Disbursement Account that comply with the Specifications that we provide to you. You will provide us with a sample of a voided check before you issue any checks in connection with the Disbursement Account.
- 7.4 **Report of Transactions.** Each Business Day, we will provide you with information on the aggregate amount of Controlled Disbursement Items presented to the Disbursement Account as well as other such information identifying the components of such aggregated dollar amount as is reasonably necessary or convenient for us to provide the Service (including, but not limited to, MICR line information and Check images), and such other information as we may otherwise mutually agree.

We will then make such information available to you electronically by such time of day as we may from time to time establish so that you can ensure adequate collected funds are available in the Funding Account each day to cover that day's Controlled Disbursement Items. If, for any reason, the Federal Reserve Bank does not provide us with the information on or before our Cutoff Time, we may estimate the amount of Controlled Disbursement Items for that day.

- 7.5 Transfer of Funds to the Disbursement Account.** We may charge the Funding Account for the actual or estimated total amount of Controlled Disbursement Items and transfer the funds to the Disbursing Bank for credit to the Disbursement Account. Funds will be transferred electronically the same day as the Disbursement Account checks are presented for payment.

If there are insufficient available collected funds in the Funding Account but you have an overdraft protection product with us for that Account, we will draw on that overdraft protection in accordance with the agreement governing that product, up to the amount of its remaining available credit. If there are insufficient available collected funds in the Funding Account and you do not have an overdraft product with us for that Account (or the overdraft product has insufficient credit remaining available), then we may (but are not obligated) in our sole discretion draw on any other available credit facility that you may have with us, up to the amount of its remaining available credit and subject to the terms of the agreement governing that facility. We may also (but are not obligated) in our sole discretion create an overdraft in your Funding Account, and such overdraft shall be governed by your Deposit Account Agreement with us. Furthermore, we may also (but are not obligated to) in our sole discretion clear any such overdraft by offsetting against other Accounts with us that are owned by you.

- 7.6 Return of Unpaid Items and Debits.** We, in our sole discretion, may return any or all Controlled Disbursement Items if: (a) there are insufficient collected and available funds on deposit in the Funding Account by the established deadline to fund the total of Controlled Disbursement Items; (b) charges cannot be posted to the Disbursement Account because it is closed, suspended, frozen, subject to a dispute, or unavailable for any other reason; (c) there is a communications failure or another condition that prevents us from obtaining information from or transmitting information or funds; or (d) there are insufficient collected and available funds in the Disbursement Account because presentments exceeded the estimated amount that we transferred to the Disbursement Account. We assume no responsibility for determining which Items or debits should be returned unpaid if there are insufficient funds in the Funding Account or the Disbursement Account, and you agree not to assert any claim against us arising out of the order that items and debits in the Funding Account or the Disbursement Account are or are not paid. We may pay and return Items and debits in any order that we choose.

We may (but are not obligated to) create an overdraft in your Disbursement Account. Such overdraft shall be governed by your Deposit Account Agreement.

- 7.7 Ancillary Services.** You may choose to request certain ancillary services with respect to your Disbursement Account ("**Ancillary Services**"). For example, the following and/or other Ancillary Services may be available for your Disbursement Account:

- (a) Stop Payments Service
- (b) Account Reconciliation Service
- (c) Positive Pay Services
- (d) Check Imaging Service

We can assist you in requesting and setting up Ancillary Services. You are responsible for reviewing and confirming any variables or specifications for how your Ancillary Services are set up.

To obtain Ancillary Services, you must accept any of our applicable agreements.

8. Data Exchange Service.

- 8.1 The Service.** With this Service, you can obtain consolidated daily balance and float status information, as well as summary and detailed transaction level information, from multiple financial institutions in one consolidated data file. You can receive this information from us or our designated Data Collection Agency, or you may arrange for us to send account data from your Accounts with us to your Data Collection Agency.

This Service is made available on an "as-is" and "as available" basis. Neither we nor the Data Collection Agency provide any warranty, express or implied, regarding this Service. Neither we nor the Data Collection Agency assume any liability for the unavailability of the service or for information provided or withheld by any institution.

- 8.2 In-Bound Data Exchange.** With this feature, you may authorize other financial institutions to submit to our Data Collection Agency account data that will be consolidated with Account data from us. You will then retrieve the consolidated data file either (a) through our Treasury Internet Banking Service or (b) directly from our Data Collection Agency. You are responsible for authorizing any other financial institutions to provide account data to our Data Collection Agency. Our ability to process such information will depend, in part, on presentation of the information in a manner and format that is compatible with our system. We are not responsible for the accuracy or timeliness of delivery of any account data furnished by other financial institutions or Data Collection Agencies.
- 8.3 Out-Bound Data Exchange.** With this feature, you authorize us to extract data on your Accounts with us, and report it to your Data Collection Agency. We will have no obligation to update such information or confirm its receipt by your Data Collection Agency.
- 8.4 BAI Direct.** With this feature, you authorize us to extract data on your Accounts with us and make it available to you via file transmission.

9. Electronic Data Interchange Service ("EDI")

- 9.1 The Service.** If you request this Service, you may originate or receive data transmissions that consist of documents and payment instructions. This Agreement applies only to the EDI Services that we provide to you. The legal relationships, and the terms and conditions relating thereto, between you and your trading partners will be governed by the terms of the EDI contracts between you and them, and will not be binding on us.

10. Electronic Invoicing and Receipts

- 10.1 The Service.** This Service provides the software for you to communicate and track invoices and receive payment instructions from your customers or enter payment orders (i.e. payment card charges or ACH debit instructions) pursuant to express authorization previously received from your customers in the ordinary course of your business. (This Service is sometimes called "e-Invoicing and Payments.")

In addition to selecting this Service in a Summary of Services or in the Specifications, you must enroll online for the Service at a designated website (the "PS Website"). The PS Website is owned by PaySimple, Inc. ("Paysimple") who is not an affiliate of Bank. When you enroll at the PS Website, you will be presented with and must accept the then-current terms of service (the "PS

Terms of Service”). The parties to the PS Terms of Service are you, Paysimple and the Bank. Solely for your general reference prior to beginning enrollment, a sample historic version of the terms of service is attached as Appendix II. The PS Terms of Service are in addition to the terms and conditions of the Service between you and us as contained hereinbelow.

10.2 Service Parameters. You acknowledge that the Service consists solely of the software provided to you as described in this Electronic Invoicing and Receipts Section.

10.3 No Debt Collection Services. You agree that you shall be using the Service as a tool for you to collect on your own Accounts. By selecting this Service, you acknowledge that neither we nor Paysimple at any time shall undertake to provide you with debt collection services or to act as a debt collector within the scope or meaning of the Fair Debt Collection Practices Act or similar state or federal laws.

10.4 Prohibited Uses of the Service. You are prohibited from using the Service to:

- (a) Collect any accounts that you acquired by assignment from any third party (whether or not affiliated with you).
- (b) Collect accounts for or on behalf of any third party (whether or not affiliated with you).
- (c) Collect any accounts that were not originally generated by your delivery of your goods or services to your customer.
- (d) Enter into the Service any customer who (when entered) is in default or past due in making any payment to you on any account.
- (e) Enter into the Service any account that (when entered) is in default or past due.
- (f) Enter into the Service any account that is current when entered, but owed by a customer who is then in default or past due to you on any other account.

If requested by Paysimple and/or us, you will from time to time provide a certificate in a form acceptable to us attesting to and warranting your compliance with these prohibitions, and will permit Paysimple and/or us to audit your records in connection therewith.

10.5 Intellectual Property. You agree not to use Bank's or PaySimple's, names, logos or marks in or in connection with any invoice or other communication with your customers without first obtaining our specific prior written consent, except: (a) as may be reasonably necessary in response to an inquiry from your customer seeking to identify how a payment was processed, or (b) where PaySimple, itself has placed its name, logo or mark on a webpage, invoice or other PaySimple, service template.

10.6 Acceptable Payment Types. You agree that this Service will only be used to collect the following types of payments:

- (a) Your customer's credit card payments and debit card payments that you process through First Data (**FDR**) (or other merchant services agreed to in writing by us) as arranged in connection with your other Services with us; and
- (b) Your customer's e-check or other ACH payments that you process through us pursuant to your Services and your Deposit Account Agreement.

- 10.7 Customer Complaints.** You agree that complaints, inquiries and customer service requests by your customers shall be received and addressed by you directly with your customers, and are not the responsibility of Bank or PaySimple.
- 10.8 Governing Laws, Rules or Agreements.** You acknowledge that the transactions you process through this Service are subject to governing laws, regulations, payment system rules and agreements with payment service providers (collectively "**Laws & Rules**"), including but not limited to (a) rules of card associations such as Visa, MasterCard, American Express, and Discover, etc., (b) your agreements with your merchant card services provider such as FDR, (c) rules of NACHA, (d) your agreements with ACH services providers, (e) federal Regulation E, and (f) federal Regulation Z. You agree that you are responsible for compliance with said Laws & Rules. **You acknowledge that the Service is not designed, intended, or represented to satisfy all of your obligations under the Laws & Rules. For example, before you initiate a payment transaction, you must first obtain your customer's express authorization in the form required by the Laws & Rules governing that type of transaction; and before initiating a recurring electronic funds transfer in a new amount, you must send your customer prior notice of that amount.**
- 10.9 Prohibited Transactions.** You shall not use this Service to process payments in connection with participation by your customer, its/their obligors, or others in (a) any activities that are illegal or otherwise prohibited by law, or (b) Internet gambling. Bank and/or PaySimple may at any time block or notify you of additional types of transactions (even if not illegal) that Bank and/or PaySimple prohibit you from using this Service to collect or process.
- 10.10 Dispute Resolution Relating to this Service.** Any claim between you and Bank that arises under or in connection with this Service, or any transaction in connection herewith, shall be resolved in the manner set forth in our Deposit Account Agreement (as amended from time to time) as stated herein. Provided, however, if PaySimple is a necessary party to such claim between us, and if PaySimple does not agree to resolve such claim in accordance with our Deposit Account Agreement dispute resolution provisions, then such claim between us shall be resolved in accordance with the dispute resolution provisions of the Terms of Service.

11. Funds Transfer Services

- 11.1 The Service.** Funds Transfer Services allow you to make payments to others and to transfer funds between Accounts by making a credit entry through the Automated Clearing House ("**ACH**"), by wire transfer, or by internal book transfer. Upon our prior approval and agreement, you may also originate certain ACH debit entries or drawdown wires on accounts of third parties who have given you their authorization. At all times, we retain the right to suspend or terminate, in our sole discretion, any payment order or your use of any or all of our Funds Transfer Services.
- 11.2 Orders.** When you transmit a transfer request, payment instruction or ACH entry (collectively "**Order**"), you authorize us to debit and/or credit the designated Account(s) for the amount indicated. You must submit your Order to us in the manner we designate.
- 11.3 Available Funds.** We may refuse to process Orders unless there are sufficient collected and available funds in your designated Account on the date we initiate the transaction or the transaction payment/settlement date (the "**Effective Date**"). We may also place a hold on funds pending our processing of your Order.

For ACH credit entries, you acknowledge that your origination of such transactions must be pre-funded (unless we have agreed otherwise in writing, after credit underwriting). Pre-funded means that we will debit (charge) your designated Account (for an amount equal to the amount of your ACH

file) on the day the file is sent to the ACH network for processing. The file is not sent more than two days prior to the Effective Date.

Each ACH file sent to us may consist of one or more batches of ACH entries. If prefunded, sufficient collected funds must be available in your designated Account at the time these batches are sent to the ACH network. If there are insufficient funds available in the designated Account at the time the batches are sent to the ACH network, we will process only those batches for which collected funds are available, in the order the batches appear within the file.

Batches for which collected funds are not available will suspend, and will retry in the next available collection window. Batches for which collected funds are not available by the last collection window of the Business Day prior to the Effective Date may be held overnight. For holdover batches, if funds are available on the morning of the Effective Date, you must provide instruction to release the batch for Same Day or Next Business Day settlement; absent instruction for Same Day release, the batch will be released for Next Business Day settlement. Premium pricing applies to Same Day settlement.

If we nevertheless process any batch without having first debited collected funds from your Account, you shall remain responsible for any resulting overdrawn balance and associated fees.

Nothing in this Agreement or in any course of dealing between you and us shall be construed as our commitment or obligation to lend money to you.

- 11.4 ACH Transaction Rules.** You agree to comply with the NACHA Operating Rules and Guidelines, as amended from time to time. We will provide you with a copy of the Rules, upon request, when you are approved for the ACH Service. Thereafter, you can obtain a copy of the current Rules at <https://www.nacha.org> or by telephoning NACHA at 703-561-1100. You agree to reimburse us for any penalties, fines and/or charges that we incur as a result of your failure to comply with this Agreement or any Rule. Without limiting your duty to comply with all of the Rules, you specifically acknowledge your obligations (a) for proper re-initiation when the originator receives Notices of Change, unauthorized returns, stops or NSF notifications; (b) to adhere to all Rules regarding pre-notifications; (c) to obtain proper authorizations from receivers; and (d) to adhere to all Rules regarding reversals and when reversals are deemed improper.
- 11.5 Processing Wire Transfers.** We may, at our discretion, process wire Orders through the Federal Reserve Bank System, SWIFT, or other commercially reasonable wire processing system. If we are also the beneficiary's bank, we may simply debit and credit the appropriate Accounts as requested in the wire Order. You must pay us at or before the time we execute the Order with available funds on deposit in the amount of the transfer plus our current Wire Transfer Fee (unless you are using Account Analysis). If you fail to do so, we may in our discretion attempt to cancel the transfer, or undertake any other legal means to collect the amount of the transfer, including offsetting against any of your Accounts with us.
- 11.6 Order Instructions.** You will comply with the Order form, format and other requirements set forth in the Specifications, applicable law, the Rules (if applicable), and any security procedures that we establish for the Service. We are not responsible for detecting or rejecting duplicate Orders. If you give us an Order that is incorrect in any way, we may charge your Account for the payment whether or not the error could have been detected by us. We are not liable for acts or omissions by you or any other person including, without limitation, any funds transfer system, any Federal Reserve Bank, any intermediary bank or beneficiary's bank, or any beneficiary, none of which shall be deemed our agent. Without limitation, we shall not be liable for delaying or failing to act if caused by legal constraint, interruption of transmission or communications facilities, equipment failure, war, emergency conditions, strikes, or other circumstances beyond the Bank's control.

You must accurately describe transaction beneficiaries, intermediary financial institutions, and the beneficiary's financial institutions in your Orders. If you describe any beneficiary or institution inconsistently by name and number, we and other institutions may process the Order solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution.

You will not allow others to initiate Orders on your behalf without our prior written consent. You must not engage in the business of initiating Orders on behalf of third parties without our prior written consent. You will be solely responsible for the acts and omissions of such agents.

11.7 SWIFT MT101 Messaging Wire Instructions. Should you elect in the Specifications to send any electronic wire Orders through MT101 message, you agree to the following additional security procedures:

- The MT101 must contain your SWIFT Bank Identifier Code ("**BIC**");
- The MT101 must identify (by Account number) the Account to be debited, as stated in the Specifications.
- The MT101 must state a transfer amount that is within the dollar limits (if any) stated in the Specifications.

Furthermore, if you select this option, you agree to the following additional terms and conditions:

- (a) You may, from time to time, amend the Specifications. We shall have a reasonable time to act thereon before accepting it, and are not required to accept any amendment. Additional data or specifications may appear in the Specifications (e.g., Authorized Users), but such additional data or specifications shall **not** be considered part of the parties' agreed security procedure and shall not be the basis for you to dispute our good faith or your liability for transactions or actions that are others in accordance with the above security procedures.
- (b) **You agree that any Order or other communication (including an instruction to amend or cancel an Order) issued in your name or BIC that is verified by us pursuant to the above security procedures, and acted upon by us in good faith, shall be effective as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized.** You hereby represent and warrant to us that you have determined these security procedures to be commercially reasonable and sufficient for you, according to your expressed wishes and needs, including the size, type and frequency of payment Orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send an MT101 to us.
- (c) You acknowledge that the above security procedures may offer fewer controls than our standard wire transfer processes of (i) entering wires into Treasury Internet Banking after log-in with Access Credentials, with two person "dual" authorization controls, (ii) telephoning Orders to our central wires department with PIN code verification and two person "dual" authorization controls, and (iii) ordering wires in person at our branches.
- (d) You acknowledge that this "SWIFT MT101 Messaging Wire Instructions" Subsection's security procedure (i) is not designed or intended to detect errors in content or transmission, and (ii) does not attempt to identify the specific individual person(s) who prepared and/or sent the MT101 in

your name or BIC to us. Nevertheless, you wish to use this Subsection's security procedure, and agree to be bound by any Order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection's security procedure.

- (e) You warrant to us that each MT101 you send or cause to be sent to us shall fully comply with all applicable law and the SWIFT rules and regulations as amended from time to time. You have chosen to enter into a separate service agreement with SWIFT for the ability to send SWIFT messages. We make no representations or warranties to you regarding the security or accuracy of messages you send us via SWIFT. You agree that we are entitled to rely in good faith upon all messages received via SWIFT bearing your BIC, and shall hold us harmless with respect to any claims or damages that you or we may incur in connection with those messages.
- (f) Orders not received by us prior to the applicable Cutoff Time, with reasonable time to act thereon, shall be deemed received on and be executed on the next funds transfers Business Day. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your Customer Service Representative.

11.8 Batch Wire Instructions/Batch Electronic File Transfers. If you elect in the Specifications to submit your electronic wire Orders to us in batch files (each a "**Wire Batch**"), and to deliver Wire Batches via Secure FTP (SFTP) or through the SWIFT FileAct processes, you agree to the following additional security procedures:

- For files transmitted via SFTP, the Wire Batch's sending IP Address must appear to match the IP Address (or range of IP Addresses) stated in the Specifications;
- For files transmitted via SWIFT FileAct, the Wire Batch must originate from the BIC stated in the Specifications;
- The Wire Batch's name must match the file name stated in the Specifications;
- In the Specifications, you shall elect to use PGP Encryption of Wire Batches for file transfers; and the Wire Batch received by us must be accompanied by the keys and/or "Access Credentials" necessary for decryption by us. If an unencrypted Wire Batch satisfying the security procedures above is received by us, we may in our sole discretion (but shall not be required to) call you to validate that the Wire Batch in fact came from you and then proceed to process it and this Subsection shall be deemed satisfied. (If you do not specify PGP Encryption in the Specification form, then you knowingly decline this recommended additional step in this security procedure, and agree that the remaining portions of these security procedures are and remain commercially reasonable for your needs.)

Furthermore, by selecting this option, you agree to the following additional terms and conditions:

- (a) You may, from time to time, amend the Specifications. We shall have a reasonable time to act thereon before accepting it, and we are not required to accept any amendment. Additional data or specifications may appear on the Specification form (e.g., funding Account numbers or Authorized Users), but such additional data or specifications shall **not** be considered part of the parties' agreed security procedure and shall not be a basis for you to dispute our good faith or your liability for transactions or actions that are otherwise in accordance with the above security procedures.

- (b) **You agree that any Order or other communication (including an instruction to amend or cancel an Order) issued in your name that is verified by us pursuant to the above security procedures, and acted upon by us in good faith, shall be effected as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized.** You hereby represent and warrant to us that you have determined this security procedure is commercially reasonable and sufficient for you, according to your expressed wishes and needs, including the size, type and frequency of payment orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send a Wire Batch to us.
- (c) You acknowledge that the above security procedures may offer fewer controls than our standard wire transfer processes of (i) entering wires into Treasury Internet Banking after log-in via Access Credentials, with two person "dual" authorization controls, (ii) telephoning payment orders to our central wires department with PIN code verification and two person "dual" authorization controls, and (iii) ordering wires in person at our branches. You acknowledge that the security procedure in this Subsection does not include other control options that may be available with our standard processes such as restrictions on the funding Account or dollar amount.
- (d) You warrant to us that each Wire Batch you send or cause to be sent to us, by any method, shall fully comply with all applicable law as amended from time to time.
- (e) For Wire Batches sent via SwiftAct, you have chosen to enter into a separate service agreement with SWIFT for the ability to send Wire Batch files. You warrant to us that each Wire Batch you send or cause to be sent to us shall fully comply with the SWIFT rules and regulations as amended from time to time. We make no representations or warranties to you regarding the security or accuracy of Wire Batches sent to us by you via SWIFT. You agree that we are entitled to rely in good faith upon all Wire Batches received via SWIFT originating from your BIC, and shall hold us harmless with respect to any claims or damages that you or us may incur in connection with those Wire Batches.
- (f) You acknowledge that this "Batch Wire Instructions/Batch Electronic File Transfers" Subsection's security procedure (i) is not designed or intended to detect errors in content or transmission, and (ii) does not attempt to identify the specific individual person(s) who prepared and/or sent the Wire Batch to us. Nevertheless, you wish to use this Subsection's security procedure, and agree to be bound by any Order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection's security procedure.
- (g) Orders not received by us prior to the applicable Cutoff Time, with reasonable time for us to act thereon, shall be deemed received on and be executed on the next Business Day for funds transfers. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your Customer Services Representative.

11.9 ACH Direct Send. You may request to directly send your originating ACH Entry Orders (each an "ACH Entry") to us in batch files (each a "File") and to deliver Files via Secure FTP (SFTP) processes ("ACH Direct Send"). Such request shall be made in the Specifications.

- (a) Security Procedure. Should you elect in the Specifications to send your ACH Entries in Files, you agree to the following additional security procedures for each ACH Entry communicated via File:

- i. For All Files, the File's name must match the file name stated in the Specifications. In addition, paragraph (ii) or (iii) must be satisfied, depending on how the File was transmitted.
- ii. For Files Transmitted Via Manual Transmission Secure Mailbox, our portal must be accessed using your valid user ID and Password;
- iii. FOR FILES TRANSMITTED AUTOMATICALLY VIA SFTP: (1) the File's sending IP Address must appear to match the IP Address (or range of IP Addresses) stated in the Specifications, and (2) you shall elect in the Specifications to use PGP Encryption, and the File received by us must be accompanied by the keys and/or Access Credentials necessary for decryption by us.
 - 1. Note: If an unencrypted File satisfying (i) and (iii)(1) above is received by us, we may in our sole discretion (but shall not be required to) call you to validate that the File in fact came from you and then proceed to process the File, in which case procedure (iii)(2) shall be deemed satisfied.
 - 2. Note: If you do not specify PGP Encryption in the Specification form, then you knowingly decline our recommendation of procedure (iii)(2), and represent that (i) and (iii)(1) alone comprise a commercially reasonable security procedure that is adequate for your needs.

You may, from time to time, amend the Service Specifications. We shall have a reasonable time to act thereon before accepting it, and we are not required to accept any amendment. Additional data or specifications may appear in the Specifications (e.g., funding account numbers or authorized users), but such additional data or specifications shall not be considered part of the parties' agreed security procedure and shall not be a basis for you to dispute our good faith or your liability for transactions or actions that are otherwise in accordance with the above security procedure.

You agree that any instruction or other communication (including an instruction to amend or cancel a payment order) issued in your name that is verified by us pursuant to the above security procedure, and acted upon by us in good faith, shall be effects as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized. You hereby represent and warrant to us that you have determined this security procedure is commercially reasonable and sufficient for you, according to your wishes and needs, including the size, type and frequency of payment orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send a File to us.

(b) Additional Terms and Conditions.

- i. You acknowledge that the above security procedure may offer fewer controls than our standard ACH processing service whereby you manually enter ACH entry instructions into Treasury Internet Banking after log-in via Access Credentials, with Dual Controls. You acknowledge that the security procedure in this Section does not include other control options that may be available with our standard ACH services such as restrictions on the funding account or dollar amount.

- ii. Separate from the above security procedure, you shall promptly verify the control total of each File ("**Control Total**") you send. Control Totals can (but are not designed or warranted to) indicate possible problems with a received File, such as the sending of an unauthorized or erroneous File, unauthorized or erroneous entries being included in the File, or corruption of the File in transmission.
 1. **If we email you with the Control Total of the File received from you**, then you shall have 30 minutes from that email to call and notify us of an incorrect Control Total, and to instruct us to not process that File. The number for you to call is stated in our email. If you do not call us within those 30 minutes, we are authorized to process the File. You shall indemnify and hold us harmless from any loss that could have been prevented by timely notifying us of an incorrect Control Total.
 2. **If we instruct you to email us with the Control Total of the File sent by you**, then we shall compare the Control Totals received in your emails to the Control Totals received in your Files. If the Control Totals in a File does not match that in the corresponding email, then we will notify you of the discrepancy and not execute that File unless further instructed by you to do so. You shall indemnify and hold us harmless from any loss that would not have occurred if you did not instruct us to execute a File after being informed of the Control Total discrepancy.
- iii. You warrant to us that each File you send or cause to be sent to us, by any method, shall fully comply with all applicable law as amended from time to time.
- iv. You acknowledge that this Subsection's security procedure (a) is not designed or intended to detect errors in content or transmission, and (b) does not attempt to identify the specific individual person(s) who prepared and/or sent the File to us. Nevertheless, you wish to use this Subsection's security procedure, and agree to be bound by any order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection's security procedure.
- v. Files not received by us prior to the applicable Cutoff Time, with reasonable time for us to act thereon, shall be deemed received on and be executed on the next Business Day for funds transfers. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your treasury services representative.
- vi. Nothing in this Subsection shall preclude you from entering into agreements to communicate ACH entry instructions via Treasury Internet Banking, or by other methods. ACH instructions received via those methods shall be governed by those separate agreements, including those agreements' security procedures.

11.10 Foreign Transfers; Currency Conversion. If your Order involves a transfer to a beneficiary in a foreign country, we may execute the Order in the currency of the country of the beneficiary's financial institution. You consent to conversion of the funds into foreign currency by us (or our agents or processors), any correspondent bank or intermediary bank, the beneficiary's bank, or any other third party reasonably involved in the completion of the funds transfer, at conversion rates generally applied by that converting party. If the transfer is returned for any reason, you agree to accept the refund in U.S. dollars in the amount of the foreign money credit, based on the current buying rate on the day of the refund, less any charges and expenses incurred by us. Foreign transfers may be subject to delays and changes in foreign currency exchange rates. Fees imposed by intermediary banks may be deducted from the amount of your Order. A portion of those charges may be shared with us.

- 11.11 Authorization and Record Retention.** You will initiate ACH debit and drawdown wire Orders only with the prior written authorization of the owners of the Accounts affected by such Orders. You agree to maintain a copy of each authorization for a period of two years following its termination, and to provide us with a copy upon request. (Where the ACH Rules permit or require alternate methods of obtaining, evidencing, and retaining authorizations from receivers, such as for WEB and TEL entries, you will comply with those Rules as applicable. See the Subsection below entitled "Restricted ACH Orders".) You warrant to us whatever we are required or deemed to warrant to others regarding your Orders.
- 11.12 Internal Book Transfers.** Transfers between your Accounts with us are subject to the terms of your Deposit Account Agreement. Although you may instruct our online system to make transfers between your Accounts at any time on any day, transfers occurring after the Cutoff Time or on a day other than a Business Day may not be posted until the next Business Day.
- 11.13 Cancellation and Amendment of Orders.** You may not cancel or amend an Order after we receive it. If we attempt to reverse an Order at your request, we assume no liability for any interest or losses that result if the reversal is not effected. You agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any reversal. You are solely responsible for providing notice to receivers that a reversal is being transmitted and the reason for the reversal no later than the Effective Date of the reversing entry.
- 11.14 Rejection of Orders.** We may reject any Order if: (a) the Order does not conform to the limitations, security procedures or other requirements set forth in this Agreement (including any applicable Specifications); (b) there are insufficient collected funds in your Account on the transaction date or Effective Date; (c) the Order involves funds subject to a lien, hold, dispute or legal process which prevents their withdrawal; (d) the Order is not authenticated to our satisfaction or we have reason to believe the Order may not be authorized (notwithstanding compliance with any security procedure); (e) the Order contains incorrect, incomplete, or ambiguous information; (f) the amount of the Order exceeds any limit established for the specific Order or for your Account; (g) we believe the beneficiary of the Order may be prohibited, e.g., on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury's Office of Foreign Assets Control (which may require us to not complete the transfer and to "block" the funds until that Office issues a written release); (h) the Order appears to be in contravention of applicable law, regulation or executive order; (i) the Order would cause us to exceed any limitation on our intraday net funds position established pursuant to Federal Reserve guidelines; (j) the Order would result in violation of any other law or regulation, or any applicable governmental risk control program; (k) the Order presents any other risk to us or third persons that we deem unreasonable in our sole discretion; or (l) we elect in our discretion to not provide the Service for any or no reason. We may notify you orally, electronically, or in writing if we reject any Order no later than two (2) Business Days after the date the Order was to be effected. We are not required to pay you interest on a rejected Order for the period between the rejection of the Order and your receipt of the notice of rejection.
- 11.15 Notice of Returned Orders.** We may notify you electronically, in writing, by telephone, or otherwise regarding any Order that is rejected or returned for any reason. We will not be obligated to credit your Account with any interest, unless the return is caused by our failure to properly execute the Order. We may attempt to remake the Order if the return is due to our error and we have sufficient data to remake the Order. You agree to reimburse us promptly for the amount of any ACH debit or wire drawdown Orders that are reversed, adjusted or returned. You may not resubmit any ACH debit or wire drawdown Order where the payment was stopped by the accountholder.

