# COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE : January 13, 2011

TO : Supervisor Michael Mayo, Chairman, County Board of Supervisors

FROM : Pamela Bryant, Capital Finance Manager

SUBJECT : **Extension of Bond Counsel Services with Chapman and Cutler LLP**

## REQUEST

The Department of Administrative Services (DAS) requests authorization to renew the Bond counsel services contract between Milwaukee County and Chapman and Cutler LLP (Chapman) for an additional one-year term.

## BACKGROUND

In 2007, Milwaukee County, through the Department of Administrative Services – Fiscal Affairs Division, entered into a contract with Chapman and Cutler and Laster and Garcia LLC to serve as bond counsel and DBE participant respectively. The original contract expired December 31, 2009, but allows for an extension of the contract for one-year terms up to a maximum of three additional years.

In September 2009 the County Board approved a renewal of the contract through December 31, 2010 and the replacement of the DBE participant from Laster and Garcia LLC to Emile Banks and Associates.

DAS is requesting the approval of the proposed agreement (**Exhibit 2**) that extends the bond counsel service contract with Chapman for one additional year beyond December 31, 2010 rather than issue a request for proposal. DAS will be issuing a request for proposal for Financial Advisory Services in 2011 and would like to maintain some consistency in services by continuing to use the same bond counsel service through 2011. A RFP would be issued for bond counsel services in 2012.

## RECOMMENDATION

The Department of Administrative Services, recommends adoption of the attached resolution in **Exhibit 1**, which requests approval to renew the current contract with Chapman and Cutler as bond counsel for Milwaukee County for an additional one-year term with Emile Banks continuing as the DBE participant.

Pamela Bryant, Capital Finance Manager

pc: Lee Holloway, County Executive
Renee Booker, Director, Department of Administrative Services
Terrence Cooley, Chief of Staff, County Board
Stephen Cady, County Board Fiscal and Management Analyst
Mark Grady, Principal Assistant Corporation Counsel
Chuck Jarik, Chapman and Cutler LLP
Emile Banks, Emile Banks and Associates

# EXHIBIT 1

File No. 11-
(Journal, date)

The Director, Department of Administrative Services requests authorization to extend the Bond Counsel Contract Service between Milwaukee County and Chapman and Cutler LLP and Emile Banks and Associates LLC as the Disadvantage Business Enterprise (DBE) participant through December 31, 2011:

**A RESOLUTION**

WHEREAS, in 2007, Milwaukee County, through the Department of Administrative Services – Fiscal Affairs Division, entered into a contract with Chapman and Cutler LLP (Chapman) and Laster & Garcia LLC to serve as bond counsel and DBE participant, respectively.

WHEREAS, the 2007 contract provided the County the right to extend the terms of the contract for additional one-year contracts beyond December 31, 2009, up to a maximum of three additional years. The contract may be extended further upon mutual agreement of both parties; and

WHEREAS, in 2009 the County Board approved a contract extension through December 31, 2010 and approved a change in the DBE participant on the contract from Laster & Garcia LLC to Emile Banks and Associates; and

WHEREAS, in accordance with Milwaukee County Ordinance 56.30 and DFR 49 part 26, Chapman shall ensure that DBEs have the maximum opportunity to participate in this project. The specific minimum goal for this project is 17 percent; and

WHEREAS, no change in the fees charged to the County is proposed; and,

WHEREAS, Emile Banks and Associates is a certified DBE with Milwaukee County; therefore,

BE IT RESOLVED, The Director, Department of Administrative Services is authorized to extend the Bond Counsel Services Contract between Milwaukee County and Chapman and Cutler LLP and Emile Banks and Associates LLC as the DBE participant through December 31, 2011.

## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/13/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Extension of Bond Counsel Services with Chapman and Cutler LLP

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☒ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The Director, Department of Administrative Services requests authorization to renew the Bond counsel Services contract between Milwaukee County and Chapman and Cutler LLP (Chapman) for an additional one-year term.

B. The cost for bond counsel services relating to a particular bond issue will be financed from the bond proceeds. There are no changes in costs for bond counsel services. The original costs are as follow:

The proposed cost from Chapman and Cutler for a general obligation bond issue (Public or Public-Private Partnership) is $340 per hour for the Public Finance Partner, $325 per hour for the Tax Partner and $140 per hour for a Public Finance Associate. The proposed costs for an Airport Revenue Bond Issue includes an additional Public Finance Partner for $340 per hour. The proposed costs for a pension obligation bond issue is $340 for the Public Finance Partner, $350 per hour for a Litigation Partner, $325 per hour for a Tax Partner and $160 per hour for a Public Finance Associate.

C. Consistent with prior bond issues the Department of Administrative Services will submit an appropriation transfer for the cost of the issuance that will include bond counsel services. Any costs incurred by the County for bond counsel services not associated with a bond financing will be paid with another revenue source.

D. Not applicable.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By Pamela Bryant, Capital Finance Manager

Authorized Signature Pamela Bryant

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

# EXHIBIT 2

# AGREEMENT FOR BOND COUNSEL SERVICES

This Agreement, by and among Milwaukee County, a Wisconsin municipal body corporate (hereinafter called "County"), represented by Renee Booker, Director of the Department of Administrative Services, Chapman and Cutler LLP and Emile Banks and Associates (hereinafter "Contractors"), as follows:

1. SCOPE OF SERVICES

Contractors shall specifically perform all of the tasks and achieve the objectives set forth in the proposal, dated January 3, 2007, which is attached hereto as Exhibit_1 and incorporated herein by reference, and the County Request for Proposal, dated December 15, 2006, which is attached hereto as Exhibit 2 and also incorporated herein by reference. If there is a variance between the Contractor's proposal and the County's request for proposal, the latter shall be controlling, unless otherwise provided for in writing.