- 11.16 Notices and Statements.** Information on transfers to or from your Accounts will be reflected on your periodic statements and may be available to you online. We are not required to provide you with any other notice of the receipt, transmittal or debiting of Orders. Please see also the Section entitled "Notices – Duty to Notify Us" regarding your obligation to notify us in the event of unauthorized or erroneously paid Orders.
- 11.17 Provisional Credit.** Under the Rules, if you originate an ACH credit entry to transfer funds to a receiver, any credit given by the receiving financial institution to the receiver's account is provisional until the receiving financial institution receives final settlement. If final settlement does not occur, then the receiving financial institution is entitled to a refund of that provisional credit, and you will not have paid the amount of that credit transfer to the receiver. In addition to the Rules, you agree that any amount we credit to your Account for any type of funds transfer to you is provisional until we receive final settlement through a Federal Reserve Bank (or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code), and we are entitled to a refund from you of that provisional credit if final settlement does not timely occur.
- 11.18 Unauthorized Order.** We may process any Order or other instruction (including an amendment or cancellation of an Order) that we believe is transmitted or authorized by you if we act in compliance with the security procedure (including any applicable callback procedure) agreed upon by you and us. Such Orders will be deemed effective as if made by you, and you will be obligated to pay us in the amount of such Orders, even though they are not transmitted or authorized by you. We strongly recommend that you impose a dual control internal environment in connection with the transmission and confirmation of Orders. We may refuse or delay execution of any Order that we have reason to believe may not be authorized by you. We shall have the right, but no duty, to question the authorization of any Order received with your Access Credentials or compliance with any agreed security procedure (including any applicable callback procedure). If we fail to follow the agreed security procedure but can prove that the Order was originated or authorized by you, then the Order shall be deemed authorized for all purposes.
- 11.19 Audit.** You hereby grant us the right (but we shall have no duty) to audit from time to time your practices, procedures and controls in originating Orders, complying with the Rules and the terms of this Agreement, and reviewing reserve requirements (collectively "**Order Controls**"). You are also responsible for providing us with access to the personnel, records and facilities of any third-party contractor or vendor (such as third-party processors) you may employ in using our Funds Transfer Services, as reasonably necessary to complete our audit of your Order Controls. You also agree to provide us with copies of reports you may create or receive of audits conducted by you or third-party parties concerning your Order Controls.
- 11.20 Payment Transaction Limits.** You agree not to: (a) exceed the transaction limits we establish from time to time for your Service; (b) allow anyone to initiate Orders without proper supervision and adequate safeguards; or (c) submit ACH debit Orders for Accounts receivable (ARC), represented check (RCK), international (IAT), back-office conversion (BOC), telephone-initiated (TEL), Internet-initiated (WEB), point-of-purchase (POP), point-of-sale (POS), machine transfer entry (MTE), shared network entry (SHR), check truncation (TRC or TRX), customer-initiated (CIE), or destroyed check (XCK) entries (each a "**Restricted Order**") unless we otherwise consent in the Summary of Services, the Specifications, or some other writing. (Should we consent to any of the above Restricted Orders please see the Subsection below entitled "Restricted ACH Orders" for the terms and conditions governing those Orders). We may from time to time and without notice prohibit your use of any other type of ACH entry unless you obtain our prior written consent to do so. You will regularly audit the actions of your employees, agents and Authorized Users of the Service.

11.21 Restricted ACH Orders. We may process certain types of Restricted Orders (listed in the "Payment Transaction Limits" Subsection above) that are otherwise prohibited, that you have requested and that we have consented to in the Summary of Services, the Specifications or a separate writing. By requesting permission to submit any Restricted Orders and by our expressing written consent, you and we agree to all other terms of this Agreement surrounding ACH entries, to the general terms in Subsection (a) below, and to the terms listed in each Subsection below that corresponds to certain Restricted Order types. All capitalized terms used in this Subsection that are not otherwise defined in this Agreement shall have the same meanings as those terms are used in the Rules.

(a) General Terms and Conditions for Restricted Orders. You and we agree to the following:

- i. **Suspension or Termination.** We may suspend or terminate your right to engage in any Restricted Order transactions at any time by providing you with notice. We may immediately suspend or terminate your right to engage in Restricted Order transactions if: (a) you breach the Rules, applicable law, this Agreement, the Summary of Services, or Specifications; (b) there is a material increase in the number or amount of claims or returns related to any of your Restricted Orders or other ACH Entries; or (c) you or we terminate this Agreement or ACH Service generally.
- ii. **Service Availability.** For each Restrictive Order, we will notify you when you may begin to process such respective Order.
- iii. As used herein, "**RDFI**" means the receiving depository financial institution (as defined in the Rules).

(b) Accounts Receivable (ARC) and Back-Office Conversion (BOC) entries. You can convert Checks into accounts receivable entries ("**ARC Entries**"), or into back-office conversion entries ("**BOC Entries**"). If you request this Restrictive Order and we consent in writing, you and we agree as follows:

- i. **ARC Entries.** You may initiate ARC Entries only for Checks that you receive via the U.S. mail or at a dropbox location for the payment of goods and services. You agree to submit ARC Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and the Specifications.
- ii. **BOC Entries.** You may initiate BOC Entries only for Checks that you receive in person or at a manned bill payment location for the payment of goods and services. You agree to submit BOC Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and the Specifications.
- iii. **Restrictions.** You may not initiate an ARC/BOC Entry for Checks that are not permitted by this Agreement or the Rules. This includes (without limitation):
 1. Checks that contain an Auxiliary On-Us Field in the MICR line;
 2. Checks in an amount greater than \$25,000;
 3. Third-party checks;
 4. Demand drafts, remotely created checks, and third-party drafts that do not contain the signature of the Receiver (i.e., your customer);

5. Checks provided by a credit card issuer for purposes of accessing a credit account or checks drawn on home equity lines of credit;
6. Checks drawn on an investment company, as defined in the Investment Company Act of 1940;
7. Obligations of a financial institution (e.g., traveler's checks, cashier's checks, official checks, money orders, etc.);
8. Checks drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank;
9. Checks drawn on a state or local government that are not payable through or at a participating depository financial institution; and
10. Checks payable in a medium other than United States currency.

You will not submit ARC/BOC Entries to collect: payments for goods or services sold by third parties; payments relating to adult entertainment or gambling services; or obligations owing to third parties. An ARC or BOC Entry may only be submitted as a single entry debit to a Receiver's (defined in the Rules) account for a payment that is made to you. No fees may be added to the amount of the Check when it is transmitted as an ARC/BOC Entry.

During initial processing of an ARC/BOC Entry, you must use a reading device (not key-enter) the routing number, account number, or check serial number from the Check. You may, however, key-enter such information to correct errors relating to MICR misreads, misencoding, or processing rejects. Checks must contain a preprinted serial number and must be completed and signed by the Receiver.

- iv. Limitations. You will not submit ARC/BOC Entries for more than the maximum single entry, daily total, and/or monthly total amount(s) we designate from time to time. We also may impose limits on files submitted by a third-party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of ARC/BOC Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing ARC/BOC Entries in a greater amount at any time without cause or prior notice.

- v. Notice to Your Customers. Prior to your receipt of a Check that is to be converted to an ARC/BOC Entry, you must provide your customer (the Receiver) with a clear and conspicuous notice, compliant in form and manner of communication with the Rules and applicable law, that the receipt of each Check will be authorization for the Check to be used as a source document for an ACH debit transaction to the Receiver's account at his or her financial institution. If the Receiver is a consumer, the notice shall comply with the requirements of Federal Reserve Regulation E, for example:

"When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

In the case of BOC Entries, your Notice must also state:

"For inquiries, please call <phone number>."

Note: Transactions to collect returned items fees require additional disclosures.

- vi. **Warranties.** In addition to any other warranties and representations made to us under the Agreement, you warrant the following to us with respect to each ARC/BOC Entry:
 - 1. The amount of the Entry, the routing number, the account number, and the Check serial number are obtained from and in accordance with the source document;
 - 2. You will retain a reproducible, legible, image, microfilm, or copy of the front and back of the source document for two years from the Effective Date of the ARC/BOC Entry. You will provide us with the copy promptly, but no later than five (5) Business Days following our request. The copy shall be clearly marked on its face as being a copy.
 - 3. You will not use the Check other than as a source document and will not enter the Check in the check collection process. The source document will not be presented or returned such that any person will be required to make payment based on the source document.
 - 4. The source document to which the ARC/BOC Entry relates will be securely destroyed within 14 days of the Effective Date for the Entry.
 - 5. You have established and implemented, and will maintain, commercially reasonable methods to securely store the source document pending its secure destruction; and to securely store all banking information relating to the ARC/BOC Entry for so long as it is retained by you and until it is securely destroyed or purged.
 - vii. **Additional Warranties for BOC Entries.** In addition to any other warranties and representations made to us under this Agreement, you warrant the following to us with respect to each BOC Entry that you have established and implemented, and will maintain:
 - 1. Commercially reasonable procedures to verify the identity of the Receiver for each BOC Entry; and
 - 2. A working telephone number that is answered during normal business hours for Receiving inquiries regarding BOC Entries, and you display that telephone number on the notice you provide to Receivers in accordance with the Subsection above entitled "Notice to Your Customers."
 - viii. **Opt-Out by Receivers.** The Rules no longer require Originators (defined in the Rules) to allow Receivers to opt out of ARC/BOC Check conversion. Presently, we do not impose any requirement of our own in this Agreement that you allow Receivers to opt-out. We retain the right, however, to notify you in the future that, in our sole discretion and as a condition to continuing to allow you to submit ARC/BOC entries, you must establish and maintain an opt-out program satisfactory to us.
- (c) **RCK Entries.** You can use a re-presented Check entry (each an "RCK Entry") to collect Checks that have been returned because of insufficient or uncollected funds, and that meet all the other requirements of this Subsection and the General Terms and Conditions for Restricted Orders above. You agree to submit such entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time.

- i. Notice of Your RCK Policy. Before first receiving the Check, you must have provided the Receiver with a conspicuous notice stating in clear and readily understandable terms that giving you the Check authorizes you to initiate an ACH debit entry to the Receiver's account for the amount of the Check if it is returned for insufficient or uncollected funds. Notices provided at the point-of-sale must be clearly displayed on a prominent sign at the point-of-sale. If you are a billing firm (i.e., you issue invoices or statements to be paid by the Receiver), the notice must be clearly displayed on each invoice or statement. You must provide us with a copy of the notice within three (3) Business Days of our request. You agree that, if the Receiver signs a written statement that a required notification was not provided, the amount may be charged against your Account and re-credited to the Receiver.
- ii. Copy of Check. You must retain a copy of the front and back of the Check to which the RCK Entry relates for 7 years from the Effective Date. You agree to provide us (for our use or the RDFI's use) a copy of the Check (front and back) promptly, but in no event more than three (3) Business Days after our request. If the Check has been finally paid prior to providing us with the copy, you must mark the face of the copy as paid.
- iii. Warranties that RCK Entries Relate to Eligible Checks. You warrant that all RCK entries relate to returned Checks that are eligible in accordance with this Agreement and the Rules. For example, the Check must:
 1. be in an amount less than \$2,500;
 2. indicate on its face that it was returned due to "Not Sufficient Funds," "NSF," "Uncollected Funds," or comparable language;
 3. be dated 180 days or less from the date the RCK Entry is being transmitted to the RDFI;
 4. be drawn on a consumer account;
 5. have been previously presented (i) no more than two (2) times through the check collection system (as a paper check, a substitute check, or an image) if the entry is an initial RCK Entry, or (ii) no more than one time through the check collection system and no more than one time as an RCK Entry if the entry is a reinitiated RCK Entry;
 6. be a "check" within the meaning of Article 4 of the Uniform Commercial Code, as amended;
 7. be a negotiable demand draft drawn on or payable through or at a participating depository financial institution, other than a Federal Reserve Bank or Federal Home Loan Bank; and
 8. contain a pre-printed serial number
- iv. Ineligible Items. You shall not submit RCK entries for any of the following ("**ineligible items**"): (1) non-cash items (as defined in Regulation CC); (2) drafts drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank; (3) U.S. Postal Service money orders; (4) items not payable in United States currency; (5) items payable to a person other than the Originator; (6) remotely-created items and other drafts that do not contain the original signatures of the Receivers; (7) drafts drawn on a state or local government that are not payable through or at a Participating DFI; (8) any other type of item prohibited by

the Rules; and (9) any other type of item that we may notify you from time to time that we have in our discretion declared ineligible under this Section.

- v. **Additional Warranties.** In addition to all other warranties given by you under the Agreement and the Rules, you warrant the following to us with respect to each Check and the RCK Entry:
1. you have good title or are entitled to enforce the Check, or are authorized to obtain payment or acceptance on behalf of one who has good title or is entitled to enforce the Check;
 2. all signatures on the Check are authentic and authorized;
 3. the Check is not counterfeit and has not been altered;
 4. the Check is not subject to a defense or claim in recoupment of any party that can be asserted against you or us;
 5. you have no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item;
 6. the Check is drawn on, payable through, or payable at the RDFI, and the amount of the Check, the Check number, and the Account number contained on the Check have been accurately reflected in the RCK Entry;
 7. subsequent to the origination of the RCK Entry, the Check or a copy of the Check will not be presented to the RDFI unless the related RCK Entry has been returned by the RDFI;
 8. the information encoded after issue in magnetic ink on the Check is correct;
 9. any restrictive endorsement made by you, your agent or third party sender on the Check is void and ineffective upon initiation of the RCK Entry; and
 10. the RCK Entry is only for the face amount of the Check only; no collection fees have been added to the amount of the Check transmitted as an ACH entry. (See the Rules for the origination of an ACH debit entry to collect fees).
- (d) **XCK Entries.** You can use a destroyed check ACH entry (each an "**XCK Entry**") if you are: (i) acting in the capacity of a collecting financial institution; and (ii) acting to collect checks that were lost or destroyed in connection with the loss or destruction of an entire cash letter (and not with respect to individually lost or destroyed checks).

You acknowledge that any RDFI may, in its sole discretion, refuse to accept and elect to return any XCK Entry. You shall not assert, and we shall not accept, any responsibility for any RDFI refusing to accept or returning any XCK Entry that you initiate.

- i. **Formatting.** You agree to submit such XCK Entries in accordance with the terms of this Agreement, the Summary of Services, the Specifications, and the technical specifications and formatting requirements set forth in the Rules, and as directed by us from time to time.

Without limiting the preceding sentence, the words "NO CHECK" and "CHECK DESTROYED" must appear in the Company Entry Description and Company Name fields so that they can appear on customers' statements and help identify the entries.

- ii. Copy of Check. You must retain a copy of the front and back of the check to which the XCK Entry relates for 7 years from the Effective Date. You agree to provide us (for our use or the RDFI's use) a copy of the check (front and back) promptly, but in no event more than three (3) Business Days after our request. If the check has been finally paid prior to providing us with the copy, you must mark the face of the copy as paid.
- iii. Warranties that XCK Entries Relate to Eligible Checks. You warrant that all XCK Entries relate to returned checks that are eligible in accordance with this Agreement and the Rules. For example, the check must:
 1. be in an amount less than \$2,500;
 2. be lost or destroyed in connection with loss or destruction of an entire cash letter;
 3. be dated 180 days or less from the date the XCK entry is being transmitted to the RDFI;
 4. not have been previously paid or returned as a check, or previously submitted as an ACH Entry;
 5. be a check within the meaning of Article 4 of the Uniform Commercial Code, as amended;
 6. be a negotiable demand draft drawn on or payable through or at a participating depository financial institution, other than a Federal Reserve Bank or Federal Home Loan Bank; and
 7. contain a pre-printed serial number
- iv. Ineligible Items. You shall not submit XCK Entries for any of the following ("**ineligible items**"): (1) non-cash items (as defined in Regulation CC); (2) drafts drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank; (3) U.S. Postal Service money orders; (4) items not payable in United States currency; (5) items payable to a person other than the Originator; (6) remotely-created items and other drafts that do not contain the original signatures of the Receivers; (7) drafts drawn on a state or local government that are not payable through or at a participating depository financial institution; (8) items drawn in amounts of \$2,500 or more; (9) any other type of item prohibited by the Rules; and (10) any other type of item that we may notify you from time to time that we have in our discretion declared ineligible under this Section.
- v. Additional Warranties. In addition to all other warranties given by you under the Agreement and the Rules, you warrant the following to us with respect to each check and the XCK Entry:
 1. you have good title or are entitled to enforce the check, or are authorized to obtain payment or acceptance on behalf of one who has good title or is entitled to enforce the check;
 2. all signatures on the check are authentic and authorized;

3. the check is not counterfeit and has not been altered;
4. the check is not subject to a defense or claim in recoupment of any party that can be asserted against you or us;
5. you have no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item;
6. the check is drawn on, payable through, or payable at the RDFI, and the amount of the check, the check number, and the account number contained on the check have been accurately reflected in the XCK Entry;
7. the item has not been and will not be presented to the RDFI;
8. the information encoded after issue in magnetic ink on the check is correct;
9. any restrictive endorsement made by you, your agent or third party sender on the check is void and ineffective upon initiation of the XCK Entry; and
10. the XCK Entry is for the face amount of the check only; no collection fees or other amounts have been added.

(e) TEL Entries. You can submit ACH Orders for telephone-initiated debit entries (each a “**TEL Entry**”). You may initiate Single Entries to consumer accounts pursuant to oral authorizations you obtain from Receivers (“**Consumers**”) by telephone. (For recurring TEL Entries, see also the Subsection below entitled “Additional Terms for Recurring TEL Entries”). You agree to submit TEL entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time. An entry based on a consumer’s oral authorization must utilize the TEL Standard Entry Class Code.

- i. **Limitations.** You must not submit TEL Entries for more than the maximum single entry, daily total, or monthly total amounts that we designate from time to time. You will not divide a transaction into more than one TEL Entry in order to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. Our processing of TEL Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing TEL Entries in a greater amount at any time without cause or prior notice.

You will not use TEL Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; or (3) obligations owing to third parties; or other amounts or transactions prohibited in the Rules, the Agreement, or any other publication by us.

- ii. **Consumer Authorization.** You will obtain the consumer’s oral authorization for each TEL Entry to the consumer’s account. A TEL Entry may not be initiated in situations where a consumer has provided you with a standing authorization for the transmission of multiple (but not recurring) ACH debit entries to an account (e.g., where there is a written authorization to charge the consumer’s account for occasional purchases made over the telephone).

A TEL Entry may be transmitted only in circumstances in which: (1) there is an existing relationship between you and the consumer, or (2) there is not an existing relationship, but the consumer initiated the call to you. A TEL Entry may not be used by you when there is no existing relationship between you and the consumer, and you either have initiated the telephone call or instructed the consumer through a mail or email solicitation to initiate the telephone call to you. Subject to the Rules, you and the consumer are considered by us to have an existing relationship when either: (1) there is a written agreement in place between you and the consumer for the provision of goods or services, or (2) the consumer has purchased goods or services from you within the past two years. You are not deemed to have an existing relationship based on any relationship your affiliates may have with a consumer.

In obtaining authorization over the telephone, you must: (1) state clearly during the telephone conversation that the consumer is authorizing an ACH debit entry to his or her account, and (2) express the terms of the authorization in clear and readily understandable terms (including the six items of information described in the "Disclosures to Consumers" Subsection below.

The consumer must then unambiguously express consent. Silence does not express consent. If you use a voice response unit (VRU) to capture a consumer's authorization for a TEL Entry, please note that key-entry responses by the consumer to input data and to respond to questions does not qualify as an oral authorization. A VRU may be used by the consumer to key enter data and to respond to questions, provided that the actual authorization by the consumer (including the six pieces of information described below) is provided orally.

The authorization and your record thereof must conform to the requirements of the Rules and must provide evidence of the consumer's identity and assent to the authorization. You must either (a) audio record the consumer's oral authorization, or (b) provide written notice to the consumer that confirms the oral authorization in advance of the Effective Date of the entry. If you opt to provide the consumer with written notice confirming the consumer's oral authorization, you must disclose to the consumer during the telephone call the method by which such notice will be provided (e.g., U.S. mail, fax, or other delivery method). The written notice must include, at a minimum, "Disclosures to Consumers" set forth in the "Disclosures to Consumers" Subsection below.

You must retain either the original or a duplicate audio recording of the consumer's oral authorization, or a copy of the written notice confirming the consumer's oral authorization, for 2 years from the date of the authorization. Within three (3) Business Days of our request, you must provide us with a copy of the authorization recording or confirming notice.

- iii. Disclosures to Consumers. You must ensure that, at a minimum, the following specific information is disclosed to the consumer during the telephone call and in any confirming written notice: (1) the date on or after which the consumer's account will be debited; (2) the amount of the debit entry to the consumer's account; (3) the consumer's name; (4) a telephone number that is available to the consumer and answered during normal business hours for consumer inquiries; (5) the date of the consumer's oral authorization, and (6) a statement by you that the authorization obtained from the consumer will be used to originate a one-time ACH debit entry to the consumer's account. When written notice is used to confirm an authorization, Consumers must be afforded the right to contact you, using the telephone number provided, to correct any erroneous information contained in the notice.

- iv. **Verification of the Consumer's Identity.** For each TEL Entry, you will use commercially reasonable procedures to verify the identity of the consumer. You will use a commercially reasonable method to verify the consumer's name, address, and telephone number. You also will verify the consumer's identity by verifying pertinent information with the consumer.
- v. **RDFI Routing Number Verification.** For each TEL Entry, you will use commercially reasonable procedures to verify that routing numbers are valid. If appropriate, this may include the use of available databases or directories, or contact with the consumer's financial institution. You also will employ reasonable procedures (if available) to verify the validity of account number structures.
- vi. **Warranties.** You warrant that all TEL entries comply with the Rules (including associated operating guidelines) and this Agreement. In addition to any other warranties given by you under this Agreement and the Rules, you warrant the following to us with respect to each TEL Entry:
 1. You have established and implemented commercially reasonable procedures to verify the identity of the consumer;
 2. You have established and implemented commercially reasonable procedures to verify that the routing number is valid; and
 3. The TEL Entry is in accordance with the Receiver's authorization.
- vii. **Recurring TEL Entries Are Prohibited Without Separate Bank Permission. You must not initiate "recurring" (also called "preauthorized") TEL entries unless we have specifically granted you permission in writing to do so.** We may give you that permission in a separate signed writing, but in either case your initiation of recurring TEL entries shall be subject to the "Additional Terms for Recurring TEL Entries" set forth below. The prohibition on initiating recurring TEL entries is applicable both to ACH files that you or your agents may submit to us, and to files or entries that you submit directly to us via any online platform (e.g., our treasury internet banking platform). In no event shall your physical or technical ability to submit recurring TEL entries constitute implied permission to do so.
- viii. **Additional Terms for Recurring TEL Entries.** You may initiate recurring TEL Entries only if we give you written permission in a separate writing signed by us. You hereby represent, promise and warrant as follows with respect to each recurring TEL entry you may transmit to us and each authorization for such entries:
 1. General. Applicable Rules and Law, Including Regulation E. All recurring TEL Entries and their authorizations shall be in accordance with the applicable Rules and all applicable law (including but not limited to Regulation E pursuant to the Electronic Funds Transfer Act governing debits to consumer accounts). The general scope of this Subsection (e) is not limited by the specific provisions of the other Subsections herein.
 2. Notices to Receivers. You shall comply with the Rules and applicable law, including Regulation E which governs advance notice to a Receiver when a recurring debit entry may vary in amount. Such notice shall be your (not our) responsibility, shall state the amount and date of the scheduled debit, and shall be sent to the Receiver at least ten (10) days before that date. You shall also notify the Receiver of its right to receive notice of all varying transfers. All disclosures, notices and agreements shall comply

with applicable governing law, including but not limited to the Electronic Signatures in Global and National Commerce Act ("**ESIGN Act**").

3. Authenticating Authorizations. The Receiver's authorization for recurring TEL Entries shall be obtained by you in a writing that is signed or similarly authenticated by the Receiver. In the case of any "similar authentication" you shall comply with applicable governing law, including but not limited to the ESIGN Act.
 4. Copy of Authorization. For any authorization for recurring TEL Entries, you shall promptly provide the Receiver with a written copy thereof promptly after your receipt (and always prior to the first settlement date). Providing the written copy is in addition to (not instead of) the requirement to make and retain an audio record of that authorization.
 5. Retaining Authorizations. For recurring TEL Entries, you shall retain for two years from the termination or revocation of the authorization (i) the original, copy, or other accurate record of the oral authorization, and (ii) evidence that a copy of the authorization was provided to the Receiver in compliance with Regulation E. At our request, you shall provide us with a copy of the Receiver's authorization.
 6. Field Code "R". Each recurring TEL transaction shall be field coded "R".
 7. No Compulsory Use for Extensions of Credit. You shall not condition any extension of credit to a consumer upon the consumer authorizing you to initiate recurring debit entries.
 8. Cumulative and Conflicting Provisions. For recurring TEL Entries and their authorizations, the provisions of this subchapter are in addition to the provisions of the Subsection below entitled "Web Entries" and this Agreement. In cases of express conflict (e.g., the duty to send a copy of the authorization, the period for retaining the authorization, and the field code "R"), the provisions of this subchapter shall prevail.
- (f) WEB Entries. You can submit ACH Orders for internet-initiated/mobile entries ("**WEB Entries**"). You may initiate single or recurring WEB entries only to consumer accounts. A WEB Entry must be based on (i) an authorization that is communicated (but not by oral communication) by the Receiver to you via the Internet or a Wireless Network; or (ii) any form of authorization otherwise permissible under the Rules if the Receiver's instruction to initiate the individual debit entry is designed by you to be communicated (but not by oral communication) to you via a Wireless Network. You agree to submit such entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time. You may not use the WEB Standard Entry Class (SEC) Code in connection with authorizations obtained from customers by mail or verbal telephone communication. The WEB SEC code may not be used to initiate credit entries except for reversals of WEB debit entries.
- i. Limitations. You must not submit WEB Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. You will not divide a transaction (other than for regular recurring payments) into more than one WEB Entry in order to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. We also may impose limits on files submitted by a third-party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of WEB Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing WEB Entries in a greater amount at any time without cause or prior notice.

You must not use WEB Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; (3) obligations owing to third parties; or (4) obligations related to cash advances by you.

- ii. Consumer Authorization. You must obtain the consumer's authorization prior to initiating a WEB Entry. The authorization must conform to the requirements of the Rules and must provide evidence of the customer's identity and assent to the authorization. You must satisfy the authorization requirement either by (1) obtaining written authorization from the Receiver via the Internet or a Wireless Network; or (2) obtaining the Receiver's authorization in any manner permissible under Rule 2.3.2 (Authorizations and Notices with Respect to Consumer Accounts, as amended), with the Receiver's instruction for the initiation of the individual debit entry being communicated (but not by oral communication) to you via a Wireless Network.

Consumers must be able to read the authorization language displayed on any computer screen, mobile device or other visual display. Consumers should be prompted to print the authorization or otherwise retain a copy. You must provide a copy of the authorization to the customer upon request. Only customers may authorize WEB Entries; a third party service provider may not do so on behalf of the customer.

- iii. Authentication. You must employ a commercially reasonable method to identify and authenticate consumers. The method you employ must not only identify the consumer, but also must demonstrate the consumer's assent to the WEB Entry authorization.
- iv. Fraud Detection System. You must establish, implement and maintain a commercially reasonable fraudulent transaction detection system to screen each WEB Entry in order to minimize the risk of fraud. The level of authentication used shall reflect the risk of the transaction, based on factors such as the transaction amount, the type of goods being offered, whether Consumers are new or existing customers, and the number and average dollar amount of WEB transactions. The system must authenticate your identity, as well as that of the customer. You agree to provide us with a description of the system, upon request, and evidence that the system is commercially reasonable. (Please see the Rules regarding the requirements for a commercially reasonable system.)
- v. RDFI Routing Number Verification. You must establish, implement and maintain commercially reasonable procedures to verify that the routing number of each WEB Entry is valid. If appropriate, this may include the use of available databases or directories. You also will employ reasonable procedures (if available) to verify the validity of account number structures.
- vi. Encryption. You shall establish a secure Internet session with each consumer using a commercially reasonable security technology that, at a minimum, is or is equivalent to 128-bit RC4 encryption technology. The secure session must be in place prior to the key-entry of the customer's banking information and through the transmission of the data to you, your agent or service provider.

- vii. **Security Audit.** You must conduct, or have conducted on your behalf, annual or more frequent security audits to ensure that the financial information you obtain from consumers is protected by security practices and procedures that include, at a minimum, 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. (See the Rules for details of the minimum components that must be addressed in the audit report.) You must provide us with a copy of each audit within 30 days from your receipt of the audit.
- viii. **Corrections.** Neither you nor your service provider will initiate corrections to files that have already been transmitted to the ACH operator.
- ix. **Warranties.** You warrant that all WEB Entries are in compliance with the Rules and the Operating Guidelines of NACHA. In addition to any other warranties given by you under this Section, the Agreement and the Rules, you warrant the following to us with respect to each WEB Entry:
 - 1. You have established, implemented and employed a commercially reasonable fraudulent transaction detection system to screen the entry;
 - 2. You have established, implemented and employed a commercially reasonable method to establish the identity of the entry's Receiver;
 - 3. You have established, implemented and employed commercially reasonable procedures to verify that the RDFI's routing number for the entry is valid;
 - 4. You established a secure Internet session prior to and during the key entry by the customer of any banking information;
 - 5. You have handled all aspects of the transaction in a commercially reasonable manner;
 - 6. There has been no change in your operations or other circumstance that would have a negative effect on the security practices identified or examined during your last security audit; and
 - 7. The Receiver authorized the WEB Entry as you have communicated it to us or our agent.
- (g) **IAT Entries.** You can submit International ACH entries (each an "IAT Entry"). The IAT format accommodates detailed information unique to cross-border payments (e.g., foreign exchange conversion, origination and destination currency, country codes, etc.). These entries must be batched separately from other ACH transactions. Credit and debit entries can only be made to the countries supported by the Outgoing Gateway Operator.