2. STAFFING

Contractor's employees listed below are to be assigned to the project:

| Name | Position |
|---|---|
| Charles Jarik | Attorney/Partner, Chapman and Cutler LLP |
| Emile Banks | Emile Banks and Associates LLC |

Contractor shall not replace Charles Jarik without the prior approval of the County. If the successor to Charles Jarik cannot be mutually agreed upon, the County shall have the right to terminate this Contract upon thirty (30) days' notice. Any replacement of other listed personnel shall be by persons of equal qualifications, which shall be attested to by Contractor.

Contractors shall provide, at their own expense, all personnel required in performing the services under this Contract. Such personnel shall not be the employees of, or have any other contractual relationship with, the County

3. TERM

The term of this Agreement shall commence upon execution of this contract and, unless this contract is terminated earlier in accordance with the provisions hereof, will continue until the latest of (a) December 31, 2011, or (b) such time as the work on financings in progress on December 31, 2011 is completed or (c) such time as the County Board takes further action designating bond counsel. At its sole option, the County may extend the contract for additional one-year periods beyond December 31, 2011, up to a maximum of two additional years. The contract may be extended further upon mutual agreement of the parties.

4. COMPENSATION

Contractors shall be compensated for work performed on an hourly basis at the billing rates listed below:

General Obligation and Airport Revenue Financings

Chapman and Cutler shall be paid $340 per hour for a Public Finance Partner, $325 per hour for a Tax Partner, and $160 per hour for a Public Finance Associate. Emile Banks and Associates shall be paid $175 per hour for Emile Banks and $150 for L. Nicole Kintop's services.

Pension Obligation Bond Financings

Chapman and Cutler shall be paid $350 per hour for a Litigation Partner, $340 per hour for a Public Finance Partner, $325 per hour for a Tax Partner, and $140 per hour for a Public Finance Associate. Emile Banks and Associates shall be paid $175 per hour for Emile Banks and $150 for L. Nicole Kintop's services.

The Contractors will be reimbursed by the County for significant out-of-pocket expenses and disbursements for such things as reproduction of documents, publication of notices, express deliveries and travel.

5. BILLING

Contractors shall provide County with monthly billings, which shall include, but not be limited to, the following:

A. Name of employee
B. Dates and hours worked
C. General task performed
D. Detail of out-of-pocket expenses, indicating their purpose such as telephone, travel, hotel, graphic reproduction, postage, etc., for these expenditures provided for in the Contract.

6. OWNERSHIP OF DATA

Upon completion of the work or upon termination of the Contract, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractors have collected or prepared in carrying out this Contract shall be provided to and become the exclusive property of the County, except as hereinafter provided. Therefore, any reports, information and data, given to or prepared or assembled by Contractors under this Contract shall not be made available to any individual or organization by Contractors without the prior written approval of County; provided that any ideas or documents prepared by Contractors may otherwise be used by Contractors, subject to the Rules of Professional Conduct applicable to counsel.

No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractors, other than documents prepared by Contractors and copyrighted by Contractors prior to the commencement of this Contract.

7. AUDIT AND INSPECTION OF RECORDS

Contractors shall permit the authorized representatives of County, after reasonable notice, to inspect and audit all data and records of Contractors related to carrying out this Contract for a period up to three years after completion of the Contract.

8. AFFIRMATIVE ACTION

The contractors assure that they will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14

CFR Part 152, Subpart E. The Contractors assure that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractors assure that they will require that their covered suborganizations provide assurances to the Contractors that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as recreated by 14 CFR Part 152, Subpart E, to the same effect.

9. DISADVANTAGED BUSINESS ENTERPRISE

The Contractors shall comply with Milwaukee County Ordinance 56.30 and CFR 49 Part 26, which have an overall minimum goal of seventeen percent (17%) participation of disadvantaged business enterprises on professional service contracts. In accordance with this, Contractors shall use good faith efforts to achieve the amount of DBE participation in this proposal. A 25 percent goal for General Obligation Financings and a 20% goal for Airport Revenue Financings have been established for applicable sections of this contract as described.

10. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS

In the performance of work under this Contract, Contractors shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractors will post in conspicuous places, available for employees and applicants for employment, notices to be provided by County, setting forth the provisions of the non-discriminatory clause.

Contractors agree to strive to implement the principles of equal employment opportunity through an effective Affirmative Action program, and has so indicated on the certificate attached hereto as Exhibit 3 and made a part of this Contract. The program shall have as its objective to increase the utilization of women, minorities and persons with disabilities, and other protected groups, at all levels of employment, in all divisions of Contractor's work force, where these groups may have been previously under-utilized and under-represented. Contractors also agree that in the event of any dispute as to compliance with the aforestated requirements, it shall be their responsibility to show that they have met all such requirements.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Contractors shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractors, further violations of this section are committed during the term of the Contract, County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractors tor use in completing the Contract, or it may permit Contractors to complete the Contract, but, in either event, Contractors shall be ineligible to bid on any future contracts let by County.

11. INDEMNITY

Each Contractor agrees to indemnify, defend and hold harmless, the COUNTY from and against all loss or expense by reason of liability for damages, including suits at law or in equity, caused by any intentional or negligent act or omission of that same Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this agreement, but only to the extent that any obligation of the Contractor arising under the foregoing indemnification does not impair the effectiveness of the Contractor's professional liability insurance or impair any subrogation rights of the Contractor's professional liability insurer.

The County acknowledges that it has an obligation to owners of its bonds to respond at its own cost and expense in good faith, using reputable and experienced counsel, to any investigation with respect to the Bonds into the compliance of the Bonds, or the actions of the County with respect to the Bonds, with legal requirements made by any governmental agency, including without limitation, the Internal Revenue Service, the Securities and Exchange Commission or any securities enforcement agency of any state, The County agrees that the Contractors have no liability to pay or reimburse the County for any such costs and expenses incurred or paid by the County except to the extent that such costs or expenses are covered by the provisions of the preceding paragraph.

12. INSURANCE

Contractors agree to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes, and benefits under Workers' Compensation laws, and/or vicarious liability arising from employees Such evidence shall include insurance coverage for Workers Compensation claims as required, including Employers Liability and insurance covering General Liability, Professional Liability and Automobile coverage in the following minimum amounts.

| **Type of Coverage** | **Minimum Limits** |
|---|---|
| **Wisconsin Workers' Compensation** | Statutory |
| **Employer's Liability** | $100,000/$500,000/$100,000 |
| **Commercial Or Comprehensive General Liability** | |
| Bodily Injury & Property Damage (Incl. Personal Injury, Contractual, Fire, Legal & Products/Completed Operations) | $1,000,000 per occurrence<br>$1,000,000 general aggregate |
| **Professional Liability** | $10,000,000 Per Claim<br>$10,000,000 aggregate |
| **Automobile Liability** | |
| Bodily Injury & Property Damage | $1,000,000 Per Accident |
| All Autos-Owned, non-owned and/or hired | |
| Uninsured Motorists | Per Wisconsin Requirements |

**Milwaukee County, as its interests may appear, shall be named as an additional insured for General, and Automobile and Liability, and be afforded a thirty (30) day written notice of cancellation or non-renewal. Disclosures must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Agreement.**

13. TERMINATION BY CONTRACTORS

Contractors may, at their individual option, terminate this Contract upon the failure of the County to pay any amount which may become due hereunder for a period of forty-five (45) days following submission of appropriate billing and supporting documentation, Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination.

14. TERMINATION BY COUNTY FOR VIOLATIONS BY CONTRACTORS

If either Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, County shall thereupon have the right to terminate the Contract with respect to that Contractor by giving thirty (30) days' written notice of termination of contract, specifying the alleged violations and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of thc thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

15. UNRESTRICTED RIGHT OF TERMINATION BY COUNTY

County further reserves the right to terminate this Contract at any time for any reason by giving Contractor(s) thirty (30) days' written notice by Certified Mail of such termination. In the event of said termination, Contractor(s) shall reduce its/their activities hereunder as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor(s) shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Contract.

16. INDEPENDENT CONTRACTOR

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns or between the Contractors. In entering into this Contract, and in acting in compliance herewith, Contractors are at all times acting and performing as independent contractors, duly authorized to perform the acts required of it hereunder.

17. SUBCONTRACTS

Assignment of any portion of the work by subcontract must have the prior written approval of County.

18. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that no party shall assign its obligations hereunder without the prior written consent of the other.

19. PROHIBITED PRACTICES

A. Contractors, during the period of this Agreement, shall not hire, retain or utilize for compensation any member, officer, or employee of County, or any person who, to the knowledge of Contractors, has a conflict of interest.

B. Contractors hereby attest that they are familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer, or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

20. NOTICES

Notices to County provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to Ms. Pamela Bryant, Milwaukee County Courthouse, 901 N. 9th St., Room 308, Milwaukee, WI. 53233, and notices to Contractors shall be sufficient if sent by Certified or Registered mail, postage prepaid, to Mr. Charles Jarik, Chapman and Cutler LLP, III W. Monroe St., Chicago, IL., 60603 and to Mr. Emile Banks, Emile Banks and Associates LLC, 1200 North Mayfair Road, Milwaukee, WI 53226, or to such other respective addresses as the parties may designate to each other in writing from time to time.

21. MISCELLANEOUS

This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractors acknowledge and agree that they will perform their obligations hereunder in compliance with all applicable state, local or federal laws, rules, regulations and orders.

22. AUTHORIZATION.

The County has executed this Contract pursuant to action taken by its Board of Supervisors on March 1, 2007, Resolution File No. 07-104.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day, month and year first above written.

WITNESS: MILWAUKEE COUNTY

By Date

WITNESS: CHAPMAN AND CUTLER LLP

_____

_____ _____

By Date

WITNESS EMILE BANKS AND ASSOCIATES

By Date

Approved as to appropriate use
of a professional service contract,
form and independent contractor
status by Corporation Counsel.

Reviewed by County's Risk Manager:

_____ _____

By Corporation Counsel Date By Risk Manager Date

Approved with regards to County Ordinance
Chapter 42

_____

By Community Business Development Partners Date

Finance

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

Referred
JAN 2011
County Board
Chairman

DATE : January 12, 2011

TO : Supervisor Michael Mayo, Chairman, County Board of Supervisors

FROM : Pamela Bryant, Capital Finance Manager

FILE NO. 11-67

SUBJECT : **Corporate Purpose Initial Authorizing Resolutions**

## Request

The Department of Administrative Services (DAS) is requesting the approval of the attached initial authorizing resolutions for the issuance of a not-to-exceed amount of $5,200,000 to finance capital Project WP191 – Moody Pool Refurbishment.