IAT Entries can be used to send entries only to those foreign countries permitted by the US Originating Gateway Operator as amended from time to time. We reserve the right to further restrict, without prior notice, the list of countries to which we are willing to send entries.

- i. **Limitations.** You will not submit IAT Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. You will not divide a transaction (other than for regular recurring payments) into more than one IAT Entry in order

to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. We also may impose limits on files submitted by a third-party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of IAT Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing IAT Entries in a greater amount at any time without cause or prior notice.

You will not use IAT Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; (3) obligations owing to third parties; or (4) obligations related to cash advances by you.

- ii. **Warranties.** You warrant that all IAT Entries are in compliance with the Rules and the Operating Guidelines of NACHA. In addition to any other warranties given by you under this Agreement and the Rules, you warrant the following to us with respect to each IAT Entry:
 1. You are and shall remain in compliance with U.S. Legal Requirements with respect to each IAT Entry, including your obligations under programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN).
 2. Your origination of each IAT Entry complies with the laws and payment system rules of the applicable receiving country(s).
- iii. **OFAC.** You acknowledge that, if an IAT Entry is identified by our screening criteria for review and examination under the Office of Foreign Assets Control's rules and regulation ("**OFAC Rules**"), then settlement for such entry may be delayed or suspended pending our review, and may be terminated under applicable OFAC Rules. You acknowledge that we may be required to place an indefinite hold on funds covered by the identified IAT Entry in the event of termination under OFAC Rules. You agree that any delay in connection with the provisions of this Agreement is a permissible delay for all purposes, including the laws and regulations applicable to the availability of funds held in deposit accounts. In the event an IAT Entry is delayed or terminated, we will provide you with such notice as may be required by the Rules, OFAC Rules, or other applicable laws and regulations.
- iv. **Cutoff Times.** Cutoff times may be different than Domestic ACH transactions, as published in the user guides.
- v. **Exchange Rate.** Exchange rate will be governed and performed by the Receiving Gateway Operators rate. Rates are available daily at <http://www.frbservices.org/app/fedachfx>. ACH returns will be returned at the rates that are based on the effective date of the return entry. Originators (and Third Party Senders) should also be aware that the FX spread will be applied both on the Original transaction, as well as any subsequent return transactions. Settlement will always be executed in US dollars, and will be executed in the receiving countries' currency, as defined by the Receiving Gateway Operator.
- vi. **Differences in International Law; Erroneous Entries.** You understand that each country is governed by its own domestic clearing rules and practices, and that these rules may not correspond directly with the NACHA or United States rules for payments. You agree to conform with the laws of the country to which you are sending payments. You will need to explore any differences within International Law, and we will not be responsible for

identifying differences for you. You further acknowledge that, in addition to our right to payment for all ACH Entries that we process on your behalf and our limited ability to recover for you any erroneous entries you may transmit to us, our ability to recover for you any IAT erroneous entry is even more limited; accordingly, you expressly assume all risk of any IAT erroneous entry you transmit to us, and you agree to indemnify and hold us harmless against any loss you or we may experience in connection with any IAT erroneous entry.

- vii. **Holiday Schedule.** You agree that foreign countries may have different holiday schedules than Domestic ACH transactions. Any transaction that is effective dated for a foreign holiday will be posted on the first Business Day following the holiday date.
- (h) **POP Entries.** You can submit one-time debit entries to accounts to facilitate the in-person purchase of goods and/or services by your customers at the point-of purchase (each a “**POP Entry**”). You may not submit POP Entries in connection with goods or services sold by third parties. POP Entries may only be made for non-recurring, in-person entries for which there is no standing authorization with you for the origination of ACH entries to the Receiver’s account. Checks for POP conversion must be received either in person or at a manned bill payment location.
 - i. **Posted Notice, Copy of Notice and Written Authorization.** Prior to submitting a POP entry, you must provide the Receiver with the following notice and also obtain the Receiver’s written authorization.
 - 1. **Posted Notice.** Prior to receiving the Receiver’s check, you must post conspicuous notice to the Receiver, placed in a prominent and conspicuous location, containing the following or substantially similar language:

“When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment.”
 - 2. **Written Copy of Notice.** At the time of the transaction, you must provide the Receiver with a written notice containing the same or substantially similar language as posted notice.
 - 3. **Written Authorization.** You must obtain written authorization from the Receiver that meets the requirements of applicable law and the Rules, including the following: the authorization must (a) be in writing, signed or similarly authenticated by the Receiver, (b) be readily identifiable as an ACH debit authorization, and (c) clearly and conspicuously state its terms. We also recommend that the authorization contain a statement that the check will not be processed. This will assist customers in understanding the nature of the transaction. You must provide a copy of the authorization to the customer, as required by the Rules. You must retain authorizations for two (2) years and provide us promptly with copies upon our request.
 - ii. **Initiation of Pop Entries/Source Documents.** To initiate a POP entry, your customer must present a check or source document containing the Receiver’s routing number, account number, and check serial number. The source document need not be signed or completed by the Receiver. However, the source document must not have been previously voided,

negotiated or used as a source document. You may not deposit or negotiate the source document.

You must use a reading device (not key entry) to initially capture the routing number, account number, or check serial number from the source document. Key entry may be used only to correct errors resulting from MICR misreads or processing rejects.

You must submit POP Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time.

You must promptly void the source document (i.e., stamp it "VOID") at the conclusion of the transaction and return it to the Receiver at the point of purchase.

- iii. **Prohibited Source Documents.** Checks that may not be used as source documents for POP Entries include: checks that contain an Auxiliary On-U's Field in the MICR line; checks written for more than \$25,000; third-party checks; credit card checks; obligations of a financial institution (e.g., cashier's checks, money orders, traveler's checks, official checks, etc.); checks drawn on the Treasury of the United States, a Federal Reserve Bank, or a Federal Home Loan Bank; checks drawn on a state or local government that are not payable through or at a participating depository financial institution; demand drafts and third-party checks that do not contain the signature of the Receiver; checks drawn on a home equity line of credit; checks drawn on an investment company as defined in the Investment Company Act of 1940; and checks payable in a medium other than United States currency. We may, in our discretion from time to time, notify you of additional types of checks that we prohibit you from using for POP Entries.
- iv. **Receipt Requirements.** You must provide your customer with a receipt that contains the following information: Originator's name; Originator's (or third-party sender's) phone number; date of transaction; transaction amount; check serial number of source document; merchant number (or other unique number that identifies the location of the transaction); and the terminal city and terminal state (as defined in Regulation E). It is recommended that the receipt also provide the following additional information: Originator's address; Originator's merchant identification number; Receiver's financial institution routing number; Receiver's truncated account number; Receiver's truncated identification number; and transaction reference number. Note: the customer's complete account number and complete identification number must not be placed on the receipt.
- v. **Warranties.** In addition to the warranties stated in this Agreement, you warrant to us for each POP entry that the source document used to initiate that entry (1) has been voided and returned to the Receiver at the time of the transaction, and (2) had not been provided by the Receiver for use in initiating any prior POP entry. You assume sole responsibility for any losses arising from POP Entries that are fraudulent or not authorized by the Receiver, that you cannot establish were authorized by the Receiver, or for which you cannot establish compliance with all of your obligations under this Agreement.
- vi. **Limitations.** You will not submit POP Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. We may impose additional limitations on files submitted by a third-party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of POP Entries in an amount greater than the established limit(s) shall not be

deemed a waiver of this provision. We may cease processing POP Entries in a greater amount at any time without cause or prior notice.

You will not reinitiate a POP entry more than two (2) times following the return of the original entry due to insufficient or uncollected funds. You should establish reasonable written procedures to identify and contact Receivers relating to any unpaid debit entry, bearing in mind that you will not be retaining the consumer's voided check (which contains the consumer's name and address).

You will not use POP Entries to collect: (a) payments for goods or services sold by third parties; (b) payments relating to adult entertainment or gambling services; or (c) obligations owing to third parties.

12. Integrated Payables Service

- 12.1 The Service.** This Service consists of a web portal and downloadable software that allows you to import and manage accounts payable data (e.g., from invoices) received by you, and to integrate that data with certain common business accounting programs (e.g., QuickBooks® from Intuit) as selected from time to time by Bank's licensor. Once that data is imported, this Service helps you to review, track, and approve or disapprove payables.

This Section is also supplemented by the separate agreements for select ancillary payment services that you may use in connection with this Service, such as Visa Payables Automation, a commercial card program, and/or ACH services (each, in this Section, a "**Payment Service**"). For purposes of this Section only, "**payment instruction**" means the information created within this Service and communicated to a Payment Service. This Service helps you create those files and communicate them to us for use with Payment Services. But, this Service itself is not a Payment Service and does not include the Bank's Payment Services. Any fees charged for this Service do not include fees that you may incur for any of your Payment Services.

For payables you approve, this Service helps you to communicate payment instructions to our Payment Services. Specifically:

- (a) For Check Payments: this Service helps you prepare and communicate payment instructions to us for checks to be drawn and issued against your Account. The Service's sub-servicer will print, issue (in the manner you direct in the Specifications), and mail the checks to payees in accordance with your file. (Payment of checks presented to us is governed by your Deposit Account Agreement, and is not part of this Service.)
- (b) For ACH payments: this Service helps you prepare instructions for ACH payments to be sent from your Account and communicates those instructions to our ACH service for processing. (To have ACH files processed by Bank, you must be separately enrolled in Bank's ACH services. ACH services are governed by your separate ACH service agreements. Processing of ACH files is not a part of this Service.)
- (c) For Commercial Card payments: this Service helps you prepare a file of commercial card payments that you have authorized your vendors to charge to your Bank-branded Visa commercial card, and that you request us (as card issuer) to authorize and pay. This Service will transmit that payment information to us (or to Visa) for processing. (Processing and tracking that file and charges to your commercial card occur pursuant to both your Visa Payables Automation service and commercial card agreements with us, and are not part of this Service.)

12.2 Enrollment; End User License Agreement ("EULA"). To enroll in this Service, you must "click" to "accept" this Service's EULA upon logging into this Service's IP Website (the "IP Website") in addition to completing any other required Specifications. The EULA will be presented to each of your Authorized Users upon their first log in, and may be re-presented from time to time for reaffirmation or amendment. You hereby authorize each of your Authorized Users to accept on your behalf the EULA as presented from time to time, and you agree to be bound by the most recently accepted EULA. You may request an updated copy of the EULA from your treasury services representative before enrolling in this Service.

12.3 Access; Security Procedure. This Service is accessed by logging in at the IP Website's URL. You may navigate directly to that URL. We may also provide a link to the IP Website from our online treasury services gateway.

You hereby agree to the following security procedure ("**IP Security Procedure**") in connection with using this Service. To the extent that Article 4A of the Uniform Commercial Code (**UCC**) may apply to this Service, the IP Security Procedure shall also be a "**security procedure**" for purposes of UCC 4A-201(i).

- (a) To log into the IP Website, your Authorized User must enter his or her Access Credentials. Access Credentials for this Service consist of the Authorized User's individual user ID and password, followed by a one-time code that this Service shall send by SMS text or by phone voice message to the primary or secondary telephone number stated in our Service records for that Authorized User.
- (b) In addition, to send a file of payment instructions to a Payment Service, this Service requires the Authorized Users to enter a one-time code that this Service shall send by SMS text or by phone voice message to the primary or secondary telephone number stated in our Service records for that Authorized User.
- (c) In addition, this Service offers certain "**dual control**" features that require secondary approval of certain actions (e.g., the sending of payment instructions by this Service to the Bank's Payment Services). A secondary approval must be communicated using Access Credentials that are distinct from the Access Credentials used to initiate the action. We require that you use this Service's available dual control features as part of the IP Security Procedure.

Note: If you request and we agree to not require use of this Service's dual control features, or if you circumvent dual control features, then you hereby agree to indemnify and hold us harmless from all losses, damages and liabilities incurred by you, us or third persons that could have been prevented by employing those dual control features.

So long as we act in good faith and in conformity with the foregoing IP Security Procedure, we are entitled to accept, rely upon, act on, enforce and execute all instructions, communications and other information received in your name through this Service, and the same shall be binding upon you, even if the instruction, communication or other information was not actually initiated, made, provided or authorized by you.

You have determined and agree that the foregoing IP Security Procedure is commercially reasonable for your needs, taking into account your expressed wishes, the invoices and other payables you manage, and the size, type and frequency of payment instructions you normally issue and expect to communicate to our Payment Services. You acknowledge that this Service

may be used by you without enabling it to communicate payment instruction files to our Payment Services, and that our Payment Services can be used without this Service.

12.4 Relationship to Payment Services' Own Security Procedures. Each Payment Service has a security procedure that is independent of this Service for communicating payment instructions to Bank. By enrolling in this Service, you hereby agree that communicating payment instructions to a Payment Service via this Service, in conformity with the IP Security Procedure, is a commercially reasonable alternative method of satisfying that Payment Service's own security procedure. In that event, we shall be entitled to accept, rely upon, act on, enforce and execute those payment instructions received via this Service, and they shall be binding upon you, to the same extent as if the Payment Service's own security procedure were satisfied.

12.5 Miscellaneous.

- (a) Text and Telephone Consent. You represent and warrant to us that you own the primary and secondary phone numbers that you have provided (or hereafter provide) to us for the Service contacting Authorized Users. If you do not own those phone numbers, then by providing those numbers you represent and warrant to us that you have been expressly authorized by their owners to use their numbers and to hereby provide the following consent on their behalf. For yourself and such owners, you hereby consent to this Service contacting you at those phone numbers for purposes of providing you this Service. That consent includes sending SMS text messages and phone voice messages to those phone numbers, including cellular numbers, and including by auto-dialer.
- (b) Cutoff Times. We establish cutoff times by which you must direct this Service to communicate payment instructions to Payment Services, after which your files will be deemed received the next banking Business Day. Cutoff Times for this Service are available from your treasury services representative. Cutoff times for this Service may differ from and are in addition to (not derogation of) cutoff times set by the Payment Services.
- (c) Limits. We may establish limits on the payment instructions permitted within this Service, including but not limited to: dollar limits for individual payment amounts; dollar limits per file; dollar limits per day or other time period; limits on types of payees or destinations; and limits on types of ACH entries. You warrant that all payment instructions are in accordance with Bank's established limits. In addition, we retain the right at all times to refuse any particular payment instructions for any or no reason.
- (d) Detecting Errors; Internal Security Controls. The agreed IP Security Procedure is not designed or intended to detect errors in your invoice or other payables management, or the content of your payment instructions (e.g., duplicate files or payment instructions, or errors in payee name, address or amount). We are not obligated to detect errors by you, Authorized Users or others, even if we take certain actions from time to time to do so. The IP Security Procedure provisions in this Section are in addition to, not derogation of, the Security Procedure and User Guides provisions of this Agreement (including your responsibility for establishing, maintaining, implementing and updating effective your own "Internal Security Controls" as defined in the Section entitled "Security Procedure and User Guides").

Automated extraction and importation of data by the Service from invoices you receive is commercially reasonably accurate on an industry basis, but neither we nor our licensors or suppliers represent or warrant that such extraction is without error or manual intervention as needed. You need to test and determine whether that extraction and importation is sufficiently accurate for your business's needs. You will have originals, copies or images of the invoices,

and you are solely responsible for verifying the accuracy of invoice and other payables data in the payment instruction files that you instruct the Service to send to the Bank's Payment Services.

- (e) Compliance with Law; Foreign Payments. You hereby warrant to us that all payment instructions that you send to us shall fully comply with all applicable federal and state law (including regulations issued by the US Treasury's Office of Foreign Assets Control (OFAC)). You further agree to not use the Service to send instructions for Payment Services to make payments outside the United States.
- (f) No Healthcare Claim Transactions. You shall not use this Service to facilitate Healthcare Claim Transactions without our express prior written consent. In this Section "**Healthcare Claim Transactions**" means electronic or paper payments, remittance advices and transaction support between Healthcare Payers and Healthcare Providers for Healthcare Claims, as well as (i) the creation of enrollment databases that track payment types and remittance preferences for Healthcare Claims (ii) capturing validating patient explanations of benefits (EOB) form data for facilitating Healthcare Claims, (iii) notification of Healthcare Claims and (iv) facilitating administration of healthcare savings and similar accounts for facilitating Healthcare Claims. "**Healthcare Claim**" means claims for payment or reimbursement resulting from (i) medical care (including behavioral healthcare), dental care or vision care services, (ii) pharmacy transactions, and (iii) worker's compensation settlements and adjustments. "**Healthcare Payer**" means an individual, commercial or governmental payer (including third party administrators) of Healthcare Claims, but shall not include an individual, commercial or governmental payer making such payments on behalf of its own employees, officers, agents or such other payer not in the primary business of paying Healthcare Claims to Healthcare Providers. "**Healthcare Provider**" means (i) providers of medical care (including behavioral healthcare), dental care, vision care services, (ii) pharmacies and (iii) providers of worker's compensation benefits or worker's compensation insurance services.
- (g) License. We provide the Service under license from its licensors and suppliers, including MineralTree, Inc. The following license terms between you and us are also in favor of those licensors and suppliers as intended third party beneficiaries.
 - i. License Grant. You are granted a non-exclusive, non-transferable right and license to use the Service for the number of authorized users licensed agreed and accepted by Bank. Under this license, you are allowed to download and install the Service software on your computer or other devices, and use it in connection with, but only as long as you continue to subscribe to the Service and abide by the terms of this agreement.
 - ii. Ownership. You agree that Bank and its licensors and/or suppliers retain all right, title and interest in and to the original, and any copies, of the Service (including all associated software and documentation, hereafter collectively the "Service Subscription"). Ownership of all patent, copyright, trade secret, trademarks and other intellectual property rights pertaining to the Service Subscription shall be and remain the sole property of Bank and its licensors and/or suppliers. You shall not be an owner of any copies of, or have any interest in, the Service Subscription. Without limiting the generality of the foregoing, you are prohibited from, and agree not to: (i) modify, port, translate, localize, or create derivative works of the Service Subscription; (ii) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Service Subscription by any means whatsoever, or disclose any of the foregoing; or (iii) sell, lease, license, sublicense, copy, market or distribute the Service Subscription or use it as a service bureau.

- iii. **Acknowledgment of Proprietary Materials; Limitations On Use.** You acknowledge that the Service Subscription, including its documentation, are protected by the intellectual property laws of the United States and other countries, and that they embody valuable, confidential and trade secret information of Bank or its licensors and/or suppliers. You agree to hold them in confidence and to not use, copy, or disclose, nor permit any of your personnel to use, copy or disclose them for any purpose that is not specifically authorized under this Agreement or the EULA. You agree that our licensors and suppliers are intended third party beneficiaries of this Subsection entitled "License") and the EULA.
 - iv. **ADDITIONAL LIMITATION OF LIABILITY. OUR LIABILITY AS WELL AS THE LIABILITY OF OUR LICENSORS AND SUPPLIERS, TO YOU AND YOUR OFFICERS, CUSTOMERS AND EMPLOYEES, IF ANY, FOR ANY CLAIM ARISING UNDER THIS SECTION OR THE EULA, AND ANY EXHIBITS, AND ATTACHMENTS THERETO, OR OTHERWISE ARISING FROM THE TRANSACTIONS CONTEMPLATED THEREIN, REGARDLESS OF THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, RESCISSION AND BREACH OF WARRANTY) WILL NOT EXCEED THE AGGREGATE FEES ACTUALLY PAID TO US DURING THE TWELVE (12) MONTH PERIOD PRECEDING SUCH CLAIM.**
 - v. **Warranties.** We warrant that the Services will conform in all material respects to the relevant express descriptions of the Service in this Agreement and the Specifications. Bank, its licensors and suppliers otherwise disclaim and exclude all other express warranties and all implied warranties, and specifically disclaim and exclude any implied warranty of merchantability, implied warranty of fitness for a particular purpose (whether or not they know, have reason to know, have been advised, or are otherwise in fact aware of any such purpose), or implied warranty of non-infringement. Bank, its licensors and suppliers specifically disclaim any warranty that the Service will be free of errors or defects or will operate without interruption. Our sole liability (or of its licensors or suppliers) for breach of warranty shall be to correct or modify the non-conformity at our option, and, if unable to or unwilling to do so within a reasonable period of time, you may, as your exclusive remedy, terminate your subscription to the Service after delivering written notice to us. This Agreement and the EULA are entered into by us on the basis that you hereby disclaim all other rights and remedies (whether arising in law, in equity, under contract or in tort) associated with any warranty claims other than as described in this Section.
 - vi. **CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL BANK OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES AND LOSS OF PROFITS, EVEN IF BANK, ITS LICENSORS AND/OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- (h) **Accounting Integration.** The business accounting programs which the Service software can integrate with are subject to change from time to time by Bank's licensor. You may ascertain which programs are currently approved by contacting your treasury services representative. Integration with business accounting programs identified by Bank's licensor shall be of a commercially reasonable quality, but Bank and its licensor do not represent or warrant the quality for any particular accounting program or that every feature in the two programs shall integrate.

13. Lockbox Service

- 13.1 **The Service.** We will process payments which you receive by mail from others (“Customers”) by: establishing a post office box address where Customers may mail payments to you; arranging for the collection of such payments each Business Day; endorsing checks on your behalf; depositing payments to your designated Account; and providing related accounting and record keeping services.
- 13.2 **Commencement of the Service.** Once we notify you that we are ready to commence the Service, you may direct Customers to mail payments to you at the post office box address we designate. We will have exclusive and unrestricted access as your agent to the mail at such address.
- 13.3 **Our Processing of Checks.** You authorize us to endorse all checks we receive on your behalf through this Service. We may accept checks for deposit to your Account without endorsement and regardless of any difference between the name of the payee and your legal name (e.g., “Acme”, as opposed to “Acme Publishing, Inc.”). You will be deemed to warrant the endorsement of all items we receive through this Service, as well as your right to receive such items for deposit to your Account.
- 13.4 **Bill Pay Items (E-Lockbox).** For items from certain Bill Payment vendors, we may elect to receive these items electronically (e.g., through ACH and not as paper items), and report them to you as part of your standard reporting.
- 13.5 **Deposit of Checks.** We will deposit Customer payments to the Account you have designated, pursuant to the terms of your Deposit Account Agreement. We may process items received after the Cutoff Time or on a day other than a Business Day as of the next Business Day.
- 13.6 **Record of Checks.** We will image or otherwise make a record of each check and accompanying documents processed pursuant to this Service and will retain the record for seven years. You acknowledge that image processing is subject to error on occasion and agree to hold us and any third-party processor we use harmless from all claims, actions, damages, attorney’s fees and costs associated with our inability to produce copies or images of checks.

Check image files will be available after the Cutoff Time on the day of deposit. In order to create indexes for web research, the remitter name, check number and check amount must be entered for each client. Other data (e.g., invoice number and invoice amount) also can be captured. Keystroke fees will apply for each data field entered.

- 13.7 **Irregular Items.** We may reject items for deposit that are irregular in any way. At our discretion, we may process, send for collection, or forward to you for disposition: checks that contain discrepancies or minor errors (e.g., a difference between the written and numerical amounts), postdated checks, stale dated checks, checks bearing payee names different from your name, checks that do not bear the drawer’s signature, altered checks, checks drawn on a foreign bank or in a foreign currency, and other irregular items. Although we may attempt to discover and forward (without processing) items bearing notations such as “Payment in Full,” you agree that we will not be liable for our failure to do so, even if we could have done so with the exercise of ordinary care. Note: Some Customers imprint such notations on checks as a normal business practice. We generally process such items, but may refuse to do so at any time without prior notice. Unless we agree otherwise in writing, we assume no duty to confirm that any payment equals the amount of any accompanying payment coupon, statement or invoice. You agree not to send or have others send demand drafts (items that do not bear the maker’s signature, but purport to be authorized by the maker) to the Lockbox.

- 13.8 Your Instructions to Customers.** You agree to instruct Customers not to send cash, returned merchandise, notices, communications or other materials (not previously approved by us in writing) with their payments to the address specified for this Service. Unless we agree otherwise in writing, you also agree that you will not provide Customers with marketing reply forms or other materials in connection with your billing process which Customers may return with their payments to the Service address. You agree to notify us at least 30 days in advance of any material change in your remittance statements and/or mailing schedule.

Unless otherwise agreed in writing, we assume no duty to you or others with respect to returned merchandise, property, or correspondence mailed to the address provided for this Service. We may return such items to the sender (if known by us) or, at your request, forward them to you at your sole risk and expense.

- 13.9 Post-Termination.** You agree to notify Customers to stop sending payments through the Lockbox following the termination of this Service. At your request, we may (in our sole discretion) agree to continue processing payments and/or will forward mail received through the Lockbox to you for a short period of time following the date of termination. Such processing will be subject to the terms of this Agreement in effect on the date of termination. Otherwise: (a) we may terminate the Lockbox and/or refuse to pick up any further mail from the Lockbox; (b) we may forward or send to you by courier (at your expense) any Lockbox mail that comes into our possession; and (c) if you fail or refuse to pay our expense for sending you such mail, we may return or send, at your expense, any Lockbox mail to the sender (if known).

14. Positive Pay Services

- 14.1 The Service.** We may provide any of the Positive Pay Services listed in this Section to you upon your request in order to increase the chance of identifying fraudulent or unauthorized checks drawn on your Accounts.

- 14.2 Positive Pay Service.** If you request this online Service and provide us with the dates that the checks are issued, check numbers, EXACT dollar and cent amounts, and Account numbers on checks that you issue on a designated Account ("**Check Issuance Data**"), we will compare that Check Issuance Data with the information encoded on items presented to us for payment against that Account. If the information matches, we will treat the matching items as validly issued and properly payable, and will process such items for payment. If the information does not match or the item is otherwise deemed to be an Exception Item (defined below), we will use the Service to provide you with an Exception Report ("**Exception Report**") that describes each exception item and the reason for the exception. You must then instruct us if you want us to pay or return an Exception Item. You authorize us to act in accordance with your pay/return default election if we do not receive your instruction for any reason by the Cutoff Time for such instructions. We may refuse to pay any item if there are insufficient funds in your Account to cover the item. Please review the Section entitled "Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification" if you do not enroll in our Positive Pay Service in connection with your checking services.

- (a) Positive Pay with Payee Match Service. If you also provide us with checks' Payee names in addition to Check Issuance Data on a designated Account, we will compare those names against the names in presented items in addition to comparing Check Issuance Data with the Positive Pay Service in accordance with the requirements and procedures described herein.
- (b) Exception Items. Exception Items may include duplicate checks, checks that do not match the check issuance data that you provided, checks with duplicate serial numbers, misencoded

items, checks lacking an encoded serial number, and any other items that you advise us to treat as exception items in the Specifications (each, an "Exception Item"). The Services do not apply to items that have been finally paid before the effective date of any listing.

Note: Our stop payment and Positive Pay systems operate separately. Therefore, if you ask us by telephone or online to stop the payment of a check, the item may not show up as an exception. You agree not to use this Service (via a return report) as a substitute for a stop payment order.

- (c) Reliance on MICR Encoding. We will not be obligated to verify signatures on any checks that match the information that you provide or fail to reject. You understand and agree that we may compare your information on approved checks with information that is encoded on the items presented to us for payment. We will not be required to physically examine matching checks to confirm that they are properly signed, completed and encoded. You agree that we may rely on the process described above and that it will be deemed an acceptable standard of care for these Services and your Account. You understand that these Services may not identify counterfeit or duplicate checks which contain the same check serial number and amount as the items described in your Check Issuance Data. Therefore, you agree to review promptly all statements, returned checks, reports and other check and transaction information that we make available to you.
- (d) Issue Information and Timing. You agree to provide Check Issuance Data and instructions to us in the manner, form and format that we specify for each Service. You assume full responsibility for the completeness and accuracy of all information furnished to us. Our willingness to process nonconforming information will not be considered a waiver of any requirement of this Agreement, and we may discontinue processing nonconforming information without prior notice.

We must receive your Check Issuance Data on or before Bank's Cutoff Time each Business Day. Check Issuance Data received after the Cutoff Time or on a day other than a Business Day may not be processed by us until the following Business Day. We will provide you with an Exception Report on the morning of the Business Day following the Business Day that the Check Issuance data is processed by us. You must instruct us to pay or return exception items by the Cutoff Time for such instructions on the same Business Day that the Exception Item was presented for decision.

14.3 Reverse Positive Pay Service. This Service allows you to review all checks presented against your Account instead of reviewing individual exception items. Each day, we will provide you with information and images of the checks presented the previous Business Day. The Reverse Positive Pay Service will show each check paid, along with its serial number and amount, and will give you access to an image of the check. You can compare this information to the checks as you issued them.

If you notify us of any check or item to be returned before the Cutoff Time on the Business Day after the check is presented, we will return the check to the bank of first deposit.