## Background

In the 2011 Adopted Capital Improvements Budget, the County Board of Supervisors approved $5,008,380 to renovate the existing structure and restore the patio, wading pool area and existing site. In addition, a sauna and steam room will be added as well as a new sound system, bleachers and pool equipment. The bond issue amount of $5,200,000 includes estimated issuance costs. The differences between the not-to-exceed amounts and the budgeted bond amounts reflects the estimated issuance costs and provides flexibility for any adjustments that may occur prior to the issuance of the bonds.

## $5,200,000 General Obligation Promissory Notes

The DAS has prepared estimated debt service schedules with total estimated debt services costs are $6,127,320. The 2011 bonds will include an estimated principal amount of $5,200,000 in bonds or notes, with estimated interest amounts of $927,320.

## COUNTY TAX RATE LIMIT

For the purpose of preparing the attached resolutions for authorizing the issuance of 2011 bonds or notes, it was assumed that approval of borrowing for the Moody Pool Refurbishment project would result in an increase in the County's debt service tax rate. Based on this assumption, and to comply with Section 59.605, Wis. Stats., regarding property tax rate limits for debt service, adoption of the attached resolutions will require approval by a minimum of three-fourths of the members-elect of the County Board. Based on the current County Board membership, 15 votes will be required for authorization to issue the bonds.

## DEBT ISSUANCE EXPENSES

The 2011 budget authorizes the Department of Administrative Services (DAS) to increase the

amount of the 2011 borrowing to pay debt issuance expenses. The attached resolution authorizes and directs the Director, Department of Administrative Services to request credit ratings and to pay all professional services and other issuance expenses related to the issuance of the bonds from debt proceeds. An administrative appropriation transfer will be processed to increase expenditure authority to pay for the cost of issuance. Anticipated expenses include bond counsel, financial auditor and financial advisory fees, official statement printing and mailing costs, credit rating fees and expenses and other issuance costs such as publication costs and express mail.

## MEETING REQUIRED FOR FINANCE AND AUDIT COMMITTEE

A Finance and Audit Committee meeting would be required on the sale date of March 17, 2011 to review the bid recommendation of a special bid opening committee composed of the Fiscal and Budget Administrator, County Treasurer and designated County Board staff member. The meeting of the Finance and Audit Committee is proposed for 12:00 noon on that date. This bid opening process was adopted on July 21, 1994 as a modification to Chapter 56.26 of the Milwaukee County Ordinances.

## AUTHORIZING RESOLUTIONS

Attached is the authorizing resolution for the 2011 bonds, which contains a resolution combining the bond issues authorized by the authorizing resolutions and authorizing the sale of the Bonds. Each of the items in the resolution requires Finance and Audit Committee and County Board approval.

## RECOMMENDATION

The Department of Administrative Services recommends that the Finance and Audit Committee approve and recommend approval by the full County Board of the attached resolution that authorizes the issuance and sale of the bonds or notes.

Pamela Bryant
Capital Finance Manager

Attachment

pc: Lee Holloway, Interim County Executive
John Thomas, Vice-Chair, Finance and Audit Committee
Joe Czarnezki, County Clerk
Dan Diliberti, County Treasurer
Renee Booker, Interim Director, Department of Administrative Services
E. Marie Brossard, Deputy Chief of Staff, County Executive's Office
Terrence Cooley, Chief of Staff, County Board
John Ruggini, Fiscal and Budget Administrator, DAS
Stephen Cady, County Board Fiscal and Budget Analyst
David Anderson, Public Financial Management, Inc.
Chuck Jarik, Chapman and Cutler LLP

File No.
(Journal, )

(ITEM *)

## A RESOLUTION

**RESOLUTION authorizing the advertisement for public sale and the sale of General Obligation Promissory Notes, Series 2011-B of Milwaukee County, Wisconsin, in an aggregate principal amount not to exceed $5,200,000, and related matters.**

WHEREAS, counties are authorized by Chapter 67 of the *Wisconsin Statutes,* as supplemented and amended, to borrow money and to issue bonds and promissory notes to finance any project undertaken for a public purpose and to refund municipal obligations, including interest thereon; and

WHEREAS, it has previously been determined that it was necessary and desirable to issue general obligation promissory notes of Milwaukee County, Wisconsin (the *"County"*), in an aggregate principal amount not to exceed $5,200,000 for the purpose of constructing pool facility improvements, pursuant to Chapter 67 of the *Wisconsin Statutes,* as supplemented and amended; and

WHEREAS, it is now necessary and desirable for the County to issue its General Obligation Promissory Notes, Series 2011-B, in an aggregate principal amount not to exceed $5,200,000;

NOW, THEREFORE, Be It Resolved by the County Board of Supervisors of Milwaukee County, Wisconsin, as follows:

*Section 1.* There shall be issued the General Obligation Promissory Notes, Series 2011-B of the County in an aggregate principal amount not to exceed $5,200,000 (the *"Notes"*); *provided*, that the Director of the Department of Administrative Services of the County is hereby

30 authorized to make all such changes to the resolutions adopted by the County Board of
31 Supervisors of the County relating to the Notes and the financing structure of the Notes to
32 conform to any changes to such resolutions and financing structures, which are approved by the
33 Finance and Audit Committee of the County Board of Supervisors of the County.