By enrolling an Account in the Reverse Positive Pay Service, you satisfy your obligation under the Section entitled "Fraud Detection and Prevention – Positive Pay/ACH Positive Pay - Indemnification" to enroll that Account in Positive Pay.

Note: enrollment in the Reverse Positive Pay Service does NOT satisfy your separate obligation under this Agreement to enroll in our ACH Positive Pay Service (or to indemnify the Bank against losses that use of ACH Positive Pay could prevent). Reverse Positive Pay does not block, limit or

filter any ACH activity in your designated Accounts. Furthermore, under certain circumstances, checks can be converted by holders into ACH debits against your designated Account rather than presented as checks. Reverse Positive Pay will not block payment of ACH debits from converted checks. Accordingly, enrollment in Reverse Positive Pay does not modify your responsibility to monitor your designated Account on a daily basis, to review all designated Account periodic statements, and to promptly report any unauthorized or erroneous activity that is identified or identifiable by such monitoring and review.

14.4 Check Block (“Check Block”) Service. With this Service, you instruct us to dishonor and return all checks and drafts drawn against your designated Accounts. You shall enroll each desired Account as a designated Account in the Specifications. Unlike Positive Pay, Positive Pay with Payee Match, or Reverse Positive Pay, Check Block is an account setting to block all checks, and does not allow you to instruct or notify us or return or pay checks on an individual basis. By selecting this Service, you and we further agree as follows:

(a) Satisfaction of Positive Pay Enrollment Obligations. By enrolling an Account in Check Block, you satisfy your obligation under the Section entitled “Fraud Detection and Prevention – Positive Pay/ACH Positive Pay - Indemnification” to enroll that Account in Positive Pay.

Note: Enrollment in Check Block does NOT satisfy your separate obligation under this Agreement to enroll in our ACH Positive Pay Service (or to indemnify the Bank against losses that use of ACH Positive Pay could prevent). Check Block does not block, limit or filter any ACH activity in your designated Accounts. Furthermore, under certain circumstances, checks can be converted by holders into ACH debits against your designated Account rather than presented as checks. Check Block will not block payment of ACH debits from converted checks. Accordingly, enrollment in Check Block does not modify your responsibility to monitor your designated Account on a daily basis, to review all designated Account periodic statements, and to promptly report any unauthorized or erroneous activity that is identified or identifiable by such monitoring and review.

(b) Do Not Issue or Authorize Checks. You agree to not issue any checks, or authorize the issuance of any checks (such as “remotely created items”), against your designated Account. Therefore, (i) you will not be not asked whether to pay, or be able to instruct us to pay, any check that may be presented; and (ii) you will not receive notice of any check being presented or our dishonor of that check.

Note: Your obligation to not authorize the issuance of any checks includes checks that are issued by us, our service providers, or other third parties engaged by you or for you in connection with other services. Certain other services available from us (such as bill payment, outsourced disbursements and integrated payables) can result in the issuance of checks; you and not Bank shall be responsible for ensuring that such checks are not created, for such checks being dishonored due to your enrollment in Check Block, and for any damages caused by such dishonor.

(c) Additional Limitation of Liability. Although Check Block is intended to prevent any check from posting to a designated Account, Bank does not waive any defense or subrogation arising under the Uniform Commercial Code or common law if a check is paid. Bank shall have no liability if a check: (i) was written or issued by you, an employee or agent who is otherwise authorized by you to make transfers, payments or withdrawals from the designated Account; (ii) was written or issued through the misconduct of your own employee or agent; (iii) discharged or was applied to a bona fide obligation of you; or (iv) is held by us with the rights of a holder in due course (which right shall not be denied on the basis of our knowledge that you are enrolled in Check

Block). We retain all defenses based on your own negligence contributing to the creation, alteration or payment of an unauthorized item.

- (d) No Consumer Accounts. You shall not enroll a designated Account that is a consumer account, or otherwise one that you use primarily for personal, family or household purposes.

14.5 Checks Covered by these Services. The Services in this Positive Pay Section only apply to checks that are presented for payment through normal interbank check clearing procedures (e.g., local clearinghouse, Federal Reserve, or direct send presentment cash letter) and posted to your Account each night. Checks that are presented in any other manner will be paid in accordance with our standard procedures.

14.6 Stale-Dated and Postdated Checks. We may pay stale-dated and postdated checks unless you place a stop payment or postdated check order on such items, remove them from your list of checks approved for payment, or fail to notify us through any of the Positive Pay Services not to pay the items.

15. Remote Deposit Capture Service

15.1 The Service. You can use this Service to convert Checks into electronic form and transmit those items together with other necessary information (e.g. MICR line data) to us for deposit into your Account. (In this Section, the term “**Check**” shall refer to the original paper check or other item, or the image of such paper item that you transmit to us, as the context requires.) The Checks will then either be collected electronically or reprinted as substitute paper checks (“**Substitute Checks**”). You may only use scanners and software that meet our requirements for capturing and transmitting images.

15.2 Using the Service. You agree to: (a) follow our Service instructions for capturing and transmitting Check images and other information to us; (b) view each Check as it is scanned to ensure that the images (front and back) have been captured properly; (c) **allow us (but we shall have no duty) to examine the physical location where you capture and transmit Check images and store Checks to confirm your compliance with this Agreement;** (d) adequately train your employees on the use of the Service and evaluate the need for separation of employee duties to reduce the risk of fraud; (e) allow us (but we shall have no duty) to inspect any audit report related to your operational process for the Service; and (f) provide us with the original Check (if it is within your possession) or a sufficient copy of the Check within five (5) Business Days of our request. A “sufficient copy” of a Check is a paper reproduction of an original Check that accurately reflects all of the information on the front and back of the original Check as of the time the image was transmitted to us by means of this Service. You agree to retain all information about your imaging of Checks and transmittal of images for no less than 7 days. In the event of lost, mistaken, incomplete or unusable Checks or images, or in the event of claims of fraud, alteration, counterfeit or otherwise, you agree to cooperate fully with us in providing information, including access to such records.

You bear sole responsibility for the care and security of any original Checks in your possession. In this regard, we strongly recommend that you insert the following above your endorsement on each original Check that you scan for transmission to us through this Service: “For Deposit Only To Account [*insert your Account number*]”. You agree that you will not attempt, directly or indirectly, to negotiate, deliver, transfer or deposit any original Check (or copies of such Check, whether in paper or electronic form) more than once, whether with us and/or with others.

You are prohibited from using the Service for the benefit of any entity or person other than you (e.g. employees, officers, subsidiaries or non-affiliated persons).

- 15.3 Non-permissible Checks.** You may use the Service only to process the deposit of original paper Checks that are payable to you. Unless we specifically agree otherwise in writing, you may not use the Service to deposit (each of the following a “Non-Permissible Check”): (a) Checks payable to a third party (even if endorsed over to you); (b) demand drafts or remotely created checks (i.e., checks lacking the original signature of the drawer); (c) Substitute Checks (i.e., paper checks created from an electronic image) other than Substitute Checks we have returned to you; (d) Checks that are irregular in any way (e.g., where the numerical and written amounts are different); (e) Checks that have previously been returned unpaid for any reason; (f) Checks that are postdated or more than 6 months old; (g) Checks drawn on a foreign bank or payable in a foreign currency; (h) Checks payable to “Cash”; (i) Checks issued by you or any company affiliated with you through common ownership or control; (j) any Check that you suspect is fraudulent or not properly authorized; (k) registered government warrants; (l) prohibited “Third-Party-Issued-Items Outside the Ordinary Course of Business” as described in the next Subsection; or (m) any Check(s) that exceed the transaction limitation(s) that we establish from time to time.

Our processing of any of the Checks described above shall not obligate us to continue that practice, and we may stop doing so without cause or prior notice. If you process a previously truncated and reconverted Substitute Check through this Service, you will ensure that the identification of previous truncating and reconverting banks are preserved and that the Substitute Check meets the requirements for legal equivalency under Federal Reserve Regulation CC. We may refuse any Check for deposit, with or without cause, or may elect to take a Check on a collection basis only. In addition, we may immediately suspend the Service or the processing of any Check if we have reason to believe that there has been a breach in the security of the Service, fraud involving your Accounts or such Check, or any uncertainty as to the authorization, authenticity or accuracy of Checks.

- 15.4 Money Orders, Travelers Checks and Similar Items.** You may deposit money orders, travelers checks and similar items purchased by remitters from third party issuers (collectively “**Third-Party-Issued-Items**”) if, but only if, they were delivered to you, received by you, and deposited by you all in the ordinary course of the remitter’s business and your business. Deposit of Third-Party-Issued-Items that were delivered to you or received by you outside the ordinary course of the remitter’s business or your business (collectively “**Third-Party-Issued-Items Outside the Ordinary Course of Business**”) is strictly prohibited.
- 15.5 Your Representations.** You make the following representations and warranties with respect to each Check: (a) you have the legal right to accept the Check for deposit and negotiation, regardless of the name of the payee shown on the Check; (b) the images and information that you transmit accurately represent all of the information on the front and back of the original Check, including (without limitation) all endorsements, at the time of transmission; (c) you have not taken any action that would obscure, alter or impair the capture or transmission of information on the front or back of the Check or that otherwise may prevent us or another institution from capturing or processing such information; (d) the image of the Check as transmitted contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; (e) all warranties that would otherwise apply to the Check if it had been a paper item deposited with us; and (f) all encoding, transfer, presentment and other warranties that we (or any correspondent bank we use) are deemed to provide to others (e.g., as a reconverting bank).
- 15.6 Hours of Operation.** You can use the Service to transmit Check information twenty-four (24) hours a day, seven (7) days a week, except when our system is unavailable due to needed maintenance or system outages. Deposit information received on or after the Cutoff Time or on a day other than

a Business Day may be deemed received by us as of the next Business Day. We are not responsible for the unavailability of the Service or any damages that may result from its unavailability. If the Service is not available for any reason or a Check cannot be processed by means of the Service, you may deposit your Checks directly at any of our branches.

- 15.7 Rejected Checks.** If your Check information is incomplete, a Non-Permissible Check, or cannot be processed by us for any reason, we may reject the Check for deposit, notwithstanding any transmission confirmation that you receive, and may charge the amount back against any provisional credit to your Account. We may notify you by email if we are unable to process a Check. Depending on which online service you use, you can confirm your Check deposits online with us either on the day of deposit or on the following Business Day.
- 15.8 Returned Checks and Claims.** If a Check is returned unpaid to us for any reason, we may return it to you in the form of a Substitute Check. If you decide to redeposit the returned item, you may only redeposit the Substitute Check; you may not deposit the original Check. If the drawee of a Check or another third party makes a claim against us or seeks a recredit with respect to any Check processed through this Service, we may provisionally freeze or hold aside a like amount in your Account pending our investigation and resolution of the claim. We may also charge your Account for any item that is returned, whether or not the return is timely or proper.
- 15.9 INDEMNIFICATION. IN ADDITION TO THE OTHER INDEMNIFICATION REQUIREMENTS SET FORTH IN THIS AGREEMENT, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD US AND OUR AFFILIATED COMPANIES HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, LIABILITIES, LOSSES, COSTS, ATTORNEY FEES, AND CLAIMS (INCLUDING WITHOUT LIMITATION WARRANTY CLAIMS) THAT RESULT FROM OR ARISE IN CONNECTION WITH: (A) OUR PROCESSING OF ITEMS, OR DEBITING OR CREDITING THE ACCOUNT OF ANY PERSON, IN ACCORDANCE WITH THIS AGREEMENT OR YOUR INSTRUCTIONS; (B) YOUR ACTIONS OR OMISSIONS, INCLUDING YOUR BREACH OF ANY REPRESENTATION OR FAILURE TO COMPLY WITH THIS AGREEMENT; (C) ANY MISUSE OF THE SERVICE BY YOU, YOUR EMPLOYEES OR AGENTS; (D) ACTIONS BY THIRD PARTIES (SUCH AS THE INTRODUCTION OF A VIRUS) THAT DELAY, ALTER OR CORRUPT THE TRANSMISSION OF CHECK IMAGES OR INFORMATION TO US; (E) THE FAILURE TO ACT OR DELAY BY ANY FINANCIAL INSTITUTION OTHER THAN US; OR (F) ANY CLAIM BY A RECIPIENT OF A SUBSTITUTE CHECK (OR A CHECK IN AN ELECTRONIC FORM) THAT THE RECIPIENT INCURRED A LOSS DUE TO (I) THE RECEIPT OF THE SUBSTITUTE CHECK (OR THE CHECK IN ELECTRONIC FORM) INSTEAD OF THE ORIGINAL CHECK, OR (II) MULTIPLE PAYMENTS WITH RESPECT TO THE SAME ORIGINAL CHECK, BASED ON ANY COMBINATION OF THE ORIGINAL CHECK, THE SUBSTITUTE CHECK, AND/OR A PAPER OR ELECTRONIC COPY OF EITHER. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**
- 15.10 Safekeeping and Destruction of Checks.** You bear sole responsibility for secure storage and destruction of original Checks and any copies of such Checks. You should retain the original paper checks for only that amount of time (but no fewer than 7 days) that you deem necessary, based on: (a) the risk of fraudulent duplicate presentments of the original Check or any paper or electronic copy thereof, (b) the needs of your business, (c) any requirements of law or regulation affecting your business, and (d) potential claims by recipients of Substitute Checks (or Checks in electronic form) that they incurred a loss due to the receipt of a Substitute Check (or a Check in electronic form) instead of the original paper Check. We suggest that you keep the original paper Checks for no more than 45 days after you transmit them to us. After the end of your retention period, you will destroy (by shredding) the original Checks.

15.11 Support Services. Support Services available for this Service are set forth in Appendix I of this Agreement, subject to applicable enrollment and fees.

15.12 Mobile Remote Deposit Capture. This Service allows you to make remote deposits of Checks to us via mobile software and software as we may permit (the “**mRDC Service**”). This Mobile Remote Deposit Capture Subsection shall only apply to the Treasury mRDC Service (and not to remote deposits made with desktop scanners). By requesting this Service, you agree to all of the other terms and conditions of the Remote Deposit Capture Service listed above. You also agree to the following terms and conditions:

- (a) User Agreement and Users. You have received, reviewed, and understand and accept, the Corporate Mobile Remote Deposit Capture User Agreement (“**User Agreement**”) that is presented to the mobile device User when installing the mRDC Banking Software to a mobile device. The provisions of the User Agreement are hereby incorporated and made a part of this Agreement.
- i. Under the User Agreement, you are a “**User**” of every mobile device registered with your mRDC Service, regardless of whether the mobile device is owned by you or a third-party. In addition, each Authorized User that owns or is authorized to use a mobile device registered with your mRDC Service is also a “**User**.”
 - ii. We specifically acknowledge the User Agreement's provisions for us to send disclosures and notices by electronic communication to Users, and your obligation to update us with any changes in User's electronic addresses.
 - iii. Notices from us to other Users also constitute notices to you. Nevertheless, we agree to use reasonable efforts to also provide notice directly to you in matters that concern the mRDC Service or the User Agreement in general, as opposed to individual transactions involving the Service, individual Users' use of the Service, or individual mobile devices.
- (b) Registration of Mobile Devices. To use the mRDC Service, both the User and the unique mobile device must be registered in the service in the Specifications. Mobile devices may be owned by you or by third parties such as your employees or agents. You shall inform us in writing of each User that you want to be registered. Completing the registration of a User requires that we issue an access code for the User to be able to download and install Bank-approved mRDC Banking Software. The installation procedure will then register the User's unique mobile device.

Company-Owned Device: Although non-company mobile devices may be registered, you acknowledge our strong recommendation to always maintain at least one (1) company-owned mobile device that an authorized officer or manager actively uses in the mRDC Service. If you forego such registration and active use, you agree that you shall nevertheless be deemed to have the same ongoing notice, knowledge and understanding of the operations, functionality, features, characteristics and disclosures regarding the mRDC Banking Software and the mRDC Service that you would have if you did so register and actively use a company-owned mobile device.

Devices Not Owned by Company: If you request registration of a mobile device or phone number you do not own, you hereby warrant that you shall have the express authorization of the owner to request that registration. You shall not require any employee or other third-party to supply his or its own mobile device or phone number for use in the mRDC Service. You are responsible for agreeing with owners and Users and phone numbers of mobile devices for any expenses

(e.g., data charges) incurred in connection with the mRDC Service, and shall indemnify and hold us harmless from any claims by such owners and Users regarding such expenses or any other damage proximately resulting from having supplied devices for your benefit.

- (c) You Are Responsible for Users and mRDC Transactions. You must train and supervise all Users with respect to (i) the operation of the mRDC Service, (ii) the User's obligations under the User Agreement, and (iii) your obligations under the User Agreement and this Agreement. You are responsible for all acts and omissions of other Users with respect to the mRDC Service and transactions thereunder, regardless of whether such acts and omissions of other Users were authorized or directed by you. You are also responsible for all transactions made through the mRDC Service by using Access Credentials that were issued to any User, even if the person making that transaction is not an Authorized User. You are solely responsible for maintaining the secrecy and security of all Access Credentials and registered mobile devices.

Without limiting the generality of the preceding paragraph, you must train each User with respect to what types of items are and are not permissible for remote deposit.

- (d) De-Registration of Mobile Devices. You must notify us of any mobile device, phone number, and/or User that you no longer want to be registered and able to access the mRDC Service (e.g., reassigned company-owned devices, lost devices, and devices owned by reassigned or terminated employees). Initial notice may be oral, but you shall promptly provide written confirmation. We shall have a commercially reasonable period of time to effect that de-registration. You shall delete the mRDC Banking software from all de-registered mobile devices that you own or possess, and shall use commercially reasonable efforts to cause the owner or possessor of other de-registered mobile devices to delete the mRDC Banking software.
- (e) Wireless Networks. The mRDC Service involves electronic transmission of information across wireless networks that are not under our control. You acknowledge that we cannot be responsible for the privacy, security or accuracy of your wireless data transmissions. By choosing to use the mRDC Service, you assume all risk that an item may be intercepted, misdirected, corrupted or lost prior to receipt by us.
- (f) Online Privacy Statement and Geo-Location Tracking. The Company has received and reviewed, and understands and accepts, the Bank's mRDC Online Privacy Statement. That document is also made a part of and accessible within the mRDC Banking Software. The Company acknowledges that, as part of the mRDC Banking Software, the Bank monitors the geographic location of a User who is conducting an mRDC transaction.

16. Returned Items Service

- 16.1 The Service.** This Service allows you to provide us with special handling instructions for any checks/items that you deposit and are later returned to us unpaid. Special handling instructions may include but are not limited to the delivery method, delivery location, and/or any special notification methods for each check/item. Any returned checks/items may be delivered to you through either electronic or physical delivery, Electronic delivery typically allows you to receive information regarding each returned check/item sooner than you would receive it through physical delivery.

You acknowledge that any special instructions that you provide may be ambiguous, incorrectly transcribed, or subject to interpretation. You agree to indemnify, defend, hold harmless and

reimburse us for all expenses, losses, claims, actions, proceedings and damages that we may incur as a result of our failure to comply with any special instructions.

17. Zero Balance Accounts

- 17.1 Description.** The Service uses a main Account (“**Concentration Account**”) and one or more related Accounts (“**Sub-Accounts**”). Daily, after all debits and credits have been processed for each Sub-Account, transfers between the Sub-Account(s) and the Concentration Account will be made based upon the amount necessary to maintain the Sub-Accounts at the target balances established in the Specifications.

You should maintain sufficient funds in the Concentration Account to ensure that there is a positive ending ledger balance in that Account after transfers between the Concentration and Sub-Account have been completed. If there are insufficient funds in the Concentration Account for this purpose, we may, at our option, return checks drawn on any of the Sub-Accounts in such order as we, in our sole discretion, may elect and the Accounts will be subject to our standard fees (including overdraft, insufficient funds, and uncollected funds usage fees). Any fees may be assessed through Account Analysis, directly to the Concentration Account or any Sub-Account, or any combination of the foregoing. You specifically waive any claims you may have against us as a result of the return of any check as provided herein, but you retain any liability for all overdrafts we may allow on your Accounts.

GENERAL PROVISIONS

- 18. Accounts.** You agree to maintain a minimum of at least one (1) Account with us with funds sufficient to cover the transactions initiated pursuant to the Agreement, and to cover fees required to pay for Services provided thereunder.
- 19. Advertising.** You will not use our name or logo in any advertisement or promotional materials without our prior written consent. You will not suggest or represent to others that we endorse you, your products or services.
- 20. Amendments.** We may amend (add to, delete or change) the terms of this Agreement, the Service fees, any Summary of Services, and the Specifications by providing you with prior notice. Any amendment will become effective upon either:
- (a) Ten (10) days after we provide you notice of such amendment, or
 - (b) Any later date that we may specify in such notice.
- Notwithstanding the foregoing, we may amend any such terms at any time, without prior notice, if we determine in our sole discretion that such amendment:
- (a) is necessary to protect the integrity, security, or operability of any Service, Accounts or systems used in performing the Services;
 - (b) is required by law, regulations, or the rules of any network, association, or clearinghouse; or
 - (c) will not have a material effect on your use of the Service(s).

Any changes to the terms of this Agreement must be specifically acknowledged by us through a separate addendum or by our acceptance of a Summary of Services signed by you. We will not be bound by attempts to amend this Agreement in any other manner (e.g., by crossing through the text or inserting additional words).

21. **Arbitration/Jury Trial Waiver/Dispute Resolution.** If your Deposit Account Agreement contains one or more class action waiver, jury trial waiver, arbitration, judicial reference, and/or forum selection provisions, then those provisions shall govern the resolution of any dispute or claim that arises between you and us regarding this Agreement, any Service, your Accounts, any software, any transaction or entry in or regarding your Accounts, or any indemnity obligation. In any event, to the maximum extent permitted by law, you hereby waive any right to trial by jury in any action between you and us.
22. **Assignment.** We may assign our rights and delegate our duties under this Agreement to a company affiliated with us or to a third party. You may not assign any right or delegate any obligation under this Agreement without our prior written consent, and any attempted assignment without the necessary consent shall be void.
23. **Couriers.** If arrangements are made to transfer items, funds or other property between you and us or our designated agent by means of a messenger, courier or armored carrier (collectively, "Messenger"), you agree that:
- (a) the Messenger is your agent, and not our agent;
 - (b) you assume all risk of loss of, or damage to, the property while it is in transit;
 - (c) property is not received by us until we provide a receipt for it at our office (or at such other location as we designate); and
 - (d) the property is delivered to you when we give it to the Messenger.

We make no warranty or representation regarding any Messenger. Our confirmation of the receipt of any bag or container shall not be considered a confirmation of its contents. All contents are subject to later verification by us. You understand that local traffic conditions and other circumstances may affect the time of shipments and that the Messenger may abandon or delay any scheduled shipment if it observes suspicious circumstances at your location.

24. **Cutoff Time and Business Days; Transactions Between Divisions.** Some of our Services are subject to processing Cutoff Times. Information on the Cutoff Time for each Service can be found in certain Specifications and is available from your treasury services representative. Instructions, information, shipments or deliveries received after the Cutoff Time or on a day other than a Business Day may be deemed received as of the next Business Day. Services may occasionally be unavailable due to needed maintenance or system/network interruptions.

Certain transactions between Accounts at our different Divisions of the Bank (including but not limited to Cutoff Times, settlement times and funds availability) may be deemed and processed by us as transactions between separate financial institutions.

25. **Definitions.** In addition to the other terms defined elsewhere in this Agreement, the following terms shall have the meanings indicated:

Access Credentials means identification names and numbers, passwords, tokens, codes and/or other means of identification that are provided to or selected by you, your Administrator(s) and/or your Authorized User(s), for purposes of establishing identity and authorization to access and use a Service or a particular function therein.

Account means any of your deposit accounts with the Bank to which one or more of the Services shall apply.

Account Analysis means the record of a detailed reconciliation of your Account balances with applicable, itemized Service fees and the resulting charges or credits to your Account. The record shall be provided to you in a periodic statement. The statement will additionally display the volumes processed for each Service, and a summary of Account balances after all charges and credits are reconciled.

Administrator means an individual that you designate in a Summary of Services as authorized to establish, accept or agree to other Administrators, Authorized Users, security procedures, Specifications and other set-up details.

Authorized User means any of the individuals you designate, either in the Specifications or within the Service by your Administrator to access and/or use the Services or a function within a particular Service on your behalf. Authorized User includes any Administrator.

Business Day means any calendar day that we are open for conducting substantially all of our business, excluding Saturdays, Sundays and federal holidays except as may otherwise be defined or described in the Specifications for a particular Service.

Cutoff Time for any Service means the time we have established, in the Specifications or otherwise, for receipt of instructions, requests, transactions, orders, approvals or deliveries for that Service.

Data Collection Agency means a third party provider selected by us or by you (depending on the Service involved) for delivering or receiving information.

Deposit Account Agreement with respect to any of your Accounts with us means the agreement(s) and other associated Account disclosure(s) we provide you in connection with your Accounts, as amended from time to time, that contains the terms and conditions of your Accounts.

Division has the meaning given in this Agreement's opening paragraph.

Dual Control is when your applicable Specifications and self-administered controls require at least two Authorized Users to separately initiate and approve a particular function or process within a Service before that function or process will be executed or effective. Dual Control is not satisfied by a single Authorized User acting with two separate Access Credentials.

Internal Security Controls, Internal Security Breaches, and Internal Security Losses have the meanings given in the Section below entitled "Security Procedure and User Guides".

Reserve Account has the meaning given in the Section below entitled "Reserve Account".

Rules, unless the context requires otherwise, means the NACHA Operating Rules and Guidelines as amended from time to time.

Security Procedure shall have the meaning provided in the Section below entitled “Security Procedure and User Guides”.

Specifications with respect to any Service means any and all specifications, set-up details, authorizations, procedures, protocols, applications, instructions, guidelines, manuals, fee schedules, or other documentation regarding the Service and any training materials we provide with respect to the Service. Without limiting the preceding sentence, Specifications are primarily set forth in your Summary of Services and certain Service-specific disclosures commonly referred to as “Spec Sheets”.

Summary of Services means one or more written requests by you, on such forms designated by us, in which you designate, modify, or replace your requested Services, Administrators, Deposit Accounts, and/or set-up details required on the form.

Treasury Internet Banking means our online Balance Reporting and Payments Service, including features such as Information Reporting, e-Statements, Stop Payment, Payments, and Mobile Treasury Internet Banking Services.

26. **Dual Control.** You bear sole responsibility for determining and implementing effective and sufficient internal security controls in connection with each of your Services. We strongly recommend that your internal controls include all Dual Control features that may be available with any Service. Without limiting the preceding sentence, you should implement Dual Control for the following functions of these Services:

<u>Service</u>	<u>Function or Process</u>
<ul style="list-style-type: none"> • ACH Positive Pay 	<ul style="list-style-type: none"> • Permitting or returning a suspended entry for payment or authorizing us to act in accordance with your permit/default elections.
<ul style="list-style-type: none"> • Positive Pay 	<ul style="list-style-type: none"> • Providing us check issuance data and approving exception items
<ul style="list-style-type: none"> • Any funds transfer services (other than via Treasury Internet Banking) 	<ul style="list-style-type: none"> • Transmission and confirmation of orders.

Even when Dual Controls are not required by this Agreement, your failure to use available Dual Control features may constitute negligence, in which you shall be responsible for resulting losses which could have been prevented by having Dual Control features in place.

Treasury Internet Banking. In addition, WE REQUIRE that you implement Dual Controls available within your Treasury Internet Banking Service for the following functions: initiating and approving payment orders; initiating and approving payment templates; designating or changing Accounts associated with the Service; establishing or modifying Administrators and Authorized Users and their respective Access Credentials and functional entitlements. You hereby agree to establish those Dual Controls, and you hereby agree to indemnify and hold us harmless against all losses or liabilities that we may suffer or incur that could have otherwise been eliminated, avoided, prevented or mitigated had you implemented those Dual Controls. Without limiting the preceding sentence, we have the right to require you to execute a separate acknowledgement or indemnity to further evidence the foregoing requirements, and may in our discretion suspend your Service pending such execution. This Section is in addition to the other indemnifications set forth in this Agreement.