34 *Section 2.* For the purpose of offering the Notes for sale, pursuant to
35 Section 67.08(2), *Wisconsin Statutes,* as supplemented and amended, the Director of the
36 Department of Administrative Services of the County is hereby authorized and directed to cause
37 to be circulated the Official Terms of Offering for the Notes and to disseminate appropriate
38 notices of the sale of the Notes at such times and in such manner as the Director of the
39 Department of Administrative Services of the County may determine and to receive bids for the
40 Notes at such time or times as the Director of the Department of Administrative Services of the
41 County may determine. The Director of the Department of Administrative Services of the
42 County shall also cause to be prepared and distributed an Official Statement or Official
43 Statements, including the Official Terms of Offering, with respect to the Notes.

44 *Section 3.* After receipt of bids for the Notes and consideration thereof by this
45 County Board of Supervisors, this County Board of Supervisors will consider resolutions
46 awarding the Notes to the best bidder or bidders, prescribing the terms thereof and the form of
47 Notes, and levying taxes in the specific amount necessary to pay the principal of and interest on
48 the Notes.

49 *Section 4.* Proceeds of the Notes shall be applied at the direction of the Director of
50 the Department of Administrative Services of the County to the payment of issuance expenses
51 with respect to the Notes. An administrative appropriation transfer will be processed to increase
52 expenditure authority in the non-departmental Debt Issue Expense budget to pay such issuance
53 expenses. The issuance expenses cover the fees for the following services provided in

54 connection with the issuance of the Notes as well as the out-of-pocket disbursements of the
55 County: credit rating agencies, bond insurance, official statement printing and mailing, financial
56 advisory services, bond counsel services, financial auditor services and other fees related to the
57 issuance of the Notes.

58 *Section 5. Copies of Resolution to Co-Bond Counsel.* The County Clerk is directed
59 to send certified copies of this resolution to the County's co-bond counsel, Chapman and Cutler
60 LLP, 111 West Monroe Street, Chicago, Illinois 60603, Attention: Charles L. Jarik, and Emile
61 Banks & Associates, LLC, Suite 290, 1200 North Mayfair Road, Milwaukee, Wisconsin 53226,
62 Attention: Emile Banks, and to the Department of Administrative Services—Fiscal Affairs
63 Division, 901 North 9th Street, Room 308, Milwaukee, Wisconsin 53223, Attention: Pamela
64 Bryant.

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/12/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT: Corporate Purpose Initial Authorizing Resolutions**

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 69,389.75 | 673,565.00 |
| | Revenue | 69389.75 | |
| | Net Cost | 0 | 673,565.00 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The Department of Administrative Services is requesting approval of initial authorizing resolutions to issue Corporate Purpose Bonds or Notes for a not-to-exceed amount of $5,200,000. These bonds will finance capital improvements to Moody Pool that were approved in the 2011 Adopted Capital Improvements Budget.
B. The estimated total debt service cost is $6,127,320 for $5,200,000. The debt services payments are due in the years 2011 through 2020. The first debt service payment amount, beginning in 2011, is $69,389.75. Due to the size of the issue, DAS is recommending that the County issue 10-year, Promissory Notes to finance the Moody Pool Refurbishment.
C. The County will pledge to levy taxes to pay the debt service payments.
D. The estimated interest rates for the debt service payments are based on rates from the December 9, 2010 bond sale with a 50 basis point inflator each year.

Department/Prepared By Pamela Bryant

Authorized Signature Renee Boeck

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

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**COUNTY OF MILWAUKEE**
INTER-OFFICE COMMUNICATION

Referred
JAN 2011
County Board
Chairman

DATE : January 12, 2011 FILE NO. 11-68

TO : Supervisor Michael Mayo, Chairman, County Board of Supervisors

FROM : Pamela Bryant, Capital Finance Manager

SUBJECT : **Corporate Purpose Bond Reimbursement Resolution**

## Request

The Department of Administrative Services (DAS) is requesting the approval of the attached reimbursement resolution to express the County's intent to reimburse capital project WP191 - Moody Pool Refurbishment for expenditures incurred prior to the issuance of General Obligation Corporate Purpose Bonds or Notes.

## Background

In the 2011 Adopted Capital Improvements Budget, the County Board of Supervisors approved $5,008,380 to improve the Moody Pool facility. The bond issue amount of $5,200,000 includes estimated issuance costs. The differences between the not-to-exceed amount and the budgeted bond amount reflects the estimated issuance costs and provides flexibility for any adjustments that may occur prior to the issuance of the bonds.

## Proposed Bond Sales

The County has a proposed bond sale scheduled for March of 2011 to refund bonds issued in 2001, 2002 and 2003. The initial plan is to include the bond issuance for Moody Pool with this financing to achieve economies of scale. However, the 2011 Adopted Budget states that the "Parks Director shall work in conjunction with representatives of the Children's Outing Association, Dominican Women's Center, Department on Aging and City of Milwaukee to study alternative uses for the Moody Pool. A final report shall be presented to the Committees on Parks, Energy and Environment and Finance and Audit by the March 2011 meeting cycle."

There is a chance that the stakeholders may not have completed the decision making process regarding the project scope by the time of the March bond sale. Therefore, the bond sale may be delayed until the next bond financing in 2013. Project implementation will not be delayed because general County funds will be temporarily used to finance the projects and will be replenished upon the sale of the general obligation bonds or notes. Approval of the attached reimbursement resolution will allow the County to reimburse itself with future bond proceeds.

## U.S. Treasury Regulation Compliance

U.S. Treasury Regulation Section 1.150-2 describes the conditions under which the County may expend County funds on a project currently and later reimburse itself with bond proceeds. The

first step in providing for such reimbursement to occur is an expression of intent by the County to reimburse itself for expenditures incurred prior to issuing the bonds. Therefore, the attached resolution expresses that intent.

Expressing this intent will allow the County to reimburse itself for expenditures incurred as far back as 60 days prior to the approval of the attached reimbursement resolution. Any work on the project that is done earlier than 60 days prior to the approval date would not be eligible for reimbursement.

## Recommendation

The DAS recommends that the Finance and Audit Committee approve the accompanying resolution that expresses the County's intent, in accordance with U.S. Treasury Regulation Section 1.150-2, to reimburse itself for expenditures that will occur prior to the issuance of the bonds.

Pamela Bryant
Capital Finance Manager

Attachment

pc: Lee Holloway, Interim County Executive
John Thomas, Vice-Chair, Finance and Audit Committee
Joe Czarnezki, County Clerk
Dan Diliberti, County Treasurer
Renee Booker, Interim Director, Department of Administrative Services
E. Marie Brossard, Deputy Chief of Staff, County Executive's Office
Terrence Cooley, Chief of Staff, County Board
John Ruggini, Interim Fiscal and Budget Administrator, DAS
Stephen Cady, County Board Fiscal and Budget Analyst
David Anderson, Public Financial Management, Inc.
Chuck Jarik, Chapman and Cutler LLP

File No.
(Journal, )

(ITEM *)

## A RESOLUTION

**RESOLUTION expressing official intent regarding certain capital expenditures to be reimbursed from the proceeds of an obligation.**

**WHEREAS** Milwaukee County, Wisconsin (the *"Issuer"*) now wishes to advance moneys from available funds to pay the costs of a capital project described in *Exhibit A* attached hereto and made a part hereof (the *"Project"*); and

**WHEREAS** all or a portion of the expenditures relating to the Projects and to be made from such funds (the *"Expenditures"*) (i) have been paid within the sixty (60) days prior to the passage of this Resolution, or (ii) will be paid on or after the passage of this Resolution; and

**WHEREAS** the Issuer reasonably expects to reimburse itself or pay for the Expenditures with the proceeds of general obligation bonds or notes;

**NOW THEREFORE** Be It Resolved by the County Board of Supervisors of Milwaukee County, Wisconsin, as follows:

*Section 1.* The Issuer reasonably expects to reimburse or pay the Expenditures with proceeds of general obligation bonds or notes.

*Section 2.* The maximum principal amount of the obligations expected to be issued for the Projects and to be made from the funds is $5,200,000 in general obligation bonds or notes.

*Section 3.* All actions of the officers, agents and employees of the Issuer that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

*Section 4.* This Resolution shall be in full force and effect immediately upon its adoption.

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## EXHIBIT A

| PROJECT | AMOUNT |
| --- | --- |
| Moody Pool Refurbishment | $5,200,0000 |

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/12/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT: Corporate Purpose Reimbursement Resolution**

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The Department of Administrative Services is requesting approval of the attached reimbursement resolution in accordance with US Treasury regulations to allow the County to reimburse itself for expenditures incurred prior to the issuance of the bonds.
B. Depending upon project implementation, costs incurred prior to the issuance of the bonds would be financed temporarily with general County revenue. However, upon issuance of the bonds the County would be reimbursed for these costs.
C. S ee item B.
D. N /A.

Department/Prepared By Pamela Bryant

Authorized Signature

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

By Supervisors Dimitrijevic, Lipscomb, Harris, Broderick and Weishan

**A RESOLUTION**

Creating an Office of Sustainability under the Office of the County Executive's and a new, full-time position of Director of Sustainability that would directly report to the County Executive, retitling the existing position of Sustainability and Environmental Engineer to Managing Environmental Engineer and funding the new position with funds from the Appropriation for Contingencies account.

WHEREAS, on July 26, 2007 the Milwaukee County Board of Supervisors voted unanimously to approve a resolution creating the "Green Print" environmental and conservation initiative for Milwaukee County government; and

WHEREAS, a provision of the Green Print authorized the Director of Human Resources to develop a position of Director of Sustainability and report back to the Personnel and Finance and Audit Committees in September of 2007; and

WHEREAS, instead, the 2008 adopted budget for the Architectural, Engineering and Environmental Services division (AE&ES) abolished the vacant position of Director of Energy and Environmental Services and created the position of Director of Sustainability and Environmental Engineer; and

WHEREAS, the job duties associated with the Director of Sustainability and Environmental Engineer position that relate to sustainability include providing effective, rational and cost conscious leadership on environmental sustainability issues, working closely with county departments to identify opportunities to apply "green" building concepts, performing cost benefit and/or life cycle analysis on proposed major maintenance and capital public works projects and monitoring results on implemented projects; and

WHEREAS, the job duties associated with the Director's position that relate to environmental services responsibilities include providing environmental services assistance to county departments, overseeing Milwaukee County's NR216 county-wide stormwater permit, management of landfill gas control systems and groundwater monitoring, serving as the County land conservationist and overseeing environmental services section staff; and

WHEREAS, given the diverse workload of the Sustainability Director's position, the County Board adopted a resolution (File No. 08-238) in June of 2008 requesting that the Green Print Workgroup recommend changes to the position based upon the existing and evolving job duties and report back in September of 2009, in anticipation of the 2010 budget deliberations; and

WHEREAS, the Green Print Workgroup submitted a report (dated September 15, 2009) recommending the creation of a “Director of Sustainability” position as a new department head reporting directly to the County Executive and retitling of the existing position of Sustainability and Environmental Engineer to “Environmental Engineer”; and