27. **Electronic Mail/Internet.** If you send us electronic mail (“email”), we may not receive or review it immediately. We will have a reasonable time to act upon any email request or notice, and reserve the right to reject any transaction or request received by email (e.g., a request to wire funds). You acknowledge that, even though email may be encrypted, we cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third party networks or persons with access to the Internet. We and our service providers assume no responsibility for viruses created by third parties, or for any third party’s unauthorized access to, or use of, your computer system. You should not include any sensitive information about yourself or your Accounts in email that is not encrypted and sent through a secure email system, and you assume all risk of such email being intercepted.
28. **Entire Agreement.** This Agreement incorporates, supplements, and supersedes any inconsistent terms of your Deposit Account Agreement. Your Summary of Services and the Specifications incorporate, supplement, supersede any inconsistent terms of this Agreement. Authorizations and Accounts in the Summary of Services and in other Specifications documents are cumulative, but the Summary of Services shall prevail in the event of any conflict. Unless agreed otherwise in writing, this Agreement, as supplemented, constitutes the entire agreement between you and us with respect to the Services.
29. **Fees.** You agree to pay us (and authorize us to charge your Accounts as described below) for the fees we disclose for each of the Services. For each Service, enrollment in Account Analysis is either required, optional, or unavailable. If you are enrolled in Account Analysis, you may be able to use your available earnings credit to offset certain Service fees. Any available credit in excess of accrued Service fees during any particular analysis period is not paid to you and does not roll forward. If your analyzed Accounts contain funds belonging to third parties, you represent that your use of any related earnings credit is not limited by law, regulation or any agreement with such third parties, and that you have any required authorization from such third parties for its use.
- For Services enrolled in Account Analysis, you authorize us to collect fees first by applying any credits you have earned through Account Analysis. Any remaining fees for Services that are enrolled in Account Analysis, and all fees for Services that are not enrolled in Account Analysis, may be invoiced to you or debited (at our election) from any Account that you have now or in the future. You acknowledge that any such debit may cause an overdraft balance if there are insufficient funds in the debited Account. You also agree to pay any invoice we may send to you that includes such an overdraft or other unpaid fees.
- In addition to the Service fees, you agree to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Services, this Agreement and/or the equipment or software made available to you (excluding any income tax payable by us). You also are responsible for the costs of any communication lines and any data processing charges payable to third parties engaged by or for you. Any such amounts incurred or paid by us on your behalf may be invoiced to you or debited from your Accounts as set forth above.
30. **Financial Statements.** You agree to provide us with a current financial statement and other information regarding your financial condition upon our request.
31. **Fraud Detection and Prevention - Positive Pay/ACH Positive Pay - Indemnification.** We are very concerned about the risk of loss from counterfeit, fraudulent, altered, or forged checks and unauthorized ACH debits to which we and you may both be exposed if you do not use our Positive Pay Service and ACH Positive Pay Service. Therefore, we are unwilling to permit you to

continue to operate your Accounts without our Positive Pay Service and ACH Positive Pay Service, unless you indemnify and hold us harmless against losses or liabilities we may suffer or incur as a result of counterfeit, fraudulent or forged checks and/or unauthorized ACH debits on your Accounts (Note: If you choose to operate your Accounts using the Positive Pay Service, you will not be required to adopt the Payee Match feature of that Service. Additionally, using the Check Block Service or Reverse Positive Pay with your Accounts shall constitute using the Positive Pay Service for purposes of this Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification Subsection).

Accordingly, if you continue to operate your Accounts without our Positive Pay Service and ACH Positive Pay Service, you agree that, to the greatest extent permitted by law, we will not be liable to you for, and you will defend and hold us harmless from and against any damages, losses, liabilities, actions, claims including third party claims, suits, judgments, obligations, penalties, costs or expenses of any kind including attorneys' fees and expenses (collectively "**Losses**") paid, suffered or incurred by you which arise directly or indirectly out of or in connection with:

- (a) the acceptance for deposit, payment, negotiation or other processing of any check drawn or purporting to be drawn on your Account if such check happens to be counterfeit or fraudulent or contains a forged signature or the amount of such check is altered or the payee has been altered; or
- (b) the acceptance of an ACH debit that is unauthorized or fraudulent, which could have been prevented with the use of the Positive Pay Service or ACH Positive Pay Service;

The indemnity provisions set forth in this Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification Subsection shall be in addition to the other indemnity provisions set forth in this Agreement.

32. Governing Law/Compliance. This Agreement will be governed by and construed in accordance with the laws of the United States and the laws of the following state(s) based upon the Division(s) through which you receive your Service and hold your Account: Texas for Amegy Bank of Texas, California for California Bank & Trust, Oregon for The Commerce Bank of Oregon, Washington for The Commerce Bank of Washington, Arizona for National Bank of Arizona, Nevada for Nevada State Bank, Colorado for Vectra Bank, and Utah for Zions Bank. If your Account and the applicable Service are provided by different Divisions then, to the extent of any conflict, the law of the state for the Division providing the Service shall govern. You agree not to operate your Accounts, use your Services, or Conduct transactions in a manner that violates or supports violation of the laws of any state or the United States, including the economic sanctions administered by the U.S. Treasury's Office of Foreign Assets Control.

33. Indemnification and Release. IN ADDITION TO THE OTHER INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT, YOU AGREE TO RELEASE AND INDEMNIFY, DEFEND AND HOLD HARMLESS US, OUR PARENT COMPANY, AFFILIATES, AND SUBSIDIARIES, AND OUR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST EVERY CLAIM, DAMAGE, LOSS, LIABILITY AND COST (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES) OF ANY KIND WHICH RESULTS DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM: (A) OUR ACTIONS OR OMISSIONS, IF THEY ARE IN ACCORDANCE WITH YOUR INSTRUCTIONS, THE TERMS OF THIS AGREEMENT, OR INSTRUCTIONS PURPORTING TO COME FROM YOU THAT ARE ACCOMPANIED BY YOUR ACCESS CREDENTIALS; (B) THE ACTIONS OR OMISSIONS OF YOU, YOUR AGENTS OR EMPLOYEES; (C) ANY WARRANTY THAT WE ARE REQUIRED OR DEEMED TO MAKE TO A THIRD PARTY IN CONNECTION WITH YOUR TRANSACTIONS, PROVIDED WE ACT IN COMPLIANCE WITH

THIS AGREEMENT; (D) YOUR USE OR DISTRIBUTION OF ANY EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU THROUGH A SERVICE THAT IS INCONSISTENT WITH THE LICENSE OR SUBLICENSE THAT YOU RECEIVE; (E) YOUR FAILURE TO COMPLY WITH APPLICABLE LAW OR REGULATION, OR THE RULES OF ANY CLEARINGHOUSE, NETWORK OR OTHER PAYMENT SYSTEM ORGANIZATION THAT GOVERN YOUR TRANSACTIONS; OR (F) YOUR "INTERNAL SECURITY BREACHES" OR "INTERNAL SECURITY LOSSES" AS DEFINED IN THAT SECTION ENTITLED "SECURITY PROCEDURE AND USER GUIDES". THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

- 34. Information Processing and Reporting.** We offer a number of Services that require us to receive, process and report information involving your Accounts and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you, your agents or others provide to us. We will not have a duty to interpret the content of any data transmitted to us, except to the limited extent specifically set forth in this Agreement. Unless otherwise agreed in writing, we will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties. Our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to provide corrected reports at our own expense. You agree to maintain adequate backup files of the data you submit for a reasonable period of time in order to facilitate any needed reconstruction of your transactions (e.g., due to a telecommunications failure). If we are unable to provide a Service for any reason, we will inform you of the problem and will take reasonable steps to resume processing.
- 35. Limitation of Liability -- General.** Except as otherwise stated in this Agreement, we will only be liable to you for damages arising directly from our intentional misconduct or gross negligence in the performance of the Services. We will not be responsible for any loss, delay, cost or liability to the extent that it arises, directly or indirectly, in whole or in part, from:
- (a) your actions or omissions, or those of third parties that are not within our immediate and reasonable control (including, but not limited to, your Internal Security Breaches (defined in the Section entitled "Security Procedure and User Guides") or the interception, corruption and/or modification of instructions that you send to us);
 - (b) your negligence, misconduct or breach of any agreement with us;
 - (c) any ambiguity, inaccuracy or omission in any instruction or information provided to us;
 - (d) any error, failure or delay in the transmission or delivery of data, records or items due to a breakdown or transmission error in any third party computer or communications facility;
 - (e) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God;
 - (f) causes beyond our reasonable control;
 - (g) the application of any government or funds-transfer system rule, guideline, policy or regulation;
 - (h) the lack of available funds in your Account to complete a transaction;
 - (i) our inability to confirm to our satisfaction the authority of any person to act on your behalf;

- (j) losses for which we are not liable by law, Rules or other clearinghouse or network rules, or for which you have agreed to indemnify or release us:
- (k) losses for which you fail to give us timely notice by law or agreement (see, e.g. the Section entitled "Notices - Duty to Notify Us", and your Deposit Account Agreement); or
- (l) your failure to follow any applicable equipment or software manufacturer's recommendations or our Service instructions.

There may be other exceptions to our liability stated in your Deposit Account Agreement.

We will not be responsible under any circumstances for special, indirect, consequential, or punitive damages which you incur as a result of our actions or omissions, even if we have been informed or are aware of the likelihood of such damages. Our liability and your remedy for actual costs and losses resulting from our failure to transmit funds in the correct amount or to the correct beneficiary listed in your funds transfer Orders (defined in the Section entitled "Funds Transfer Services") shall not exceed the direct money damages that you incur as a result of the failure (e.g., the amount of a wire transfer that is sent to the wrong party, or the amount by which a transfer exceeds the amount you authorized, plus interest as permitted by law). In all other cases, our liability and your remedy for actual costs and losses resulting from our actions and/or omissions, whether the claim is in contract or tort, will not exceed the lesser of (i) six (6) times the average monthly charge for the Service(s) in question for the three (3) months immediately preceding the cost or loss, or (ii) \$20,000.

Any claim, action or proceeding by you to enforce the terms of this Agreement or to recover for any Service-related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action or proceeding first occurs. You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with your Services. You acknowledge that our Service fees have been established in contemplation of all the terms of this Agreement, including: (i) these limitations on our liability; (ii) your agreement to review statements, confirmations, and notices promptly and to notify us immediately of any discrepancies or problems; and (iii) your agreement to assist us in any loss recovery effort.

- 36. Notices - Duty to Notify Us.** You agree to notify us immediately if you discover: (a) any error or discrepancy between your records and the information we provide to you about your Accounts or transactions (e.g., in a statement, confirmation, online balance or electronic report); (b) unauthorized transactions involving any Account; (c) a breach in the confidentiality of any Access Credential; or (d) other problems related to the Services. You must deliver us a written notice of any discrepancy or other problem, including a statement of the relevant facts, within a reasonable time (not to exceed 15 days from the date you first discover the problem or receive information reflecting the problem, whichever occurs first). If you fail to notify us within such reasonable time, you agree that, in addition to all other limitations on our liability: (1) in the case of an erroneous funds transfer, you will be liable for all losses up to the amount thereof (including any loss of interest), which result from your failure to give us such notice or which might have been prevented by your giving us such notice; and (2) in the case of an unauthorized funds transfer, we will not be liable for any loss of interest which results from your failure to give us such notice or which might have been prevented by your giving us such notice. If we have received payment from you with respect to a funds transfer requested in your name, and if you believe that the funds transfer was unauthorized or erroneous, then to the maximum extent permitted by law, and in addition to all other limits on our liability, you are precluded from asserting any objection to us retaining that payment unless you have notified us of your objection within 90 days of our (i) notifying you of that transfer, or (ii) providing you a statement reflecting that transfer, whichever is earlier. In addition, with respect to ACH payments from your Account, to the maximum extent permitted by law, and in addition to all other limits on our liability,

we are not liable for an erroneous or unauthorized ACH entry that we did not cause unless (A) you notify us (which may be oral with prompt written confirmation of the relevant facts) before that entry actually settles (generally 1 or 2 Business Days after the entry was posted to your Account), or (B) we are otherwise able without bringing suit to effect a reversal of that settlement under the applicable ACH system Rules.

You agree to provide us with at least 30 days' advance notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in the type, scope or nature of your business; or (iii) any anticipated (20% or greater) increase in the amount or volume of your ACH transactions (if applicable) over the preceding calendar quarter.

37. **Notices Under this Agreement.** Unless otherwise agreed, notices required by this Agreement must be in writing. Notices to you may be mailed or sent to you at the statement, email or mailing address shown for you in our deposit or Service records, or (for online Services) by posting the notice at our website. Notice of a transaction to an online Account is also given if posted to and viewable by you on that Account. Notices may also be given to you by message on any paper or electronic statement that we issue in connection with affected Service(s) or with any Account(s) that use the affected Service(s) (e.g., statements or reports that reflect transactions in, fees for, or Account Analysis).

Notices sent to you by email, if properly addressed, will be deemed given to you when sent, even if they are blocked or rejected by your computer. You agree to provide us with written advance notice of any change in your address or email address. Notices to us must be delivered to the Division address listed below:

Amegy Bank of Texas	Attn: Treasury Management P.O. Box 27459 Houston, TX 77227-7459
California Bank & Trust	Attn: Treasury Management 550 S. Hope St. Ste 300 Los Angeles, California 90071
Nevada State Bank	Attn: Treasury Management 600 White Drive Las Vegas, Nevada 89119
National Bank of Arizona	Attn: Treasury Management 5500 W. Chandler Blvd Suite 1 Chandler, Arizona 85226
Vectra Bank Colorado	Attn: Treasury Management 2000 S. Colorado Boulevard Suite 2-1100 Denver, Colorado 80222
Zions Bank	Attn: Treasury Management 310 South Main Street, Ste 1400 Salt Lake City, Utah 84101

The Commerce Bank of Washington

Attn: Treasury Management
601 Union Street, Suite 3600
Seattle, Washington 98101

The Commerce Bank of Oregon

Attn: Treasury Management
1211 SW 5th Ave; Suite 1250
Portland, OR 97204

38. **Records.** Unless a different period is provided in this Agreement, you will retain and provide to us, upon request, all information necessary to remake or reconstruct any transaction, transmission, file or entry until ten (10) Business Days following receipt by us of the transaction document, tape, file, entry, transmission, or other Order affecting an Account.
39. **Reliance on Third Parties.** Our ability to provide certain Services is dependent upon our ability to obtain or provide access to third party vendors and networks. In the event any third party is unavailable or we determine, in our discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through a different party. In such situations, we will have no liability for the delay or unavailability of access. We will not be responsible for any services you receive from third party vendors.
40. **Requests for Information/Beneficial Ownership.** We are required by law to adequately document the identity of direct owners and certain beneficial owners of Accounts, and of companies receiving certain Services. We must also be aware of the business and transactions that will be associated with the Accounts and Services. We will require documentary identification as part of this process. We will require you to provide adequate documentation to establish good standing, ownership, and entity authorization for the individuals who will be authorized signers, principals, and beneficial owners (as defined by FinCEN regulation or requested by us in our discretion). Failure to provide requested information to our satisfaction may mean we will not open your Account or provide you Services. Requesting a Service or opening an Account is no guarantee that the Account will remain open, that we will continue providing any of the Services, or that the information requests are completed or satisfactory. We reserve the right at any time to request updated information. Failure to supply satisfactory responses may cause us to terminate your Account(s) and Service(s).
41. **Reserve Account.** We may require that you establish and maintain one or more Reserve Accounts (each a "**Reserve Account**") with us as a condition to us providing one or more Services. You grant us a security interest in each Reserve Account, including any current and future deposits to and renewals of each Reserve Account, for all obligations owing to us under this Agreement. Each Reserve Account will bear interest only if it is opened by you and us as an interest-bearing Account. You will deposit the amount that we designate into each Reserve Account within five days from our request.

If we determine that your reserves may not be sufficient to cover our risk for potential claims (e.g., based on factors such as the volume and amount of past or current returns/claims, your financial condition, the risk of new product offerings by you, fraud losses, substantial increases in the average number or amount of transactions, and other relevant circumstances), we may increase the amount of the required reserve by providing notice to you. If you fail or refuse to deposit sufficient reserves promptly upon our request, we may transfer funds to a Reserve Account from your other Accounts with us. Your obligation to us under this Agreement will not be limited by the balance or existence of any Reserve Account.

Upon the termination of this Agreement or any Service, we may require, and you shall promptly deposit, funds in any Reserve Account that we estimate may be needed to cover potential returns and claims that may arise after such termination. This provision shall survive the termination of this Agreement.

42. **Restricted Transactions; Internet Gambling.** You may not use any Service to process transactions restricted by Federal Reserve Regulation GG (12 C.F.R. Part 233). Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by themselves or others in unlawful Internet gambling. We have elected to not offer Accounts to organizations that offer, sponsor or facilitate Internet gambling. As such, you agree not to use any Account or Service to process Internet gambling transactions, whether or not permitted by law.
43. **Security Interest.** You grant us a security interest in your Accounts with us (other than fiduciary Accounts maintained for the benefit of others) to secure the repayment of any overdraft or other obligation or liability that you incur under this Agreement.
44. **Taxes.** You will be responsible for, and shall pay all sales, use, VAT and other taxes, interest, penalties or assessments that are imposed by any governmental authority in connection with any of your Services, except taxes based on our net income, and you agree to indemnify us for your failure or refusal to do so. We may charge to any of your Accounts all fees and taxes imposed on us that are your responsibility.
45. **Termination.** Either party may terminate this Agreement as to some or all of the Services, with or without cause, by giving 30 days prior notice to the other party. We may suspend or terminate any Service or this Agreement immediately and without prior notice if: (a) you breach any agreement or warranty under any agreement with us or if any representation under any such agreement becomes untrue; (b) the confidentiality of any Access Credential is compromised or we have reason to believe that there has been any other breach in the security of the Service; (c) we have reason to believe that there is an unauthorized or fraudulent transaction involving any of your Accounts or any of the Services; (d) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; (e) we are uncertain as to any person's authority to give us instructions regarding your Accounts or the Services; (f) if we identify possible fraudulent, suspected illegal, or inappropriate activity or use of any Service by you or any third person; (g) we detect excessive returns to your Accounts, including without limit, returns in excess of the Rules; or (h) we determine that continued provision of a Service will or may violate applicable law. The termination of this Agreement will not affect the rights or obligations of the parties that arise prior to termination (e.g., the indemnification and record retention requirements).
46. **Third Parties.** This Agreement is made for the exclusive benefit of you and us. No third party has any rights under this Agreement. Unless you have our prior written consent, you may not use the Services to process transactions for third parties or permit others to initiate Service transactions on your behalf.
47. **Transaction Limits/Safeguards.** You agree not to exceed the transaction limits we establish from time to time for your Account or any Service. You will not allow anyone to initiate transactions on your behalf without proper supervision and adequate safeguards. You agree to review pending instructions prior to their submission to ensure that they are complete, accurate and properly authorized.

48. **Validity/Waivers/Overdrafts.** If any provision of this Agreement is found to be void or invalid, the remainder of this Agreement will remain in full force and effect, and the invalid provision shall be modified in a way that most closely effectuates its intent in a valid and enforceable manner. Any waiver by us must be in writing to be effective. Our waiver of any right will not be deemed a waiver of other rights or of the same right at another time. Our allowing overdrafts against your Accounts, at any time or from time to time, will not obligate us to continue allowing overdrafts at a later date. We may discontinue permitting overdrafts at any time and without prior notice.

GETTING STARTED - SETUP

49. **Availability of Services.** We will let you know when the Services you request become available for use.
50. **Equipment and Software.** You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any equipment or software that you use in connection with the Services, even if we have previously approved their use. You bear sole responsibility for establishing, maintaining and updating procedures, equipment and software and other Internal Security Controls that will effectively safeguard the security and integrity of your computer systems from unauthorized use, intrusion, takeover or theft, and will prevent your Access Credentials from unauthorized use, disclosure or discovery.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER WE NOR OUR SUPPLIERS OR VENDORS MAKE ANY WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR OF NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. Services, equipment, and software are provided "as is". You agree to notify us promptly if any equipment or software we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to replace or repair the defective equipment or software. We do not warrant that the equipment or software provided to you will be error free or that the Services will be uninterrupted.

You agree to comply with the terms of any software license provided to you in connection with the Services. You may not transfer, distribute, copy, reverse compile, modify or alter any software provided. Unless otherwise agreed by us in writing, the equipment, Service guides, security procedures, and systems provided to you in connection with a Service represent our proprietary property and must be returned to us upon request. We and/or our suppliers retain all right, title and interest in and to the intellectual property rights associated with the Services, the equipment, and software. Your license to use equipment and/or software will end with the termination of this Agreement or upon our earlier notice to you. You may only use the equipment and software in connection with your use of the Services. You may not use or move the equipment or software outside the United States without our written consent.

51. **Your Administrator.** For many Services, your Administrator can establish separate Access Credentials for you and each Authorized User, perform various administrative tasks, and/or set limits on each Authorized User's authority to access information and conduct transactions. You assume sole responsibility for the actions of your Administrator (or other person using your Administrator's Access Credentials), the Access Credentials and authority he or she gives others to act on your

behalf, and the actions of Authorized Users (or other person using an Authorized User's Access Credentials).

You or your Administrator will need to designate which Accounts will be utilized for Services. If your Administrator designates an Account with respect to which we have agreed, by separate agreement, to honor a requirement for more than one signature for the withdrawal or transfer of funds, you agree that we may act upon any Service instruction that is accompanied by the Access Credential designated by you or your Administrator for that Account and the Service in question. As long as an instruction is accompanied by the designated Access Credential, the transaction will be deemed authorized by you. NOTE: Subject only to Dual Control settings, this means that a Service may act upon the instruction of only ONE person, even though a separate agreement between you and us requires two or more signatures on checks or other withdrawals or transfers of funds.

52. **Your Accounts.** You will need to designate which of your Accounts will be used in conjunction with each Service in a Summary of Services. If you fail to do so, we may make the designation for you. A Summary of Services or the Specifications may list certain Accounts that you wish to access with the Services. If it includes the Accounts of your parent company, subsidiaries or affiliates, you warrant that they have authorized you, by resolution or otherwise, to access their Accounts through the Services in the same manner as your own Accounts. You agree to provide us, upon request, with their written authorization (in addition to any resolution), in form and substance acceptable to us, evidencing that authority, and to notify us immediately in writing of any change to that authorization. This Agreement does not authorize you to use the Services for accounts of separate entities or individuals without our written consent.
53. **Security Procedure and User Guides.** As used in this Agreement and in Specifications, a "security procedure" is a procedure by which we verify that an instruction or other communication issued in your name, or your authorized signers or users names, or with respect to your accounts, was made and authorized by you. Different Services have different security procedures, as disclosed to you herein or in one or more Specifications for the specific Services. By receiving a Service's Specifications and then using that Service, you are representing that you have determined that the Service's security procedure is commercially reasonable for your needs as expressed to us (including the size, type and frequency of your typical transactions with that Service), and you are agreeing that the security procedure is commercially reasonable, and agreeing that we may accept, rely, act upon, and enforce against you any instruction (including payment instructions) or other communication (e.g., designation of accounts or authorized signers or users for the Service, or establishing or modifying payment templates) received by us in compliance with that security procedure, even if that instruction or communication was not actually made, sent or authorized by you. If a Service's disclosed security procedure is not commercially reasonable for your needs, or if you are unwilling to be bound by all instructions and communications received by us in accordance with that security procedure, then you must not use that Service. Contact your treasury services representative who can discuss alternative products, and in some instances alternative or additional security procedures.

We may provide you with (or allow your Administrator(s) or Authorized User(s) to select) one or more Access Credentials to access our Services. We also may provide you with operating procedures, and user guides in the Specifications in connection with certain Services. You agree to: (a) comply with the Specifications and procedures that we provide to you; (b) take all necessary steps to safeguard the security and confidentiality of your Access Credential, Specifications, and any other proprietary property or information we provide to you in connection with the Services; (c) limit access to the Access Credential to persons who have a need to know such information; (d) closely and regularly monitor the activities of employees who access the Services; (e) notify us immediately if you have any reason to believe the security or confidentiality required by this provision

has been or may be breached; and (f) immediately change or exchange your Access Credential if you know or suspect that the confidentiality of the Access Credential has been compromised in any way. Our security procedures are not designed for the detection of errors (e.g., duplicate payments, or errors in your funds transfer instructions such as beneficiary or amount). We are not obligated to detect errors by you or others, even if we take certain actions from time to time to do so.

You agree to change any temporary Access Credential we give you promptly after you are given access to the Services for the first time. You must disable access to the Services and to all Access Credentials for anyone that is no longer employed or authorized by you to use the Services. You also agree to change on a regular basis any self-selected Access Credential, but no less frequently than every 60 days. We may require you to change your Access Credentials at any time.

As an alternative to verifying transactions by means of Access Credentials, we may elect to verify the authenticity or content of any order or instruction by placing a call to any Administrator or Authorized User on your Account or any other person designated by you for that purpose. We may deny access to the Services without prior notice if we are unable to confirm to our satisfaction any person's authority to access the Services or use a feature, or if we believe such action is necessary for security reasons.

Each time you make a transfer, payment, or other instruction with a Service, you warrant that our security procedures are commercially reasonable for your needs as expressed to us (based on the normal size, type, and frequency of your transactions). Some of our Services allow you or your Administrator to set transaction limitations and establish internal controls. Your failure to set such limitations and implement such controls increases your exposure to, and responsibility for, unauthorized transactions. You agree to be bound by any transfer, payment order, or other instruction we receive through the Services, even if it is not authorized by you, if it is authenticated by your Access Credential or is otherwise processed by us in accordance with our security procedures.

(a) Your Internal Security. You bear sole responsibility for establishing, maintaining, implementing and updating policies, procedures, equipment and software ("**Internal Security Controls**") that ensure the security and integrity of your processes, equipment (including telecommunications and computer systems) and information, protect them from any unauthorized use, intrusion, takeover or theft, and prevent your Access Credentials from any unauthorized discovery or use (collectively "**Internal Security Breaches**"). You bear all risk of fraudulent transfers and other losses or disclosures arising from your Internal Security Breaches or from the interception of your communications prior to their receipt by us (collectively "**Internal Security Losses**"). We will not reimburse your Internal Security Losses. You agree that we are authorized to execute, and it is commercially reasonable for us to execute, any instruction received by us and authenticated by your Access Credentials. You are encouraged to consider purchasing insurance to cover your Internal Security Losses.

To protect your system from Internal Security Breaches, your Internal Security Controls should consider including:

- i. Limiting and controlling who has access to your computer systems;
- ii. Protecting and frequently changing your internal passcodes and Service Access Credentials;
- iii. Adopting dual authorization and/or transaction-based authentication procedures for financial transfers where available;

- iv. Employing up-to-date security software such as anti-virus, anti-malware and anti-spyware programs, as well as up-to-date software patches for all your software programs, internet browsers, email programs, and the like;
- v. Using effective, up-to-date firewalls;
- vi. Procedures to avoid infection by malicious software, such as: controlling what websites are visited by your computers; controlling the connection of other devices (e.g., flash drives) to your computers; controlling what documents, email attachments, programs and other files are opened or installed on your computers; and limiting which of your computers are used for online banking;
- vii. Reconciling all Accounts (including online monitoring) on a daily basis, and immediately reporting any discrepancies;
- viii. Prohibiting your Authorized Users from leaving computers unattended or from communicating or accessing sensitive information from insecure locations (e.g., terminals or networks at Internet cafes or airports);
- ix. Allowing Services to be accessed only from secure locations such as your premises;
- x. Establishing internal procedures (such as callbacks) for employees to verify that instructions or requests they may receive (especially by email or fax) to transfer funds (especially to new transferees, new addresses or new Accounts) are authentic, even if received in the name of your officers, vendors, or other known third parties; and
- xi. Adopting such other recommendations that we may make from time to time to help ensure your safe use of our Services.

This is not a complete listing of the Internal Security Controls that you may need. You are solely responsible for determining and implementing all of the Internal Security Controls necessary to prevent Internal Security Breaches and Internal Security Losses. We have no duty to review your Internal Security Controls, identify deficiencies or make recommendations. We do not represent or warrant that any or all of the above recommendations or any future recommendations are adequate for your needs or will prevent Internal Security Losses.

We may at any time limit access to any Service function to only those customers who have adopted specific Internal Security Controls. Our specification of any required Internal Security Controls shall not constitute a representation or warranty by us that they will (i) prevent any Internal Security Breach or Internal Security Losses, or (ii) be compatible with any computer system or other Internal Security Controls.

You remain at all times solely responsible for your Internal Security Controls, Internal Security Breaches and Internal Security Losses. Although we may employ various systems and procedures from time to time to prevent losses to us, we assume no obligation for your Internal Security Losses.

APPENDIX I

SUPPORT SERVICES AGREEMENT (“SS AGREEMENT”)

GENERAL TERMS

1. Mutual Indemnification. 1.1 YOU SHALL INDEMNIFY AND HOLD HARMLESS BANK, ITS SERVICE PROVIDERS, ANY PARTY THROUGH WHICH BANK HAS OBTAINED ANY LICENSE (“LICENSOR”) TO ANY SOFTWARE PROVIDED TO YOU BY BANK FOR THE ELECTRONIC PROCESSING OF CHECKS AND CASH LETTERS (“SOFTWARE”) OR ALL SOFTWARE INSTALLATION DOCUMENTATION AND OTHER MANUALS (“DOCUMENTATION”) RELATING TO THE SOFTWARE OR EQUIPMENT AND HARDWARE CERTIFIED BY BANK OR ITS LICENSORS FOR USE IN PROCESSING CHECKS USING THE SOFTWARE (“AUTHORIZED EQUIPMENT”), AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (EACH A “BANK INDEMNIFIED PARTY”) FROM AND AGAINST ANY AND ALL THIRD PARTY SUITS OR PROCEEDINGS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES AND OTHER LEGAL EXPENSES), LIABILITIES AND OTHER LOSSES (“CLAIMS”) RESULTING FROM OR ARISING OUT OF (A) THE WRONGFUL ACTS OR OMISSIONS OF YOU OR ANY PERSON ACTING ON YOUR BEHALF IN CONNECTION WITH YOUR USE OF THE SOFTWARE AND THE AUTHORIZED EQUIPMENT (“PRODUCT”), INCLUDING, WITHOUT LIMITATION, (I) A BREACH BY YOU OF ANY PROVISION, REPRESENTATION OR WARRANTY OF THIS SS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL MISCONDUCT (WHETHER BY ACT OR OMISSION) OF YOU OR ANY PERSON UNDER YOUR CONTROL OR ACTING ON YOUR BEHALF; (III) ANY MODIFICATIONS OR CHANGES TO THE SOFTWARE MADE BY YOU OR ANY THIRD PARTY WITHIN YOUR CONTROL OR ON YOUR BEHALF; (IV) ANY USE OF THE PRODUCT BY YOU OR A THIRD PARTY WITHIN YOUR CONTROL OR ON YOUR BEHALF, THAT IS NOT IN ACCORDANCE WITH THE DOCUMENTATION; OR (V) YOUR FAILURE TO COMPLY WITH APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS; OR (B) ANY ACTION OR OMISSION OF BANK THAT IS IN ACCORDANCE WITH THIS SS AGREEMENT OR INSTRUCTIONS FROM YOU. THIS PROVISION SHALL NOT REQUIRE YOU TO INDEMNIFY OR HOLD A BANK INDEMNIFIED PARTY HARMLESS IN CONNECTION WITH SUCH BANK INDEMNIFIED PARTY’S OWN BREACH OF CONTRACT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

1.2 Bank shall indemnify and hold harmless you and your shareholders, directors, officers, employees, and agents (each a “Customer Indemnified Party”) from and against any Claims that the Software directly infringes any valid United States copyright or that the use of the Software by you to (a) capture electronic images of Checks (as hereinafter defined); (b) electronically transmit the resulting Electronic Images to Bank or its service providers, as applicable for processing, in accordance with the Documentation; and/or (c) store electronic copies of such Electronic Images (hereinafter defined) within the Software, directly infringes any valid United States patent of such third party. As used herein, “Check” means a draft, whether negotiable or not, that is (i) payable on demand, (ii) drawn on or payable through or at an office of a United States bank payable in United States money, (iii) payable or endorsed to you, and (iv) capable of being converted to a digitized form for processing. Such term does not include traveler’s checks, money orders or non-cash items. As used herein, “Electronic Image” means information in electronic form, together with other electronic images and other information related thereto and transmitted therewith.