WHEREAS, the recommendation was based on several advantages including the allowance of full-time dedication to both sets of priorities, the appropriate elevation of the Director of Sustainability position to provide more countywide visibility and to increase the likelihood of securing more grants for sustainability and environmental services of the existing position; and

WHEREAS, the County Executive’s recommended budget for 2010 did not include the Green Print Workgroup’s recommendations and an amendment to create an Office of Sustainability within the County Board failed; and

WHEREAS, the duties of the existing position of Director of Sustainability and Environmental Engineering are extensive and the combined position does not allow for many opportunities to expand sustainability efforts; therefore, creating a new position of Director of Sustainability is warranted; and

WHEREAS, the City of Milwaukee has an Office of Environmental Sustainability managed by a full-time position and the Milwaukee Metropolitan Sewerage District also funds full-time position for environmental sustainability efforts; and

WHEREAS, the position of Director of Sustainability for Milwaukee County will be funded by the Appropriation for Contingencies Account to be reimbursed by grants and other outside revenues; and

WHEREAS, the considerable amount of savings already achieved through implementation of the Green Print program would increase significantly more by dedicating a full-time position to these efforts; now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby creates a new Office of Sustainability within the Office of the County Executive and a new full-time position of Director of Sustainability that will directly report to the County Executive; and

BE IT FURTHER RESOLVED, that the County Board authorizes and directs the Director of the Division of Human Resources to retitle the existing position of Sustainability and Environmental Engineer to Managing Environmental Engineer; and

BE IT FURTHER RESOLVED, that the County Board authorizes and directs the Director of the Department of Administrative Services to initiate a fund transfer in the amount of $129,000 for salary, fringe benefits and supplies from Org. Unit 1945-Appropriation for Contingencies Account to the new Office of Sustainability; and

BE IT FURTHER RESOLVED, that the County Board authorizes and directs the Sustainability Director to seek and receive grants or other revenues that would offset the cost of the position.

JE
January 7, 2011
H:\Shared\Research Analysts\Esch\Pending Supervisor Approval\Creation of Director of Sustability Position - Dimitrijevic.doc

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** January 7, 2011

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Creating an Office of Sustainability and a new, full-time position of Director of Sustainability that would directly report to the County Executive, retitling the existing position of Sustainability and Environmental Engineer to Managing Environmental Engineer and funding the new position with funds from the Appropriation for Contingencies account.

**FISCAL EFFECT:**

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☒ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☒ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 129,000 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 129,000 | 0 |
| **Capital Improvement Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |

**DESCRIPTION OF FISCAL EFFECT**

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Adoption of the resolution would result in the creation of a new position, Director of Sustainability, to carry out the Green Print program.
B. The Director of Sustainability position is anticipated to be created at the mid-point of 902 ECP range, at a total personnel cost (salary and benefits) of $124,000 and an additional $5,000 for office supplies and services for a total cost of $129,000. Retitling of the existing position will have no fiscal effect.
C. The position will be funded through a fund transfer from the Appropriation for Contingencies Account. Any grant revenues or other outside revenues received for the purpose of implementing the Green Print program will be applied to the Appropriation for Contingencies Account to offset the cost of the position.

Department/Prepared By Julie Esch, Legislative Research Analyst

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

5

Personnel
Finance
DAS
DHR

Referred
JAN 2011
County Board Chairman

*County of Milwaukee*

**Office of the Sheriff**

FILE NO. 11-47

**David A. Clarke, Jr.**
*Sheriff*

**DATE:** January 3, 2011

**TO:** Supervisor Michael Mayo, Sr., Acting Chairman, County Board of Supervisors

**FROM:** Richard Schmidt, Inspector, Milwaukee County Office of the Sheriff

**SUBJECT:** Request to Abolish 18 Positions of Deputy Sheriff Sergeant (Title Code 00061700) (PR 22B) and Create 18 Positions of Correctional Officer Lieutenant (Title Code 00058610) (PR 23CM) for the County Correctional Facility Central of the Office of the Sheriff effective February 21, 2011. Abolishment of the positions would occur upon the filling of Correctional Officer Lieutenant positions

REQUEST

The Sheriff of Milwaukee County requests the abolishment of eighteen positions of Deputy Sheriff Sergeant and the creation of eighteen positions of Correctional Officer Lieutenant for the County Correctional Facility Central (CCFC) of the Office of the Sheriff.

BACKGROUND

As a part of the 2005 Adopted Budget, the Office of the Sheriff began a program of eliminating Deputy Sheriff positions in the County Correctional Facility Central (CCFC) upon vacancy and replacing them with Correctional Officers. This initiative was implemented for a variety of reasons including the realization that Deputies were working in the CCFC as officers in the housing units, which is the same function that Correctional Officers served at the County Correctional Facility South. Typically, new Deputies would spend the first five years of their service as a housing office in the CCFC.

A newly hired Deputy was spending 20 weeks in training before being deployed while Correctional Officers were spending four weeks in training since Deputies required training in all areas of law enforcement instead of just corrections. Transitioning to Correctional Officers in the CCFC meant that substantial training hours could be saved. This change led

to a reduction of approximately 32,000 hours of overtime staffing that had previously occurred while deputies were in recruit training. In 2005, there were 37.5 Correctional Officers budgeted in the CCFC, in 2011 there are 212 Correctional Officers budgeted. During the same time period, deputies have decreased in the Jail from 292 in 2005 to 39 in 2011. The remaining Deputies in the CCFC will be replaced by Correctional Officers upon vacancy. Eventually, all budgeted positions in the CCFC currently filled by a Deputy Sheriff will be staffed by a Correctional Officer.