Bank shall have no liability under this Section to the extent a Claim is attributable to (a) modification of the Software by anyone other than Bank or its Licensors, without the express prior written consent of Bank; (b) combination or use of the Software with any software that is not provided by Bank or hardware that is not Authorized Equipment; (c) use of the Software in any way not authorized by this SS Agreement; (d) transmission of Electronic Images to any other computer, system or media, other than transmission to Bank or its designees, as applicable, for the purpose of processing such Electronic Images as contemplated herein; (e) use of other than the most current release of the Software provided to you; or (f) any breach by you of this SS Agreement.

If use of any portion of the Software by you is, or in Bank’s opinion is likely to be, enjoined due to any Claim, Bank shall, at its sole option and expense, do one or more of the following: (a) provide you the right to continue using such Software at no additional expense, (b) replace or modify such Software with non-infringing software, (c) resolve any Claim to allow use of such Software at no additional expense, or (d) if the remedies set forth in (a), (b) and (c) are not obtainable on commercially reasonable terms, terminate the license and accept return of such Software.

You agree and acknowledge that the remedy provided in this Section is your sole and exclusive remedy, and consequently the sole and exclusive liability of Bank with respect to any Claim or any related action, and Bank shall not be otherwise liable to you for providing non-infringing software.

1.3 A Bank or Customer Indemnified Party shall (a) give the indemnifying party prompt written notice of any Claim for which the Bank or Customer Indemnified Party intends to claim indemnification; (b) give the indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) the right to control and direct the investigation, defense and settlement of the Claim; and (c) cooperate fully with the indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) in the investigation, defense and settlement of such Claim. A Bank or Customer Indemnified Party shall not settle or compromise any Claim, and any settlement or compromise by a Bank or Customer Indemnified Party of a Claim shall be void as against the indemnifying party and shall terminate the indemnifying party's obligation to indemnify such Bank or Customer Indemnified Party. The indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) may settle or compromise any Claim, provided that such settlement or compromise does not involve any admission of wrongdoing on the part of the Bank or Customer Indemnified Party or require any payment or other performance by the Indemnified Party.

2. Warranty Disclaimer. 2.1 BANK WARRANTS THAT THE SERVICES PERFORMED UNDER THIS SS AGREEMENT SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER CONSISTENT WITH STANDARDS IN THE SOFTWARE AND HARDWARE SERVICES INDUSTRY, AS APPLICABLE, BUT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY NATURE WITH RESPECT TO THE SUBJECT MATTER OF THIS SS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE PRODUCT SUPPORT SERVICES, THE EQUIPMENT AND THE SERVICE PLAN TO THE EXTENT COVERED HEREBY. BANK'S OBLIGATIONS AND LIABILITIES AND YOUR RIGHTS AND REMEDIES SET FORTH IN THIS SS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND YOU WAIVE AND RELEASE BANK, ITS LICENSORS, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE, EQUIPMENT OR OTHER MATTERS PROVIDED UNDER THIS SS AGREEMENT, INCLUDING, WITHOUT LIMITATION, (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION OR OTHER IMPLIED CONTRACTUAL WARRANTY; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (D) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT WILL BE ERROR-FREE, THAT ITS OPERATION WILL BE UNINTERRUPTED OR THAT ALL DEFICIENCIES OR ERRORS WILL BE CORRECTED.

2.2 THE SOFTWARE IS PROVIDED TO YOU "AS IS".

2.3 You acknowledge and agree that warranties, if any, regarding the Authorized Equipment are made solely by the manufacturer. You shall promptly notify Bank of any defect in Authorized Equipment that is or may be covered by a manufacturer's warranty. Notification may be made by calling the customer support service numbers provided by Bank.

3. Additional Limitation on Liability. 3.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SS AGREEMENT, YOUR AGGREGATE LIABILITY UNDER THIS SS AGREEMENT FOR ANY CLAIMS RELATING TO THIS SS AGREEMENT WHETHER FOR BREACH, NEGLIGENCE OR INFRINGEMENT, IN TORT OR OTHERWISE, AND ARISING IN ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID TO BANK BY YOU UNDER THIS SS AGREEMENT FOR SUCH TWELVE MONTH PERIOD. IN NO EVENT SHALL EITHER PARTY OR ANY LICENSOR BE LIABLE FOR ANY ERROR IN THE SOFTWARE, FOR ANY INJURY, DAMAGE OR LOSS RESULTING FROM SUCH ERROR OR FROM SUCH USE OF THE SOFTWARE, CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, OR USE, OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BANK OR ANY LICENSOR BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN FURNISHING PRODUCTS OR SERVICES HEREUNDER. NO ACTION ARISING OUT OF THIS SS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER A CAUSE OF ACTION HAS ACCRUED.

3.2 Bank will not be responsible or liable to you or any other person for (a) any damages, costs or other consequences caused by or related to its mistakes that are caused by information or instructions that you provide to it; (b) any unauthorized actions initiated or caused by you or your employees or agents; (c) any party's lack of access to the

Internet or inability to transmit or receive data; (d) failures or errors on the part of Internet service providers, telecommunications providers, portions of the Internet, or any other party's own internal systems (including intranets and other wide and/or local area networks); or (e) the failure of third persons or vendors to perform satisfactorily, other than such parties to whom Bank has delegated the performance of specific obligations provided in this SS Agreement.

3.3 THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. YOU AGREE AND ACKNOWLEDGE THAT BANK WOULD NOT ENTER INTO THIS SS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.

4. Assignment. Neither party may assign this SS Agreement or its rights or delegate any of its duties under this SS Agreement without the other party's prior written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment or delegation without the required consent shall be void.

5. Applicable Law, Jurisdiction. This SS Agreement shall be governed by and construed in accordance with the laws of the state of Utah, excluding its choice of law provisions. Any action brought to enforce or interpret the terms of this SS Agreement shall be brought exclusively in the federal or state courts located in Salt Lake County, Utah, and the parties hereby agree to and submit themselves to the jurisdiction of, and venue in, such courts.

6. Effect of Agreement. This SS Agreement shall be binding upon the parties' respective representatives, successors and permissible assigns. If any part of this SS Agreement is invalid, illegal or unenforceable, the remaining provisions shall remain in effect.

7. Force Majeure. Except for the obligation to make payments, nonperformance by either party will be excused to the extent performance is rendered impossible due to causes beyond such party's reasonable control and without its negligent or willful misconduct, including, without limitation, acts of God, natural disasters, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations, third party nonperformance or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

8. Notices. All notices permitted or required to be given under this SS Agreement shall be in writing and shall be deemed duly given upon actual delivery. Any notice to you shall be addressed to you at your address shown in the Master Services Agreement.

9. Survival. All terms of this SS Agreement which, by their nature, are intended to survive termination of this SS Agreement (including, without limitation, all provisions regarding confidentiality, protection of intellectual property, indemnification, arbitration, warranties and limitations of liability) shall survive such termination.

10. Third Party Beneficiaries. This SS Agreement is for the sole and exclusive benefit of the parties hereto and is not intended to benefit any third party, except the Licensors. You acknowledge and agree that such Licensors are third party beneficiaries to this SS Agreement with respect to those provisions dealing with use and protection of intellectual property.

11. Entire Agreement. THIS SS AGREEMENT AND ANY EXHIBITS, SCHEDULES OR ATTACHMENTS HERETO CONSTITUTE THE ENTIRE SS AGREEMENT BETWEEN YOU AND BANK WITH RESPECT TO THE SUBJECT MATTER HEREOF. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS SS AGREEMENT AND THE DOCUMENTATION, THIS SS AGREEMENT WILL GOVERN.

12. Acceptance. The furnishing of support services by Bank under this SS Agreement shall constitute the acceptance by Bank of the terms and conditions of this SS Agreement.

SUPPORT SERVICES EQUIPMENT AND SOFTWARE ADDENDUM TO GENERAL TERMS

1. SS Equipment Transfer. Bank will furnish Authorized Equipment to you subject to the terms and conditions of this SS Agreement. Upon receipt of a qualifying purchase order, Bank will use commercially reasonable efforts to deliver Authorized Equipment pursuant to the order within a reasonable time to the location(s) designated by you in the order. Bank shall have no liability to you or any other party for late delivery or mis-delivery of any Authorized Equipment. All actual costs associated with the delivery of Authorized Equipment, including, without limitation, transportation, shipping, insurance and warehousing, will be paid as provided in the fee schedules that we may provide, if any. Risk of loss passes to you upon tender of delivery of the Authorized Equipment to the destination point designated in the applicable order. Upon transfer of risk of loss to you, no damage, loss, theft or destruction of the Authorized Equipment shall relieve you of your obligation to pay any purchase price, taxes, fees or other amounts due under this SS Agreement. Any capitalized term used herein but not otherwise defined shall have the meaning set forth in the SS General Terms.

2. Software License. Subject to the terms and conditions of this SS Agreement, Bank hereby grants you a non-exclusive, non-transferable license to: (a) use the Software solely for processing Checks in connection with your own business operations in accordance with the Documentation and solely on Authorized Equipment; (b) copy and use the Documentation solely to support your authorized use of the Software; and (c) copy any Software actually delivered to you solely for archival or backup purposes.

3. Fees. You shall pay Bank the purchase price, license fees and/or service fees, if any, as listed in the Specifications.

4. Customer Responsibilities

4.1 You shall maintain a fully qualified and properly trained staff sufficient to perform your obligations under your agreements regarding the Product and Documentation.

4.2 You shall implement any change or upgrade to the Software within 30 days of your receipt of such change or upgrade. You shall use commercially reasonable efforts to implement any change or upgrade in such shorter time frame as Bank may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Product.

4.3 You shall (a) install and use the Authorized Equipment and Software in accordance with the Documentation; (b) use the Authorized Equipment only for processing Checks electronically through the Bank; (c) use the Software only on Authorized Equipment; (d) use only the current releases to the Software, subject to the timeframes for implementation to new releases set forth in this SS Agreement; (e) comply with the security procedures described in the Documentation; and (f) not bypass or disable any security mechanisms in the Authorized Equipment or the Software.

4.4 You may not export, re-export or otherwise transfer the Software without our prior written consent. You acknowledge that certain Software is cryptographic software subject to U.S. export controls under the Export Administration Regulations, and that the Software, and technical data to be provided under this SS Agreement and certain transactions under this SS Agreement, may otherwise be subject to export controls and import and use restrictions of the U.S. and of other countries. You agree to comply with all such laws and regulations, including all export control laws, rules and regulations administered by: (a) the U.S. Department of Commerce (including the Bureau of Industry and Security); (b) the U.S. Department of Defense; (c) the U.S. Department of Treasury (including the Office of Foreign Assets Control); (d) the U.S. Department of State (including the Directorate of Defense Trade Controls); and (e) any other applicable government agency. You warrant that you are not located in, or are a national of, Cuba, Iran, North Korea, Sudan or Syria. You warrant that you are not on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers. You agree that you will not use the software with chemical, biological or nuclear weapons or applications, or with missiles. You warrant that you otherwise understand and will comply with these conditions.

5. Ownership of Intellectual Property

5.1 You acknowledge and agree that (a) the Software, the Documentation, and all intellectual property rights (such as copyrights, patents and trade secrets) pertaining to the Product and the Documentation are owned exclusively by Bank and its Licensors, represent or contain valuable rights of Bank and its Licensors, and are protected under U.S. patent, copyright, trademark and trade secret laws of general applicability; and (b) all right, title and interest in and to the Software and the Documentation, together with all modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents and trade secrets, pertaining to the Software and Documentation are and shall remain owned exclusively throughout the universe by Bank and its Licensors.

5.2 You agree that you shall not at any time, either directly or indirectly, put to issue the scope, validity or ownership of Bank's or its Licensors' intellectual property rights in the Software and Documentation; shall not do any act, either directly or indirectly, which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights; and shall at no time assert any ownership rights to the Software or Documentation.

5.3 You assign to Bank and its Licensors (as directed by Bank) any rights, including any patent, copyright, mask work rights, trademarks and trade secrets, which now exist or which it may acquire at any time, to the Software or the intellectual property rights to the Software. You hereby waive any "moral rights" to the Product.

5.4 You acknowledge and agree that any license to you does not create in you any rights in or to any of the Software or Documentation, or copyrights, trademarks, trade secrets, patents or other intellectual property rights of the Bank or its Licensors, other than a limited, non-exclusive, non-transferable right, revocable in accordance with the terms of this SS Agreement, to use the Software and Documentation as set forth herein. You shall have no other license, right or interest in the Software or Documentation, either express or implied.

5.5 This SS Agreement does not grant to you any right, title, interest or license in or to any trademark of the Licensors.

5.6 You may not assign any license granted to it to any third party without the prior consent of Bank.

5.7 You agree to promptly execute and deliver such further documents and take any and all other actions reasonably requested by Bank from time to time, for the purpose of fully effectuating the intent and purposes of this Section 5.

6. Protection of Intellectual Property

6.1 You shall establish reasonable precautions and use commercially reasonable efforts, no less rigorous than those you use to protect your own confidential information, to protect and maintain the confidentiality and security of the Software, Authorized Equipment and Documentation in your possession or control. Without limiting the generality of the foregoing, You shall use reasonable measures to protect the Software and Documentation from unauthorized copying, dissemination or disclosure and from other unauthorized use.

6.2 You will not permit any third party to: (a) copy or use the Software or Documentation except as expressly authorized herein; (b) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others, except as specifically authorized herein; (c) use the Software for third party training, commercial time-sharing or service bureau use; (d) alter, change, modify or otherwise create derivative works of the Software or Documentation; (e) remove or alter any intellectual property or proprietary notices, markings, legends, symbols or labels appearing on or in the Software or Documentation; or (f) reverse engineer, disassemble or decompile any Software, except to the extent any law allows such activities, in which event you must notify Bank of your intent to perform such activities, in which event Bank shall have the right to terminate your license to the Software. You shall include on any copy of the Software or Documentation any copyright, trademark or other proprietary rights notices contained in the original.

6.3 You shall (a) reasonably cooperate with Bank and its Licensors to protect the Software, including in connection with any lawsuits or disputes involving the Software; and (b) promptly notify Bank and provide to it relevant background and other facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof, of the Software.

6.4 In the event of any infringement of Bank's or its Licensors' intellectual property rights with respect to the Software, you (a) grant to Bank and its Licensors the sole right to determine the course of action with respect to such claim and to bring any infringement proceeding and to settle and collect any settlement amount or judgment for any infringement proceeding, and (b) agree that Bank and its Licensors shall be solely entitled to any proceeds of any infringement proceeding, including, without limitation, any settlement proceeds, insurance proceeds, arbitration award, judgment or other consideration in any form.

6.5 You shall maintain an accurate list of all locations where you have loaded and maintain the Software and make such list available to Bank upon request.

7. Termination of License

7.1 Bank may terminate your license to the Software if you are not using a current release in accordance with this SS Agreement. Upon termination of this SS Agreement for any reason, all licenses granted to you for the Software and Documentation will terminate automatically. Your license to the Software and Documentation will terminate no later than the termination of Bank's license to the Software and Documentation.

7.2 Within 30 days after termination of your license to the Software and Documentation, you must, at your expense, deliver to Bank, or destroy, all copies of the Software and Documentation that are in your possession or under your control.

SUPPORT SERVICES SERVICE PLAN ADDENDUM TO GENERAL TERMS

1. Services Provided. Bank shall provide to you product support services in accordance with the agreements in this Appendix and the service plans selected by you in the Specifications (the "Service Plans") for the scanners described in the Specifications and any replacements for such scanners (collectively, the "Equipment").

2. Support Services Requirements. You shall contact Bank [or its first level support provider] for all Equipment-related support and maintenance issues. You will allow Bank or its agents full and free access to the Equipment and other information reasonably requested by Bank. Upon enrolling any Equipment, you shall inform Bank of the brand, type, serial number and location of such Equipment, and shall thereafter promptly inform Bank of the new location of Equipment if it is relocated to another address.

3. Services Not Included. Bank shall have no obligation under this Agreement to (a) make changes to the Equipment; (b) furnish or install operating supplies, accessories or other consumables (such as ribbons, ink and other supplies); (c) service options, attachments or other equipment or software not part of the original Equipment; (d) provide emergency or other services not specifically provided for in this Agreement; or (e) perform product support services for any Equipment for which an update has been provided to you by Bank, but which has not been installed in accordance with applicable requirements. Bank shall have no obligation to provide product support services for any Equipment if you do not provide sufficient information to enable Bank to determine that such Equipment is covered by a Service Plan.

4. Limitations on Product Support Services. Equipment that is not in good operating condition due to one or more of the following causes will not be covered by the product support services, and will be repaired by Bank in its sole discretion and only upon the payment of additional charges: (a) an alteration not approved by Bank; (b) yours or any other third party's negligence or intentional acts; (c) misuse or abuse by you or a third party, including the failure to operate and maintain the Equipment or Equipment Software in accordance with applicable documentation or specifications, or improper testing, installation or handling of the Equipment; (d) your failure to properly and timely install any update provided by Bank; (e) failure of any equipment not maintained by Bank; (f) attachment, use or integration of equipment not approved by Bank; (g) improper use of or failure to use supplies or use of supplies not meeting applicable specifications; (h) fire originating outside of the Equipment; (i) water damage; (j) any other causes external to the Equipment such as electrical power fluctuations or failure; and (k) acts of God or other types of catastrophic damage. You shall bear the risk of loss or damage from any cause, including theft or destruction of the Equipment or any part thereof, and Bank shall have no liability to you or any other third party for any such loss, damage, theft or destruction.

5. Service Plans. You may purchase a Three Year Advanced Exchange Service Plan, the term of each Three Year Advanced Exchange Service Plan is thirty-six (36) months. The term may not be renewed. For a Service Plan purchased after the date of shipment, the Service Plan shall not apply to any damage or failure with respect to the Equipment that occurred prior to the purchase of the Service Plan. The term of the Advanced Exchange Service Plan will commence on the date (a) that the Equipment is shipped to you, if the Service Plan is purchased before or at the time the Equipment is shipped, or (b) for Service Plan purchases after shipment, the date you purchase the Service Plan.

Under the Advanced Exchange Service Plan, replacement Equipment is shipped to you to replace failed Equipment. The replacement Equipment is shipped by "overnight/next day delivery," and Bank shall pay such shipping costs. You shall return the failed Equipment to Bank or its designee within five (5) Business Days of receipt of the replacement Equipment, using the provided shipping label and the original or replacement Equipment packing material. If you ship Equipment using other shipping boxes, packing or materials, you shall be responsible for any resulting repair fees or replacement costs. The replaced Equipment becomes the property of Bank or its designee. Bank pays inbound shipping at the surface rate. Any time remaining on the then-current Service Plan term will be applied to the replacement Equipment. If you fail to timely return failed Equipment as required, Bank will bill you, and you shall pay, upon receipt of invoice, the purchase price for the replacement Equipment. You will pay any international shipping charges that apply to Equipment shipped outside of the United States.

APPENDIX II

(ELECTRONIC INVOICING AND RECEIPTS) PAYSIMPLE TERMS OF SERVICE

Last Modified: February 20, 2013

PaySimple, Inc. ("PaySimple") and PaySimple's authorized reseller ("Reseller") each require you ("You" or "Your") to agree and adhere to the following terms and conditions of service ("Terms of Service") in connection with Your use of the Electronic Invoicing and Receipts Services and associated user accounts (the "Service") which You have purchased through Reseller. By accessing or otherwise using the Service, you indicate Your agreement, acknowledgment and acceptance of the Terms of Service and You agree and covenant to comply with all applicable laws, rules and regulations governing Your use of the Service. Reseller and PaySimple accept these Terms of Service by and upon notifying you that your Service has been activated. As between You and Reseller only, you shall have also entered into an agreement in which You request, and Reseller agrees, to make the Service available to You.

1. DESCRIPTION OF SERVICES

The Service provides online invoicing and/or payment software to assist Your management of Your Accounts receivables. The Service allows You to electronically generate and transmit invoices via email to Your customers. If You have subscribed to that portion of the Service that provides for the acceptance of payments (in this appendix, the "Payment Service"), Your customers will be allowed to make, and You to receive, electronic payments via various system features (click-to-pay from system generated invoices, web page payment forms, manual entry, etc.) using one of the electronic payment methods You select (for example, via credit card, debit card or automated clearing house ("ACH") payments). The payment received by You will be credited to Your designated deposit account with Reseller. The precise features of the Service, and the "look and feel" of the Service, are those made available to you at the times you actually use the Service, and may be changed from time to time by PaySimple without prior notice to You.

2. REPRESENTATIONS AND WARRANTIES

You represent, warrant and covenant to each of PaySimple and Reseller that: (a) the person who has applied for the Service on Your behalf is at least eighteen (18) years old, is a U.S. citizen, and will access the Service's website and/or mobile application (collectively the "Site") only from a computer (and/or mobile device) with a U.S. IP address (and/or U.S. network connection); (b) You shall comply with all applicable federal, state and local laws and regulations, and with all applicable payment system rules (e.g., ACH Rules and credit card association rules); (c) You will provide complete and accurate information on which invoices issued in connection with the Service will be based and You will timely resolve any disputes with Your customers in connection therewith; (d) the schedule that You select for invoicing reflects the payment terms to which You have previously agreed with each of Your customers by authenticated record; (e) You do business in the United States and will use the Service to provide invoices to, and receive payment from (if You have subscribed to the Payment Service), Your customers that are U.S. businesses or residents only; (f) each of Your customers with respect to whom You utilize the Service has, by an authenticated record, consented to receiving electronically all invoices, materials, disclosures, terms and other content delivered to them through the Service, is willing and capable of receiving, reviewing, printing and saving all such invoices, materials, disclosures, terms and other content, consented to Your disclosure in connection with the Service of the information required to create and distribute invoices to Your customers, has consented to making payments through the Service (if You have subscribed to the Payment Service), and agreed to the Customer Terms of Service (as described below) prior to making a payment using the Service (if You

have subscribed to the Payment Service); (g) the person who has applied for the Service on Your behalf has the full power and authority to enter into these Terms of Service on Your behalf; and (h) for each transaction or recurring charge, You have obtained in one or more authenticated records express authorization to initiate the payment transaction, whether by credit card, debit card or ACH.

PROHIBITION OF ENTERING DELINQUENT ACCOUNTS: You are strictly prohibited from using the Service to:

- A. Enter a new customer who (at the time of being added) is in default or past due in making any payment to You; or**
- B. Enter a new charge for an existing customer's purchase of goods or services if (at the time of being added) the customer is in default or past due in making payment to You for that purchase.**

You may use the Service in your collection of a charge that is delinquent or in default **only if** that charge was current and in good standing when You first entered into the Service. Any default or delinquency must arise after the charge was entered into the Service. If requested by PaySimple and/or Reseller, You will provide a certificate attesting to Your compliance with this prohibition, and You will permit PaySimple and/or Reseller to audit your records in connection therewith.

The internet is an inherently insecure medium and the reliability of hosting services, internet intermediaries, Your internet service provider and other service providers cannot be assured. When you use the Service, you represent, warrant and covenant that you accept these risks and the responsibility for choosing to use a technology that does not provide perfect security or reliability.

3. RESPONSIBILITY FOR DISCLOSURE OF CUSTOMER TERMS OF SERVICE

Prior to any of Your customers' use of the Site to access any invoice using the Service, You are responsible for informing each such customer of, and shall provide to each such customer, the terms and conditions to which their use of the Site is subject. The Customer Terms of Service can be viewed online at: http://www.paysimple.com/customer_terms.html You shall make Your customers aware of such Customer Terms of Service and shall not, in any way, alter the Customer Terms of Service.

4. RESPONSIBILITY FOR ACCURACY AND TIMELINESS OF INVOICES

Invoices to be sent to Your customers created using the Service will be prepared using information that is provided by You. You are responsible for the customization of invoices created using the Service and the accuracy and completeness of all information on which invoices to Your customers are based, including, without limitation, the identity of, and contact information for, Your customers who are being invoiced, the transactions for which You are invoicing them, and the cost thereof, including applicable discounts. PaySimple will not entertain or handle disputes about the information provided by You on which invoices are based. You will be responsible for promptly handling any and all disputes with Your customers. It is solely your obligation to inform PaySimple as to any errors contained in any invoices created using the Service. It is also solely your obligation for determining the schedule on which invoices will be created and distributed. You must ensure that the schedule of invoicing that You select reflects the payment terms to which You have agreed with Your customers, and You may not use the Service for the first time with any of Your customers that are in default or past due.

5. LAWS AND REGULATIONS

Your access to and use of the Service and the Site is subject to all applicable international, federal, state, and local laws and regulations. You may not use the Service or the Site, or any information, data or content available at or through the Service or the Site (collectively, "Content"), in violation of, or to violate, any law, rule or regulation. PaySimple and Reseller do not make, and hereby disclaim, any representation that the Content is appropriate or available for use in any particular location, and access to Content from territories where the Content may be illegal is prohibited. Those who choose to access or use the Site and the Service do so at their own initiative and risk and are responsible for compliance with all applicable laws.

6. CHANGES TO THESE TERMS OF SERVICE

PaySimple reserves the right to revise, modify and supplement the content of the Site and these Terms of Service (and all other documents related hereto or described herein) at any time in PaySimple's sole discretion. PaySimple will notify You that changes to any such document(s) are being made by sending an email message to that effect to the email address that You provided when enrolling (or Your updated email address) and such changes will apply to your continued use of the Service. Additionally, the date indicated as "Last Modified" at the beginning of these Terms of Service or with respect to any other modified document will be updated to reflect the date as of which the last of any such revisions, modifications and supplementation occurred. Any changes shall be effective immediately after notice is sent to You. Your continued use of the Site and the Service from that point forward shall be deemed to constitute Your affirmative acknowledgment of, and agreement to abide and be bound by, the modified terms, conditions and obligations therein. If You object to any of these revisions, modifications or supplementations or become dissatisfied with the Service in any way, Your sole recourse is to immediately discontinue Your use of the Service and the Site.

7. ENROLLMENT; ONLINE ORDERS

Enrollment to use the Site and the Service is not automatic. PaySimple and Reseller reserve the right to reject any enrollment for any reason including, but not limited to, Your inability to meet applicable underwriting criteria.

Your enrollment information must be accurate and complete, and You shall update enrollment information as necessary to keep it accurate and complete. You shall not misrepresent Your ownership, Your identity, the identities of Your Authorized Users of the Service or those whom You have authorized to act on Your Behalf, or any other enrollment information or information provided by You subsequent to the enrollment. Failure to provide accurate and complete information may result in the termination of Your ability to use the Service and result in errors.

Neither PaySimple nor Reseller is responsible or liable for any processing delays or damages which may result from any processing delays. Enrollment is activated upon the earlier to occur of (a) Your receipt of the enrollment confirmation email including Your log-in information or (b) the time at which You first log into the password protected portion of the Site. The username and password provided in the enrollment confirmation email will be that which is assigned to the Primary Administrator for Your account (the "Primary Administrator").

You, the Primary Administrator and all other Authorized Users shall have a unique username and password. You, the Primary Administrator and any other Authorized User of Your account, shall not use a username or password that PaySimple, in its sole discretion, deems offensive or inappropriate. You are solely responsible for Yourself and Your agents maintaining the confidentiality and security of usernames and passwords for Your account, and assume all liability for sharing or disclosing such usernames and

passwords. You agree to immediately contact Reseller if You become aware that the security of the usernames and/or passwords for Your account may have been compromised or if there has been unauthorized access to Your account or Your data. You are solely responsible for all activity occurring under the usernames and passwords for Your account. Access to and use of password-protected and secure areas of the Site and the Service is restricted to Authorized Users only.

8. LICENSE AND USE OF THE SITE

You are hereby granted a limited license during the portion of the Term (as described below) to utilize, including incidental copies arising from the operation of Your browser, the Service and Content solely to generate invoices to, and, if You have subscribed to the Payment Service to receive payments from, Your customers and to manage Your accounts receivables. You may only use the Service, the Site and the Content as directed in the tutorials on the Site. **You are strictly prohibited from using the Service to assist any creditor, other than Yourself, including invoicing, communicating or collecting payment on behalf of any creditor with any obligor.** You are prohibited from modifying, copying, distributing, transmitting, displaying, publishing, selling, licensing, creating derivative works from, decompiling, reverse engineering, disassembling, transferring, or using the Service or the Content, or any other materials available on or through the Site for any purposes, except You may make print copies of the Content for Your own benefit and internal business use, but not for distribution to others. You agree that Your use of the Site is voluntary, non-assignable and non-transferable.

You may not (a) use the Site, the Content or the Service in any manner that could damage, disable, overburden, or impair the Site, the Content or the Service, nor may You use the Site, the Content or the Service in any manner that could interfere with any other person's or entity's use and enjoyment thereof, or (b) use any "robot," "spider" or other automatic device, or a program, algorithm, or methodology having similar processes or functionality, or any manual process to monitor or copy any of the Content or the Service, or any other materials found on the Site.

You hereby covenant and agree that You will not charge Your customers to access Your invoices using the Service, or to pay Your invoices using the Service.

9. PRICING & PAYMENTS

Pricing and payment terms for the Service shall be agreed to by You and Reseller.

10. TERM AND CANCELLATION

These Terms of Service remain in effect until Your enrollment in the Service is canceled by PaySimple as set forth herein or cancelled by You or Reseller in accordance with Your agreement with Reseller (the "Term"). PaySimple may cancel these Terms of Service or any aspect of the Service at any time upon ten (10) days advance notice for any reason. PaySimple may cancel these Terms of Service or any aspect of the Service provided to You immediately if You breach any obligations required of You in these Terms of Service, or any of the documents described herein.

11. PROPERTY RIGHTS

You acknowledge that PaySimple, or third parties other than You, as applicable, own all rights, title and interest in and to the Service and the Site, and portions thereof, including, but not limited to, all Intellectual Property Rights, and that the trademarks, logos and service marks ("Marks") displayed on the Site or through the Service are the property of PaySimple or such third parties. "Intellectual Property Rights" means

any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. You acknowledge and agree that no title to any Intellectual Property Rights of PaySimple or such third parties is transferred to You, and that You do not obtain any rights, express or implied, in the Site or the Content other than the rights expressly granted in these Terms of Service. The Content is protected by copyright and other Intellectual Property Rights. You are prohibited from using any Marks for any purpose including, without limitation, use as metatags on other pages or sites on the World Wide Web without the written permission of PaySimple or such third party that may own the Marks. You agree not to remove, obscure or alter the copyright notice, trademarks or other proprietary rights notices belonging to PaySimple or such third parties affixed to or contained within or accessed in conjunction with or through the Site. Your use of the Service, the Content or the Site is not an endorsement of You or Your business by PaySimple, and You shall not utilize the trademarks, logos or service marks of PaySimple or such third parties to suggest any endorsement or affiliation to them. You remain owner of all rights, title and interest in and to the Intellectual Property Rights in Your trademarks, logos and service marks. If You upload any trademark, logo or service mark, or other material, You thereby grant PaySimple a limited license to use such in conjunction with Your use of the Service, such as on Your invoices or web page displays generated by the Service, and to identify You as a user of the Service. You agree that under no circumstances will You ever use Reseller's trademarks, logos and service marks in connection with Your use of the Site or the Service.

12. NO WARRANTIES

YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE AND ALL CONTENT MADE AVAILABLE ON OR THROUGH THE SITE OR VIA THE SERVICE ARE PROVIDED TO YOU BY PAYSIMPLE AND RESELLER "AS IS" ON AN "AS AVAILABLE BASIS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY, OR ACCURACY. NEITHER PAYSIMPLE NOR RESELLER MAKE ANY WARRANTY THAT (A) THE SERVICE WILL MEET YOUR REQUIREMENTS, OR (B) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.

PAYSIMPLE AND RESELLER DO NOT ENDORSE AND ARE NOT RESPONSIBLE FOR (A) THE ACCURACY, TIMELINESS OR RELIABILITY OF ANY INVOICE OR STATEMENT GENERATED THROUGH THE SERVICE (B) THE ACCURACY, TIMELINESS OR RELIABILITY OF ANY INVOICE, OPINION, ADVICE, OR STATEMENT MADE THROUGH THE SERVICE OR THE SITE BY ANY PARTY OTHER THAN PAYSIMPLE, (C) ANY CONTENT PROVIDED ON ANY THIRD PARTY SITE(S) LINKED TO THE SITE, OR (D) THE CAPABILITIES OR RELIABILITY OF ANY PRODUCT OR SERVICE OBTAINED FROM ANY THIRD PARTY SITE(S) LINKED TO THE SITE.

OTHER THAN AS REQUIRED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCE WILL PAYSIMPLE, RESELLER OR ANY OF THEIR AFFILIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES, BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED THROUGH THE SERVICE OR THE SITE, OR YOUR RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM A LINKED SITE. IT IS YOUR SOLE RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ANY OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THE SITE OR OBTAINED FROM A THIRD PARTY SITE LINKED TO THE SITE. PLEASE SEEK THE ADVICE OF PROFESSIONALS, AS APPROPRIATE, REGARDING THE EVALUATION OF ANY SPECIFIC OPINION, ADVICE, PRODUCT, SERVICE OR OTHER CONTENT.

PAYSIMPLE AND RESELLER DO NOT REPRESENT OR WARRANT THAT THE SITE IS COMPATIBLE WITH YOUR EQUIPMENT OR THAT THE SITE IS FREE OF VIRUSES, WORMS, BOTS OR ANY OTHER

HARMFUL, INVASIVE OR CORRUPTED FILES. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, THE UNIFORM COMMERCIAL CODE AND THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT SHALL NOT APPLY TO THESE TERMS OF SERVICE.

13. ADDITIONAL LIMITATION OF LIABILITY

THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES, SITE, CONTENT AND DESCRIPTIONS OF SERVICES PUBLISHED ON THE SITE OR A LINKED SITE MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS, AND PAYSIMPLE AND RESELLER SPECIFICALLY DISCLAIM ANY LIABILITY FOR SUCH INACCURACIES OR ERRORS. PAYSIMPLE AND RESELLER DO NOT REPRESENT OR WARRANT THAT THE CONTENT ON THE SITE IS COMPLETE OR UP-TO-DATE. PAYSIMPLE AND RESELLER ARE UNDER NO OBLIGATION TO UPDATE THE SITE, THE SERVICE OR THE CONTENT. PAYSIMPLE MAY CHANGE THE SITE, THE SERVICE OR THE CONTENT, OR MAY MAKE IMPROVEMENTS OR CHANGES THERETO, AT ANY TIME WITHOUT NOTICE.

YOU AGREE THAT NEITHER PAYSIMPLE, RESELLER NOR ANY OF THEIR AFFILIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES, WILL BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY DIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, COST OF PROCURING SUBSTITUTE SERVICE OR LOST OPPORTUNITY) ARISING OUT OF, OR IN CONNECTION WITH, THE USE OF THE SITE, THE SERVICE, THE CONTENT OR A LINKED SITE, OR WITH THE DELAY OR INABILITY TO USE THE SITE OR A LINKED SITE, EVEN IF PAYSIMPLE, RESELLER OR ANY SUCH AFFILIATE, AGENT, OFFICER, DIRECTOR OR EMPLOYEE IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION ON LIABILITY INCLUDES, WITHOUT LIMITATION, THE TRANSMISSION OF ANY VIRUSES THAT MAY INFECT YOUR EQUIPMENT, FAILURE OF MECHANICAL OR ELECTRONIC EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS (E.G. YOU CANNOT ACCESS YOUR INTERNET SERVICE PROVIDER), UNAUTHORIZED ACCESS, THEFT, DATA LOSS, OPERATOR ERRORS, STRIKES OR OTHER LABOR PROBLEMS, OR ANY FORCE MAJEURE. PAYSIMPLE CANNOT AND DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO THE SITE, THE SERVICE OR THE CONTENT.

THE MAXIMUM AGGREGATE LIABILITY OF PAYSIMPLE, RESELLER AND THEIR AFFILIATES, AGENTS, OFFICERS, DIRECTORS AND EMPLOYEES, WILL BE THE GREATER OF (A) TWENTY DOLLARS (\$20) AND (B) THE AMOUNT OF THE MONTHLY SUBSCRIPTION FEES PAID PURSUANT TO SECTION 9 HEREOF IN THE TWO (2) MONTHS PRIOR TO THE EVENT(S) GIVING RISE TO THE CLAIM.

14. INDEMNIFICATION

You shall defend, indemnify and hold PaySimple, Reseller and their agencies, service providers, parent, subsidiaries, affiliates, officers, employees, directors, representatives and agents, harmless from any claim, cause of action or demand, loss, liability or damage (including reasonable attorneys' fees, accounting fees and costs) made or brought by You or by any third party due to, or arising out of, any of the following: (a) Your use of the Site (or the use of the Site by Your customers), the Content or the Service or any other program offered on or through the Site; (b) the violation by You, or Your customers or anyone using Your computer or Your username and password, of these Terms of Service; (c) any user submission posted by You; or (d) the infringement or violation by You, or Your customers or anyone using the Service or the Site with Your computer or Your username and password, of any Intellectual Property Rights or other right of any person or entity. Both PaySimple and Reseller reserve the right to exclusively defend and control the defense, settlement and resolution of any and all claims arising from the above causes and any such

indemnification matters arising therefrom and You agree that You will fully cooperate with PaySimple and Reseller in any such defenses and reimburse PaySimple and Reseller for reasonable fees (including attorney's fees) and expenses in connection therewith.

15. VIOLATIONS OF SERVICE TERMS - TERMINATION

Both PaySimple and Reseller reserve the right to seek all remedies available at law and in equity for violations of these Terms of Service, including, without limitation, the right to block access from a particular Internet address to the Site or the Service. In addition, PaySimple or Reseller may, in its sole discretion, immediately terminate Your use of the Site if it believes You are violating or have violated these Terms of Service or the terms and conditions of other documents described herein. Both PaySimple and Reseller reserve the right to terminate the Service and these Terms of Service immediately for any or no reason without notice and without PaySimple or Reseller incurring any liability. Any such termination will be without prejudice to any other rights that PaySimple and Reseller may have against You arising from a violation of these Terms of Service or of the documents described herein.

16. GOVERNING LAW

The laws applicable to the use of the Site and the interpretation of these Terms of Service shall be the laws of the State of Colorado, United States, and applicable federal law, without regard to any conflict of law provisions.

17. ARBITRATION

You and PaySimple agree that any and all disputes, claims or controversies arising out of or related to the use of the Site, the provision of the Service or these Terms of Service, including any claims under any statute or regulation ("Disputes"), shall be submitted for binding arbitration. Unless the parties agree otherwise, any arbitration shall take place in the State of Colorado, City and County of Denver, and shall be administered by, and pursuant to the commercial arbitration rules of, the American Arbitration Association. In the event of any dispute which is between You and Reseller, exclusive of PaySimple, or which may be fairly adjudicated without PaySimple as a co-party to the proceedings, then such dispute between You and Reseller shall be resolved in the manner set forth in the separate agreements between You and Reseller.

Disputes shall be arbitrated on an individual basis. There shall be no right or authority for any Disputes to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or other persons or entities similarly situated. The arbitrator's authority to resolve Disputes and to make awards is limited to Disputes between You and PaySimple alone, and is subject to the limitations of liability set forth in these Terms of Service. Disputes brought by either You or PaySimple against the other party may not be joined or consolidated in arbitration with Disputes brought by or against any third party, unless agreed to in writing by You and PaySimple. No arbitration award or decision on any Disputes shall be given preclusive effect as to issues or claims in any dispute with anyone who is not a party to the arbitration. Should any portion of this paragraph be stricken from these Terms of Service or deemed otherwise unenforceable, then the entire section of these Terms of Service labeled "Arbitration" shall be stricken from these Terms of Service.

The provisions of the section of these Terms of Service labeled "Arbitration" and all arbitration awards duly made in connection therewith may be enforced in a court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses (including attorney fees) incurred in obtaining the enforcement of this provision, to be paid by the party against whom enforcement is ordered.

All arbitration awards duly made under these Terms of Services shall not be subject to review or appeal except as permitted by applicable law. Any provision of these Terms of Service to the contrary notwithstanding (a) You or PaySimple may seek interim relief from a court located in the State of Colorado, City and County of Denver to protect such party's rights or property while arbitration is pending, and (b) PaySimple may bypass the aforementioned arbitration process in cases of fraud or other crimes against PaySimple, interference with PaySimple's technical operations or violations of PaySimple's rights or property.

18. PRIVACY; ACCEPTABLE USE

In order to use the Service, You must acknowledge and agree to the terms of (a) the Privacy Policy, which can be found online at: <http://www.paysimple.com/privacy.html>; (b) the Acceptable Use Policy, which can be found online at: <http://www.paysimple.com/aup.html>; and (c) such other documents as required by PaySimple from time to time.

Any information collected from or about You through Your use of the Site or the Service is subject to the Privacy Policy.

19. DATA SECURITY

PaySimple adheres to Payment Card Industry Data Security Standards ("PCI DSS") and will maintain its PCI DSS certification as a service provider. PaySimple protects and secures cardholder data in our possession according to our responsibility under PCI DSS. During the Term, You are solely responsible for Your own compliance with PCI DSS, and You agree to comply with PCI DSS and, at the request of either PaySimple or Reseller, to undergo a yearly self-assessment and submit a yearly "Attestation of Compliance" or complete other certification processes and procedures as required by PCI DSS.

20. FORCE MAJEURE

Neither PaySimple nor Reseller shall be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes or hurricanes, as well as wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss, data loss, failure or interception, incorrect data transmission or any other event outside the direct control of PaySimple or Reseller.

21. ENTIRE AGREEMENT/SEVERABILITY/WAIVER/RESELLER TERMS AND CONDITIONS

These Terms of Service, the documents and policies referenced herein, and any other terms and conditions on the Site, constitute the entire agreement between You, Reseller and PaySimple with respect to the Site and govern Your use of the Site. Additional terms and conditions shall have been agreed to directly between You and Reseller ("Reseller Terms"). Reseller Terms are separate from, independent of and supplemented by these Terms of Service. If any provision(s) of these Terms of Service is found by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of You, Reseller and PaySimple, and the other provisions of these Terms of Service shall remain in full force and effect. Neither Reseller's nor PaySimple's failure to exercise or enforce any right or provision of these Terms of Service shall constitute a waiver of such right or provision unless acknowledged and agreed to by PaySimple and Reseller in writing. These terms may not be altered, supplemented, or amended by You without the prior written consent of PaySimple and Reseller. Your acceptance of payment using the payment options selected by You (if You have subscribed to the Payments Service) is governed by the applicable card acceptance agreements and the ACH acceptance agreement, if applicable.

22. NOTICES

You must send any notices or other communications required or permitted under these Terms of Service to PaySimple in writing to PaySimple, Inc., Attention: CFO, 1433 17th St., Suite 300, Denver, CO 80202. Notices by You to Reseller are governed by the other agreements in place between You and Reseller. PaySimple and Reseller may send any notices to You to the most recent email address You have provided to PaySimple or, if You have not provided an email address, to any email or postal address that PaySimple or Reseller believes is Your address.

23. GENERAL

You acknowledge this is an online service. A printed version of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

You are solely responsible for ensuring that each of Your customers who receives invoices using the Service has consented to, is willing and capable of receiving, reviewing, printing and saving all materials, disclosures, terms or other content You deliver to them through the Service and has consented to Your use and disclosure of the information required to create and distribute invoices to such customer.

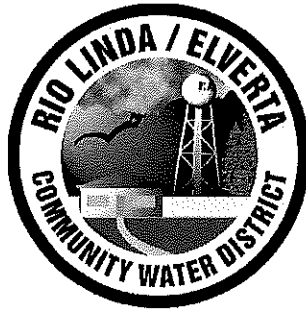
Notwithstanding any cancellation or termination of this Service, or of Your account or Your enrollment, Sections 1-5 and 10-23 of these Terms of Service shall survive any such cancellation or termination.

PaySimple reserves the right to modify or discontinue the Site with or without notice to You. Neither PaySimple nor Reseller shall be liable to You or to any third party in the event that PaySimple exercises the right to modify or discontinue the Site.

Your acceptance of these Terms of Service and use of the Site do not create a joint venture, partnership, employment or agency relationship between You, Reseller and/or PaySimple. You shall not represent in any way that You are in partnership with, are a joint venturer of, or have any employment or agency relationship with PaySimple or Reseller. You may not assign, delegate or transfer Your rights or obligations under these Terms of Service and any such prohibited assignment, delegation or transfer shall be null and void.

You agree that regardless of any statute or law to the contrary, any claim or cause of action You bring arising out of or related to Your use of the Site, the provision of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles in this Terms of Service are solely used for the convenience of the parties and have no legal or contractual significance.



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Items for Discussion and Action
Agenda Item: 6.7

Date: February 25, 2019

Subject: Resolution No. 2019-01 Nominating Director Paul Green to serve as ACWA-JPIA Executive Committee

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

This item was not discussed at Committee.

Current Background and Justification:

On February 5th, I received an email from ACWA/JPIA regarding their Executive Committee appointment process. I distributed the notice to all RLECWD Board Members. Subsequently, Director Green responded with his interest in being nominated. Director Green further requested that an item be placed on the 2-25-2019 Board agenda to allow the Board to consider nominating Director Green to serve on the ACWA/JPIA Executive Committee.

ACWA/JPIA provided details via a hyperlink URL on their February 5th email. The ACWA/JPIA process entails RLECWD adopting Resolution 2019-01 to nominate Director Green. The process further requires two other ACWA agency Boards adopt a Resolution to concur with the RLECWD nomination. To illustrate, the subsequent item on tonight's agenda is Resolution 2019-02, which is the Yuba Water Agency request for RLECWD to concur with their Board's nomination of Brent Hasteley.

Conclusion:

I recommend the Board approve Resolution No. 2019-01 to nominate Director Paul Green to serve on the ACWA/JPIA Executive Committee.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:____ Green:____ Ridilla:____ Harris:____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.7

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Resolution No. 2019-01 Nominating Director Paul Green to serve as ACWA-JPIA Executive
Committee

2/22/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

RESOLUTION NO. 2019-01

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE RIO LINDA/ ELVERTA
COMMUNITY WATER DISTRICT NOMINATING ITS ACWA/JPIA BOARD
MEMBER TO THE EXECUTIVE COMMITTEE OF THE ASSOCIATION OF
CALIFORNIA WATER AGENCIES JOINT POWERS INSURANCE AUTHORITY
("ACWA JPIA")**

WHEREAS, this district is a member district of the ACWA JPIA that participates in all four of its Programs: Liability, Property, Workers' Compensation, and Employee Benefits; and

WHEREAS, the Bylaws of the ACWA JPIA provide that in order for a nomination to be made to ACWA JPIA's **Executive Committee**, the member district must place into nomination its member of the ACWA JPIA Board of Directors for such open position;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Rio Linda/Elverta Community Water District that its member of the ACWA JPIA Board of Directors, Paul R. Green Jr. be nominated as a candidate for the **Executive Committee** for the election to be held on May 6, 2019.

BE IT FURTHER RESOLVED that the ACWA JPIA staff is hereby requested, upon receipt of the formal concurrence of three other member districts to effect such nomination.

BE IT FURTHER RESOLVED that the District Secretary is hereby directed to transmit a certified copy of this resolution to the ACWA JPIA at P.O. Box 619082, Roseville, CA 95661-9082, forthwith.

APPROVED AND ADOPTED by the Board of Directors of the Rio Linda / Elverta Community Water District on this 25th day of February 2019. By the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

John Ridilla
President, Board of Directors

Timothy R. Shaw
Secretary of the Board of Directors



105

Items for Discussion and Action
Agenda Item: 6.7.a

Date: February 25, 2019

Subject: Resolution 2019-02 to concur with Yuba Water Agency's nomination of Brent Hastey to serve on ACWA-JPIA Executive Committee

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

This item was not considered at committee.

Current Background and Justification:

This item was consequent to a February 20th email from the Yuba Water Agency (after February Committees had already met). The ACWA JPIA process does not allow much time for agency Board's to meet and comply with their timelines for the nomination, concur process.

If the District Board approves the nomination of Director Green, which would then lead to seeking concurrence Resolutions from other ACWA member agency boards, a bit of reciprocity is conducive to the District's objective.

A simple professional biography for Brent Hastey is included with your Board Packets.

Conclusion:

I recommend the Board approve Resolution 2019-02, and further direct Staff to seek concurrence Resolutions form Yuba Water Agency (and several other ACWA member agencies).

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:___ Green:___ Ridilla:___ Harris:___.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

Item 6.7.a

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Resolution 2019-02 to concur with Yuba Water Agency's nomination of Brent Hastey to serve
on ACWA-JPIA Executive Committee

2/22/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

RESOLUTION NO. 2019-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE RIO LINDA/ ELVERTA COMMUNITY WATER DISTRICT CONCURRING IN NOMINATION TO THE EXECUTIVE COMMITTEE OF THE ASSOCIATION OF CALIFORNIA WATER AGENCIES JOINT POWERS INSURANCE AUTHORITY (“ACWA JPIA”)

WHEREAS, this district is a member district of the ACWA JPIA; and

WHEREAS, the Bylaws of the ACWA JPIA provide that in order for a nomination to be made to ACWA JPIA's **Executive Committee**, three member districts must concur with the nominating district, and

WHEREAS, another ACWA JPIA member district, the Yuba County Water Agency (Yuba Water Agency), has requested that this district concur in its nomination of its member of the ACWA JPIA Board of Directors to the **Executive Committee** of the ACWA JPIA;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Rio Linda/Elverta Community Water District that this district concur with the nomination of Brent Hasteley of Yuba County Water Agency to the **Executive Committee** of the ACWA JPIA.

BE IT FURTHER RESOLVED that the District Secretary is hereby directed to transmit a certified copy of this resolution to the ACWA JPIA at P.O. Box 619082, Roseville, CA 95661-9082, forthwith.

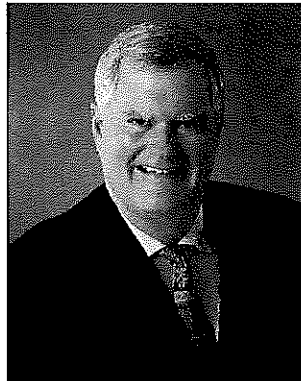
APPROVED AND ADOPTED by the Board of Directors of the Rio Linda / Elverta Community Water District on this 25th day of February 2019. By the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

John Ridilla
President, Board of Directors

Timothy R. Shaw
Secretary of the Board of Directors



Brent Hastey was elected to a two-year term as president of the Association of California Water Agencies on Nov. 29, 2017.

He is a member and chairperson of the Yuba Water Agency Board of Directors and a former member of the Yuba County Board of Supervisors. He also has served on the boards of Reclamation District 784, Yuba County LAFCO, Regional Council of Rural Counties and the Sacramento Area Council of Governments.

In addition to his service in the water management arena, Hastey has worked in higher education both locally and on a statewide level. In 2010, he was elected to the Yuba Community College District, which serves eight counties and spans nearly 4,200 square miles of rural Northern California. He is a member of the California Community College Trustee Board, which represents the state's 72 community college districts. Hastey also serves as a Director of Bank of Feather River, a community bank in Yuba City, CA.

Hastey previously served as vice president of the ACWA for the 2016-'17 term and on the ACWA JPIA executive committee 2016-2017.



Items for Discussion and Action

Agenda Item: 6.8

Date: February 25, 2019

Subject: Proposed Revisions to District Policy on Termination of Service - Delete policy 4.07.725 and amend policy 4.31.285

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

The February Finance Admin Committee forwarded this item onto the 2-25-2019 Board agenda with a recommendation for Board approval of the proposed policy revisions.

Current Background and Justification:

The January Finance/Admin Committee discussed the need for revising the District's policy on termination of service. The Committee directed staff to draft specific policy language and bring the revised policy to the subsequent Finance/Admin Committee meeting.

While reviewing the relevant sections of the current District Policy Manual for the most appropriate and compatible revision point, I also became aware of an inappropriate policy in the same section of the Manual. Policy 4.07.725 is inappropriate. The District adopted 4.07.725 in September 2014. Subsequently, in June 2016, the District was formally advised by Legal Counsel that 4.07.725 is inappropriate and should be deleted. I have also corresponded with Legal Counsel (Kerry Fuller) to confirm the policy should be deleted.

As discussed in the January Finance Committee, staff has established a practice of precluding the District's service termination process for any outstanding balance of less than \$50. This staff practice is not approved by the Board, not codified in any District written policy, and based on a false premise.

As we review and revise the District's service policies, including termination of service in preparation for compliance with SB-998, it is incumbent to start from a solid foundation. Accordingly, the above described practice, which is not supported by written policy/procedure needs to be refined, then codified and established as a written Board policy.

Although it may not be justifiable and/or defensible to preclude the termination of service process for outstanding balance of less than \$50, there is justification for establishing a threshold below which the service termination process should be precluded. For example; it is not an appropriate expenditure of

District resources to initiate service termination for an outstanding balance of \$0.01. I believe establishing a reasonable threshold based on the prudent expenditure of resources and the context of the fees imposed for termination of service, (\$40 charge plus notices etc.) is necessary. I recommend the Board establish the threshold at \$10, i.e. the District will not initiate termination of service process unless the outstanding balance is at least \$10.

Conclusion:

I recommend the Board approve the deletion of Policy 4.07.725 and the amendment of Policy 4.31.285

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills:_____ Green:_____ Ridilla:_____ Harris:_____.

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

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Item 6.8

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Proposed Revisions to District Policy on Termination of Service - Delete policy 4.07.725 and
amend policy 4.31.285

2/11/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

2/14/19

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

6/30/16

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19

4.07.725 Payment of Outstanding Water Service Charges Upon Property Transfer *(approved at the September 15, 2014 meeting of the Board)*

Consistent with the legal principles set forth in the preface of this section, a Landowner who acquires real property in the District is responsible for paying any outstanding District fees and charges owing on the acquired Parcel regardless of the time or manner in which those charges were incurred. The District reserves the right to refuse to open an account and to provide water service to a Parcel until the acquiring Landowner pays all outstanding fees and charges. It will be the acquiring Landowner's sole responsibility to pursue any legal remedies it may have to seek reimbursement of such outstanding fees and charges from any former Landowner or occupant of the acquired Parcel.

4.31.285 Service Discontinuation. Unless the arrears is cured or an Occupant of the service who is not the property owner applies to become a customer of the District, ten (10) days following the mailing of late notices, the District may discontinue water service for delinquent charges which remain unpaid. A written notice shall be served at the property of the water service forty-eight (48) hours prior to discontinuation of service. A notification charge may be applied. The District shall not be obligated to serve the 48-hour notice person-to-person; rather, placement of the notice shall be in a conspicuous area such as a door, fence, or any area determined to be most accessible and safe by the District representative. The District shall not be obligated to adjust notification time or other procedures due to consumers absence for any reason and consequential delay of receipt of such notice. Notice at the property shall be deemed sufficient to permit service termination for non-payment regardless of who occupies the property. Following the 48-hour period, service may be terminated for non-payment and a discontinuation charge shall be applied. Service may be reinstated pursuant to Section 4.07.710 following payment of delinquent charges.

Notwithstanding the foregoing, outstanding account balances which are significantly less than the fees charged for service termination may be considered relatively de minimis. The District is committed to efficient and effective allocation of resources. Initiating the service termination process and the fees and charges therein may be unreasonable if the outstanding balance is de minimis. Therefore, the District will not initiate the service termination process for any outstanding balance of less than ten dollars (\$10).

Tim Shaw**Subject:** FW: Outstanding Charges

From: Mustafa Hessabi [<mailto:mustafa@churchwellwhite.com>]
Sent: Thursday, June 30, 2016 10:15 AM
To: Ralph Felix <RFelix@rlecwd.com>; Renita Lehman <RLehman@rlecwd.com>
Cc: Barbara Brenner <Barbara@churchwellwhite.com>; Robin Baral <robin@churchwellwhite.com>
Subject: Outstanding Charges

Good Morning,

Please see the summary analysis below regarding outstanding charges paid after property transfer. We are preparing a comprehensive memorandum to follow with recommendations on amendments to the CWD lien procedure, notifications, and collections process.

The new property owner did not take ownership subject to the delinquent charges owed on the property for water service because a lien was not perfected against the property on the County tax roll prior to the new owner's purchase of the property at a foreclosure sale. The facts indicate that the new owner purchased the property at a foreclosure sale prior to a lien being effected against the property. Upon application to receive water service, the new owner was informed of the delinquent charges incurred by the previous owner and paid the charges under protest in order to establish service. The owner has since sought the return of the funds paid under protest.

Some water districts have adopted a regulation similar to Rio Linda-Elverta Community Water District ("CWD") Title 4, Chapter 4.01, **Section 4.07.725**, which makes a landowner who acquires real property responsible for paying outstanding charges regardless of the time or manner incurred and which also permits the district to refuse service until the outstanding charges are paid. (See Sacramento Suburban Water District Regulation No. 5, Section K). However, it appears that this type of provision may be **difficult to enforce** and defend in court because it could be viewed as part of an **"unconscionable contract"** that the water user was compelled to enter in order to receive service.

The California Water Code grants the CWD general authority to establish rules and regulations for the sale, distribution, and use of water and CWD may provide that water shall not be furnished to persons against whom delinquent water rates apply. (Water Code § 31024). Notably, when it comes to tenant (not owner) water use, CWD may not recover charges or penalties for furnishing water from any subsequent tenant on account of nonpayment by the previous tenant, although CWD may require that the service to the new tenant be furnished on the account of the landlord or property owner. (Water Code § 31007.5).

Receiving an application from a new water user does not represent a commitment or agreement by CWD to serve water. (CWD Regs. § 4.07.011). However, the process for recovering delinquent water charges for a property is detailed in the California Public Utilities Code and Water Code, and generally requires a district to obtain a lien for the delinquent charges prior to the transfer of ownership of the property. CWD may require by resolution or ordinance that delinquent water charges constitute a lien on the property, to the extent that the property is owned by the person or entity receiving the service, and CWD may record a certificate with the County indicating the unpaid debt. (Pub. Util. Code § 16472.1; Water Code § 31701.7). The certificate remains in effect until the unpaid amount is paid or the property is sold to satisfy the debt.

There is no statutory authority directly on point which grants CWD the authority to compel payment or withhold service from a new property owner based on delinquent charges incurred by a previous owner. Moreover, compelling a water user to abide by such a policy as a condition of receiving water service may be against public policy and unenforceable as a result. A court may find that forcibly requiring a new water user to pay delinquent charges amounts to an “unconscionable” contract. Under California law, unconscionability focuses on a procedural element and a substantive element. The procedural element generally focuses on oppression, which may arise from an inequality of bargaining power which results in no meaningful choice for a party, or contract terms which are unreasonably favorable to a party. The substantive element generally focuses on terms that “shock the conscience” or at least may be described as harsh or oppressive.

A court may find that requiring the new property owner to execute an application for service that requires them to pay the delinquent charges incurred by a previous owner as a condition of receiving water service, without having previous notice of the delinquent charges before they purchased the property (via a lien applied at the County), amounts to unequal bargaining power with no meaningful choice but for the new property owner to pay the delinquent charges in order to receive service. In addition, given the fact that CWD did not have a lien in place prior to the purchase of the property at foreclosure, an application for service that requires the new owner to pay for the prior owner’s delinquent charges without prior notice of the delinquent charges may be construed as harsh or oppressive.

Therefore, under the current scenario, CWD Regulation Section 4.07.725 (“Payment of Outstanding Water Service Charges Upon Property Transfer”) may not be enforceable against the new property owner. CWD should take steps to ensure that it is strictly adhering to the delinquency noticing and lien application process in a timely manner in order to make certain that it can recover future delinquent charges.

Please let me know if you have any questions or would like any additional clarification.

Thanks,
Mustafa

Churchwell White LLP

Mustafa Hessabi | Attorney
916.468.0948 | mustafa@churchwellwhite.com

Churchwell White LLP
1414 K Street, 3rd Floor, Sacramento, CA 95814
F 916.468.0951
churchwellwhite.com



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Items for Discussion and Action
Agenda Item: 6.9

Date: February 25, 2019

Subject: Consider confirming any new Board Member assignments (committees and other) announced by the Chair pursuant to District Policy 2.01.065.

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

N/A

Current Background and Justification:

District Policy and other relevant statutes require that the Board approve any Board Member assignments for committees and other formal assignments.

Conclusion:

I recommend the Board consider approving any specific nominations for assignments as may be deemed necessary and appropriate.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: _____ Green: _____ Ridilla: _____ Harris: _____

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

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Item 6.9

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Consider confirming any new Board Member assignments (committees and other) announced by the Chair pursuant to District Policy 2.01.065

2/22/19

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other Water or special districts, District Engineer, Legal Counsel then laying out business cases, pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

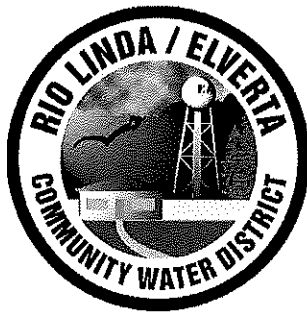
Legal Counsel should have enough time to review all potential legal matters for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19



115

Items for Discussion and Action
Agenda Item: 6.9. a

Date: February 25, 2019

Subject: Board authorization of the RWA Evaluation Ad Hoc Committee

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

N/A

Current Background and Justification:

Due to an inadvertent omission of a standing agenda item on the January 28th Board meeting agenda, there was no action item included to enable Board confirmation of the Regional Water Authority (RWA) Withdrawal Ad Hoc Committee, which was discussed at the January 28th Board meeting in context with Director Dills report on his attendance at the January RWA Board meeting

Although the Board was precluded from acting to confirm the ad hoc committee appointments, the consensus of the Board and Board Member willingness/availability to serve was established. At the January 28th meeting, Directors Dills and Green indicated their willingness and availability to serve in this capacity.

Conclusion:

I recommend the Board approve the creation of an RWA Withdrawal Ad Hoc Committee consisting of Director Dills and Director Green. The scope of this ad hoc is to evaluate the relative merits of withdrawing vs. continuing the District's membership in RWA, and further evaluate the feasibility and consequences of withdrawing from RWA.

Board Action / Motion

Motioned by: Director _____ Seconded by Director _____

Dills: _____ Green: _____ Ridilla: _____ Harris: _____

(A) Yea (N) Nay (Ab) Abstain (Abs) Absent

RLECWD Agenda Item Checklist

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Item 6.9.a

Date

Initial Potential Meeting Date

2/25/19

Circle High/Medium/Low priority of Item and Identify if in line with Mission/
Goal/Strategic Planning issues or state of emergency

Board authorization of the RWA Evaluation Ad Hoc Committee

N/A

Staff Work Completed

(Includes reviewing, researching item with other resources (ACWA, JPIA, RWA, SGA, other
Water or special districts, District Engineer, Legal Counsel then laying out business cases,
pros and cons, options and recommendations based on best information available, etc.

Committee Review of Item and Staff Work

N/A

Review by appropriate Finance/Administration, Projects /Planning or Ad Hoc
Committees, to prepare board recommendations

Formal Legal Counsel Review

N/A

Legal Counsel should have enough time to review all potential legal matters
for correctness and legality

GM Review

2/22/19

Actual Meeting Date Set for Agenda Item

2/25/19



Information Items
Agenda Item: 7.1

Date: February 25, 2019

Subject: District Reports

Staff Contact: Timothy R. Shaw, General Manager

1. DISTRICT ACTIVITY REPORT

- a. Operations Report
- b. Conservation Report

RIO LINDA/ELVERTA C.W.D. 2019

REPORT OF DISTRICT OPERATIONS

SOURCE WATER DATA

Water Production (Million Gallons)

January	February	March	April	May	June	Year To Date																									
35.3																															
35,329,525																															
July	August	Sept.	Oct.	Nov.	Dec.																										
						35.30																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th style="width: 10%;">Monthly Total</th> <th colspan="2"></th> </tr> </thead> <tbody> <tr> <td>Gallons = Multiply M.G. by:</td> <td style="text-align: right;">1,000,000</td> <td style="text-align: center;">35,329,525</td> <td>Gallons</td> <td style="text-align: center;">35,329,525</td> </tr> <tr> <td>Cubic Feet = Divide gallons by:</td> <td style="text-align: right;">7.48</td> <td style="text-align: center;">4,723,199</td> <td>Cubic Feet</td> <td style="text-align: center;">4,723,199</td> </tr> <tr> <td>Hundred Cu Ft. = Divide cu. ft. by:</td> <td style="text-align: right;">100</td> <td style="text-align: center;">47,232</td> <td>Hundred Cubic Feet</td> <td style="text-align: center;">47,232</td> </tr> <tr> <td>Acre Ft. = Divide gallons by:</td> <td style="text-align: right;">325,829</td> <td style="text-align: center;">108.43</td> <td>Acre Ft.</td> <td style="text-align: center;">108</td> </tr> </tbody> </table>									Monthly Total			Gallons = Multiply M.G. by:	1,000,000	35,329,525	Gallons	35,329,525	Cubic Feet = Divide gallons by:	7.48	4,723,199	Cubic Feet	4,723,199	Hundred Cu Ft. = Divide cu. ft. by:	100	47,232	Hundred Cubic Feet	47,232	Acre Ft. = Divide gallons by:	325,829	108.43	Acre Ft.	108
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DISTRIBUTION SYSTEM DATA

Water Quality Complaints						Complaints Total (Low Psi Complaints)	Year To Date
January	February	March	April	May	June		
2 (1)							
July	August	Sept.	Oct.	Nov.	Dec.		
						2	

New Services

New Construction	0	0
Existing Homes	0	0
Paid prior to increase. (2 not installed)	0	0
Total of Service Connections to Date ----->		4637

Distribution System Failures

Deterioration January 1 thru 31	4	4
Damaged January 1 thru 31	0	0

Bacteriological Sampling

Routine Bacteriological Samples (Distribution System)	20	20
Raw Water Bacteriological Samples (at Wells)	0	0

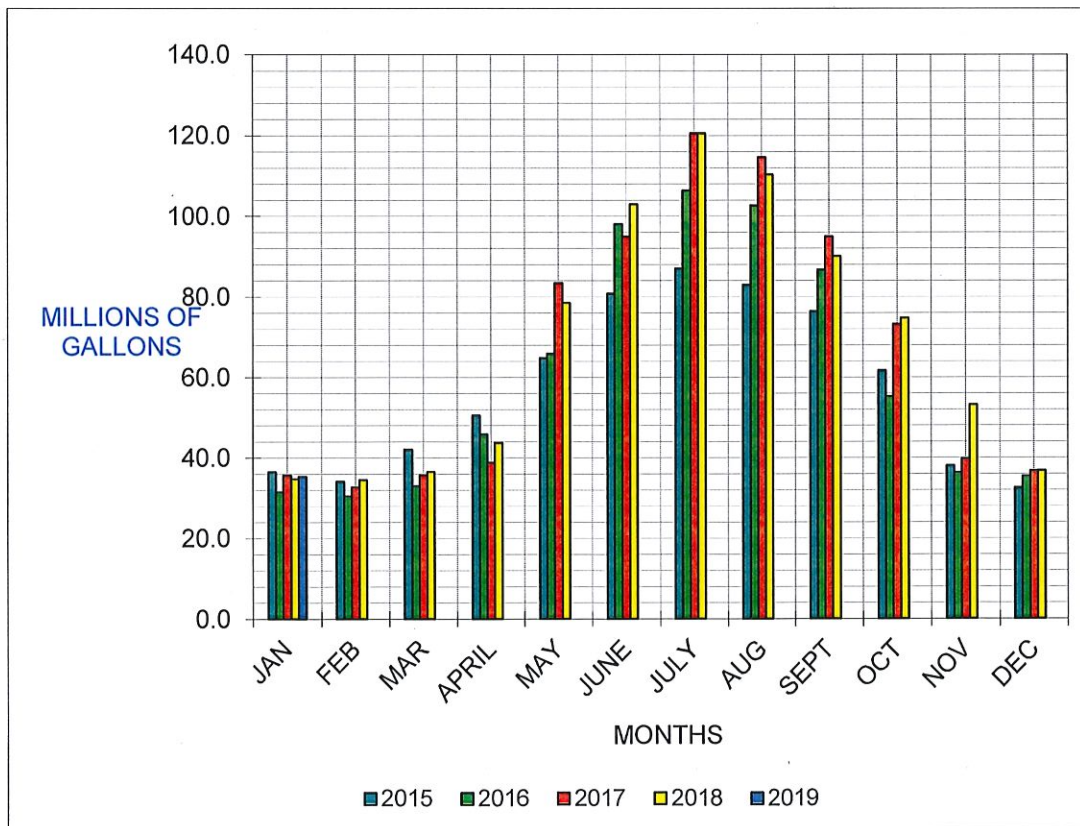
January 1, 2019 - January 31, 2019

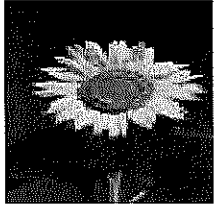
4 - Distribution leaks repaired by District staff, 0 - by Contractor or with contractor assistance.		
Work Orders Issued - 64	Work Orders Completed - 93	USA's Issued - 77
Backflow Test - 12	Backflow Test - 9	
Change Out Meter - 3	Change Out Meter - 44	
Flow Test - 1	Get Current Read - 3	
Get Current Read - 4	Line Leak - 3	
Line Leak - 4	Lock Service Off - 1	
Other Work - 3	Meter Downsize Request - 1	
Possible Leak - 9	Other Work - 1	
Pressure Complaint - 1	Possible Leak - 8	
Pull Meter - 16	Pull Meter - 16	
Re-Read Meter - 3	Re-Read Meter - 3	
Tag Property - 4	Tag Property - 2	
Taste or Odor Complaint - 1	Turn Off Service - 2	
Turn Off Service - 2		
Turn on Service - 1		

RIO LINDA/ELVERTA C.W.D. WATER PRODUCTION

2015 \ 2019

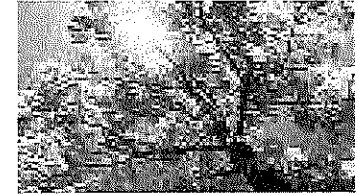
Month	Water Production in Million Gallons						SSWD Water Purchases				
	2015	2016	2017	2018	2019	Avg.	2015	2016	2017	2018	2019
JAN	36.5	31.5	35.6	34.8	35.3	34.7	0.0	0.0	0.0	0.0	0.0
FEB	34.1	30.5	32.7	34.5		33.0	0.0	0.0	0.0	0.0	
MAR	42.0	33.0	35.6	36.5		36.8	0.0	0.0	0.0	0.0	
APRIL	50.5	45.8	38.8	43.7		44.7	0.0	0.0	0.0	0.0	
MAY	64.8	65.9	83.4	78.5		73.2	0.0	0.0	0.0	0.0	
JUNE	80.8	98.0	94.9	102.9		94.2	0.0	0.0	0.0	0.0	
JULY	87.0	106.4	120.5	120.5		108.6	0.0	0.0	0.0	0.0	
AUG	83.0	102.6	114.6	110.3		102.6	0.0	0.0	0.0	0.0	
SEPT	76.4	86.7	94.9	90.1		87.0	0.0	0.0	0.0	0.0	
OCT	61.7	55.2	73.2	74.7		66.2	0.0	0.0	0.0	0.0	
NOV	38.0	36.3	39.7	53.1		41.8	0.0	0.0	0.0	0.0	
DEC	32.5	35.4	36.7	36.8		35.4	0.0	0.0	0.0	0.0	
TOTAL	687.3	727.3	800.6	816.4	35.3	757.9	0.0	0.0	0.0	0.0	0.0





Conservation Report

January 2019



Supplies (kits):	Shower heads (0) Kitchen Aerators (0) Bathroom Aerators (0) Shower Timer (0) Nozzle (0) Toilet Tabs (12) Moisture Meters (0) Water Bottles (0) Toilet Tummy (0) Retro-Fit Kits (1) Welcome Kits (1) Kids Kit (1)
Water Waste (calls, emails, letter, leaks detected/fixed):	1 water waste call 30 contacts about possible leaks using the AMI system - 5 were called, 13 were mailed, 12 were emailed 1 Retro-fit Kits given and 12 additional dye tablets 12 were confirmed resolved
Water Schedule:	Given to customer with all violation letters and new applications
Surveys:	0
Rebates:	Toilets: 0 Washing Machines: 0
Workshops, Webinar, Meetings:	<ul style="list-style-type: none">● RWEpac Meeting on January 8th
Fines:	NONE
Other Tasks:	<ul style="list-style-type: none">● Assisted with payments, new customers. Closing accounts, final billing accounts and printing stamps● Created/completed work orders● Created the Newsletter● Wrote an Article for our New Online Water Portal● Got the word out about the Online Water Portal: Rio Linda Online, Rio Linda News, Facebook and Newsletter● Created a Water Leak Detection Kit● One on one learning opportunity at San Juan Water District● Created Ideas for a conservation postcard● Setup email notices for leaks



Information Items
Agenda Item: 7.2

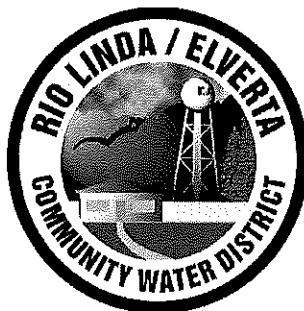
Date: February 25, 2019

Subject: Mandatory Board Members' training and reporting requirements - Reminder

Staff Contact: Timothy R. Shaw, General Manager

1. As discussed at the February Planning Committee, Board Members are required to complete training every two years for Ethic (AB-1234) and Unlawful Harassment Prevention (AB-1825).
2. Board members are also required to file a Statement of Economic Interests (Form 700) every year.

Please consult with the General Manager regarding any question you have about means for compliance or documentation of compliance.



Information Items

Agenda Item: 7.3

Date: February 25, 2019

Subject: Board Reports

Staff Contact: Timothy R. Shaw, General Manager

3. BOARD REPORTS

- a. Announce ad hoc committee(s) dissolved by requirements in Policy 2.01.065
- b. Regional Water Authority – Dills (primary), Shaw
- c. Sacramento Groundwater Authority – Green (primary), Harris
- d. LAFCO – Green
- e. Planning Committee – Dills, Harris
- f. Finance / Administrative Committee – Ridilla,
- g. ACWA/JPIA – Green (primary), Ridilla
- h. Ad Hoc Committee's
 1. MOU Negotiations – Dills, Harris
- i. Other Reports

SACRAMENTO GROUNDWATER AUTHORITY
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, February 14, 2019; 9:00 a.m.

5620 Birdcage Street, Suite 110
Citrus Heights, CA 95610
(916) 967-7692

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Agenda

The Board will discuss all items on this agenda, and may take action on any of those items, including information items and continued items. The Board may also discuss other items that do not appear on this agenda, but will not act on those items unless action is urgent, and a resolution is passed by a two-thirds (2/3) vote declaring that the need for action arose after posting of this agenda.

The public shall have the opportunity to directly address the Board on any item of interest before or during the Board's consideration of that item. Public comment on items within the jurisdiction of the Board is welcomed, subject to reasonable time limitations for each speaker. Public documents relating to any open session item listed on this agenda that are distributed to all or a majority of the members of the Board of Directors less than 72 hours before the meeting are available for public inspection in the customer service area of the Authority's Administrative Office at the address listed above. In compliance with the Americans with Disabilities Act, if you have a disability and need a disability-related modification or accommodation to participate in this meeting, please contact the Executive Director of the Authority at (916) 967-7692. Requests must be made as early as possible, and at least one full business day before the start of the meeting.

- 1. CALL TO ORDER AND ROLL CALL**
- 2. PUBLIC COMMENT:** Members of the public who wish to address the Board may do so at this time. Please keep your comments to less than three minutes.
- 3. CONSENT CALENDAR**
Minutes of December 13, 2018 meeting
Action: Approve December 13, 2018 meeting minutes
- 4. EXECUTIVE DIRECTOR RECRUITMENT PROCESS**
Information Presentation
- 5. DEVELOPMENT OF SGA FISCAL YEAR 2019 – 2020 BUDGET**
Information Presentation and Discussion of FY 2019 – 2020 Budget
Action: Chair to Appoint Budget Subcommittee for Fiscal Year 2019 - 2020
- 6. AMENDMENTS TO SGA POLICY 100.2, ADMINISTRATIVE AND MANAGEMENT SERVICES AGREEMENT**
Information Presentation
Action: Adopt Amendments to Policy 100.2, and direct the Board Chair to sign the amended agreement subject to RWA approval of amendments
- 7. EMPLOYEE COMPENSATION POLICY 100.3**
Information Presentation; John Woodling, Executive Director
Action: Adopt Policy 100.3 containing salaries and pay ranges for SGA employees

8. INTERIM EXECUTIVE DIRECTOR APPOINTMENT

Action: Appoint Robert J. Swartz as Interim Executive Director for a period beginning March 1, 2019 or until a new permanent Executive Director begins work or June 30, 2019, whichever comes first

9. SUSTAINABLE GROUNDWATER MANAGEMENT ACT (SGMA) UPDATE

Information Update: John Woodling, Executive Director

10. GROUNDWATER MANAGEMENT PROGRAM UPDATE

Information Update: Rob Swartz, Manager of Technical Services

Action: Authorize the Executive Director to sign the Memorandum of Agreement regarding the funding commitments for development of a Groundwater Sustainability Plan for the North American Subbasin

11a. CLOSED SESSION UNDER GOVERNMENT CODE SECTIONS 54954.5(F) AND 54957.6. CONFERENCE WITH LABOR NEGOTIATORS

Designated Representatives: Directors Tobin and Schubert

Unrepresented Employee: Manager of Technical Services

b. CLOSED SESSION UNDER GOVERNMENT CODE SECTIONS 54954.5(E) AND 54957. PUBLIC EMPLOYEE APPOINTMENT

Title: Interim Executive Director

12. REPORTS FROM CLOSED SESSIONS

13. EXECUTIVE DIRECTOR'S REPORT

14. DIRECTORS' COMMENTS

ADJOURNMENT

Next SGA Board of Director's Meeting – April 11, 2019, 9:00 a.m., RWA/SGA office, 5620 Birdcage Street, Ste. 110, Citrus Heights.

Notification will be emailed when the SGA electronic packet is complete and posted on the SGA website at <http://www.sgah2o.org/meetings/board-meetings/>.

FEBRUARY 14, 2019

TO: SACRAMENTO GROUNDWATER AUTHORITY BOARD

FROM: JOHN WOODLING

RE: EXECUTIVE DIRECTOR'S REPORT

- a. **Legislative Update** – SGA staff continues to work on language for legislation that would streamline the process of getting a temporary (five-year) water rights permit for the purpose of groundwater recharge. This is an extension of work on AB 2649 (Arambula) in 2018. RWA staff continues to focus closely on the issue of a water tax to fund safe drinking water in disadvantaged communities. Notably, Governor Newsom proposed the tax in his budget, and a budget trailer bill has been introduced. We are working closely with ACWA, CMUA and others in the water industry to proposal an alternative approach to funding, a trust set up with contribution from the general fund during the current budget surplus.
- b. **SGA Outreach** – Mr. Woodling will be on a panel on March 6, 2019 at the ACWA Legislative Symposium regarding the groundwater recharge legislation. He will also chair the meeting of the ACWA Groundwater Committee on February 21 before stepping down from that position. Mr. Woodling spoke at the conference of the Groundwater Management District's Association, a national organization that also serves as the Groundwater Caucus of the National Water Resources Association, on February 9, 2019.
- c. **Carmichael Water District** – Resolution of Appreciation attached.
- d. **Financial Documents** – The financial reports for the period ending January 2019 are attached.
- e. **Closing Comments from the Outgoing Executive Director**

February 1, 2019

RLECWD Planning and Project Committee Meeting

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Meeting was opened at 2:02 pm by Director Dills

Public Comment: None

RLECWD members present were G.M. Tim Shaw, Directors Mary Harris and Brent Dills. Dane Wadle from CSDA attended.

Also Present: Mike Vasquez the District Engineer was available for questions and answers.

1) Status update on the agreement with the Elverta Specific Plan owners to fund the District's processing costs.

The committee reviewed and discussed the status. Issue has stalled a bit. The owners group continues to ask for minor revisions to a draft that is not final. The District did receive a check to reimburse RLECWD for legal services. So they are complying with the intent but are just not signing anything.

2) Status update on Irrevocable Offer of Dedication for the Well #16 project site.

This issue has stalled a bit too. May need to be discussed in closed session at next board meeting.

3) District Engineer Project Status Report.

Mike Vasquez updated the committee. The committee reviewed the draft developer funding agreement and recommends it be approved by the full board.

- District received 4 RFP's to proceed with Well #16. These will be scored by GM, District Engineer and the Operations Superintendent. Recommendations will be made to the board at the February board meeting.
- Discussed progress reports to RWA/SGA for the Well #10 grant.
- The GM and District Engineer need to consider timing of projects and funding and coordinate with OPUS Bank.

4) Mandated Training Review:

Review legislatively mandated training and reporting requirements for the RLECWD Board Members agency, e.g. ethics, preventing unlawful harassment, and conflict of interest. This will be put on the agenda for the board meeting.

5) Member Agency Group Efforts:

Discuss efforts of agency groups to cooperate and collaborate on more effective and efficient means for complying with water use legislation e.g. PF – 8, SB – 555, SB – 606 and SB – 998. A discussion took place about sharing resources and costs and coordinating and working together. A discussion took place regarding trying to create a standard definition for what a disadvantaged community is for all services instead of different definitions for different kinds of service providers. CSDA representative said they would think about that. The GM has asked for direction related to what the board would like him to participate in and what not to participate in.

Has ESPOG began to help identify other sources of surface water?

Next Planning Committee meeting is Friday, March 1, 2019

Director Dills adjourned the meeting at 3:19 pm.

Committee Chair John Ridilla opened the meeting at 6:30 PM.

Attendees: Director Mary Harris, Director John Ridilla and District General Manager Mr. Tim Shaw were present. No members of the public were present.

Meeting was called to order at 6:30 PM.

Public Comment. There was no public comment.

Agenda Items

1. Review and discuss the Expenditures of the District for the month of January 2019.

- It was noted that the charge to Continental Utility Solutions was for billing software, not computer maintenance.
- Reduction in fuel charges as a result of greater flexibility on the debit card should be shown. Annual reduction in fuel costs was estimated at \$1,000.
- Committee Recommendation: Recommend approval to the full Board of Directors.

2. Review and discuss Financial Reports of the District for the month of January 2019.

- General discussion on moving to a VOIP phone system and a reduction in general costs and repair costs.
- Committee Recommendation: Recommend approval to the full Board of Directors.

3. Revise policy on Termination of Service.

- General discussion on how the \$10 limit was determined. Committee determined that it was fair and reasonable.
- Revision should be reviewed by legal to ensure it meets the intent.

Committee Recommendation: Recommend approval to the full Board of Directors.

4. Re-establishment of District Financial Policies and Completion of Accounting Procedures.

- General discussion and contradistinction between written accounting procedures manual and the District Finance Policies, which were adopted in Resolution 2012-12, the subsequently deleted. procedures were not implemented in prior years.

The Committee concurs that the written accounting procedures should be completed, but not adopted by the Board. The Committee requested that the General Manager provide a date when the accounting procedures will be complete.

Committee Recommendation: Re-insertion of the Finance Policies into the District Policy Manual, which were initially adopted via Resolution 2012-12.

5. Consider Discontinuing Funding for Conservation rebate program.

- The background of this item was discussed. Currently, this is on a first come first serve basis. The Committee concurred with the recommendation to discontinue funding. The General Manager needs to show the amount in the years current budget.

Committee Recommendation: Recommend approval to the full Board of Directors.

6. Logistics for ACWA/ ACWA JPIA Spring Conference.

- General discussion on prior history. The committee believes that there is only one Director for both ACWA and ACWA -JPIA , and that is Director Green.

Committee Recommendation: Recommend approval/clarification to the full Board of Directors

9. Other items.

- Notices sent out for credit card fee change.

The meeting was adjourned at 7:30PM



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**PENDING AND COMPLETED ITEMS
2-25-2019 BOARD OF DIRECTORS MEETING**

1. **Destruction of Well #17 project wells** Access to the property to perform wells destruction is still limited by weather and ground conditions **Pending**
2. **Irrevocable Offer of Dedication for the Well #16 parcel:** The District has received the signed offer from the parcel owner for Well #16. **Completed**
3. **Credit/Debit Card Convenience Fees:** Notices of discontinuance of District paid credit/debit card convenience fees have been posted and mailed. Customers who call or walk into the office to pay by credit card are apprised. The District is on track to discontinue the practice of paying the customer's convenience fees June 1st. **Pending**
4. **Letter to Tesco for Disappointing Service:** The District's IT hardware failure impeded progress, but the vendors have shown a commitment to resolving the access to SCADA historian reports. **Pending**
5. **Professional Services Agreement for Engineering for the design of the Well #16:** There is an item on tonight's Board agenda to consider authorizing a contract with Domenichelli and Associates for engineering design of the Well #16 project **Pending**
6. **Strategic Planning:** I have started writing the content requested by the consultant, but the process is a start and stop evolution with all of the other demands for my attention, e.g. negotiations, personnel, contract administration meeting attendance etc. I had hoped that the protracted cycle between meetings caused by the observance of President's day would yield more time for writing on the Strategic Plan, but Well #16 design bidding and negotiations issues expanded to fill the void. **Pending**
7. **General Unit MOU renewal:** I unexpectedly had to expend considerable effort to correspond with the other half of the District's negotiating team. **Pending**
8. **Disposition of the District assets recently declared as surplus by the Board:** The copper tubing auction ran its course, now we're onto auctioning surplus vehicles. **Pending**
9. **Funding Agreement with Elverta Specific Plan Owners** – I have complied with several months of request by the Owners for minor revisions to the draft agreement. This week, I sent them a final version of the agreement, to which the Owners have indicated they will provided a signed agreement on February 25th. **Pending**
10. **Evaluating the Relative Merits of Withdrawing from membership in RWA** Even though the ad hoc has not yet been formally established, I've began requesting and receiving information the ad hoc members will need to attain their objectives. **Pending**