The other major change that has occurred in the Office of the Sheriff is that the 2009 Adopted Budget transferred administration of the House of Correction to the Office of the Sheriff. This was done primarily due to the use of excessive mandatory overtime at the House of Correction in recent years, a history of tax levy deficits and an audit report from the National Institute of Corrections that identified serious operational deficiencies at the House of Correction. One major tenant of the audit report suggested that establishing a single correctional department under the Office of the Sheriff would be a significant step toward correcting problems at the House of Correction. The Office of the Sheriff has worked in 2009 and 2010 toward establishing the agency as one detention unit, comprised of the County Correctional Facility South (CCFS) (formerly the HOC) and the County Correctional Facility Central (CCFC), which has resulted in changes both at the South and Central Correctional Facilities.

These two majors changes have resulted in a large increase in correctional staff at the CCFC. The CCFS has Correctional Officer Lieutenant positions that serve as the immediate supervisor to Correctional Officers. In recognition of a singe correctional department under the Office of the Sheriff, the large increase in Correctional Officers at the CCFC and the need for a career ladder for the correctional staff, the Sheriff desires to abolish the Deputy Sheriff Sergeant positions currently budgeted in the CCFC and create Correctional Officer Lieutenant positions instead. The use of Correctional Officer Lieutenants as the immediate supervisory staff in the CCFC is consistent with the staffing patterns at the CCFS.

Currently, 20 Deputy Sheriff Sergeant positions in the Sheriff's Office are filled by Deputy Sheriff 1s on Temporary Assignment to Higher Classifications (TAHC).

It is requested that the abolishment of the positions occur upon the filling of the Correctional Officer Lieutenant positions. The Office of the Sheriff does not want a situation to occur where there are no filled supervisory positions in the CCFC due to the timing of the recruitment and filling of the new CO Lieutenant positions. Enabling the TAHCs to stay in place until the Lieutenant positions are filled would allow for a seamless transition from Sergeants to Lieutenants in the CCFC.

FISCAL NOTE

The abolishment of eighteen positions of Deputy Sheriff Sergeant and the creation of eighteen positions of Correctional Officer Lieutenant will result in decreased costs of $114,008 for 2011 for salary and social security costs and $134,737 in 2012 for salary and social security

costs. Additional overtime savings may be achieved due to Correctional Officer Lieutenants accruing overtime on a straight time basis versus Deputy Sheriff Sergeants accruing overtime on a time and a half basis.

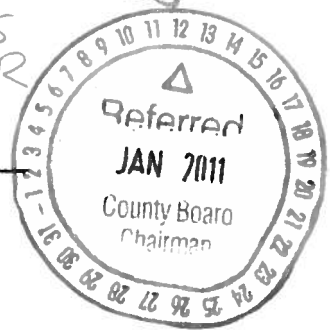
Inspector Richard R. Schmidt

Richard Schmidt, Inspector, Milwaukee County Office of the Sheriff

cc: Chairman, Finance and Audit Committee
Patricia Jursik, Chairman, Personnel Committee
Candice Richardson, DAS-Division of Human Resources
Deputy Inspector Kevin Nyklewicz, Office of the Sheriff
Jon Priebe, Public Safety Fiscal Administrator

Finance
Personnel
DAS
DHR

**COUNTY OF MILWAUKEE**
INTEROFFICE COMMUNICATION




DATE : January 6, 2011 FILE NO. 11-47

TO : Supervisor Michael Mayo, Chairman, County Board of Supervisors

FROM : John Ruggini, Assistant Fiscal and Budget Administrator, DAS - Fiscal

SUBJECT : Request to Abolish 18.0 FTE of Deputy Sheriff Sergeant (Title Code 00061700) (PR 22B) and Create 18.0 FTE of Correctional Officer Lieutenant (Title Code 00058610) (PR 23CM) for the County Correctional Facility Central of the Office of the Sheriff effective February 21, 2011. Abolishment of the positions would occur upon the filling of Correctional Officer Lieutenant positions

## REQUEST

The Sheriff of Milwaukee County requests the abolishment of eighteen positions of Deputy Sheriff Sergeant and the creation of eighteen positions of Correctional Officer Lieutenant for the County Correctional Facility Central (CCFC) of the Office of the Sheriff.

## BACKGROUND/ANALYSIS

As a part of the 2005 Adopted Budget, the Office of the Sheriff began a program of eliminating Deputy Sheriff positions in the County Correctional Facility Central (CCFC) upon vacancy and replacing them with Correctional Officers. This initiative was implemented for a variety of reasons including the realization that Deputies were working in the CCFC as officers in the housing units, which is the same function that Correctional Officers served at the County Correctional Facility South (CCFS). Typically, new Deputies would spend the first five years of their service as a housing office in the CCFC.

A newly hired Deputy was spending 20 weeks in training before being deployed while Correctional Officers were spending four weeks in training since Deputies required training in all areas of law enforcement instead of just corrections. Transitioning to Correctional Officers in the CCFC meant that substantial training hours would be saved. This change led to a reduction of approximately 32,000 hours of overtime staffing that had previously occurred while deputies were in recruit training. In 2005, there were 37.5 Correctional Officers budgeted in the CCFC; in 2011 there are 212 Correctional Officers budgeted. During the same time period, deputies have decreased in the Jail from 292 in 2005 to 39 in 2011. The remaining Deputies in the CCFC will be replaced by Correctional Officers upon vacancy. Eventually, all budgeted positions in the CCFC currently filled by a Deputy Sheriff will be staffed by a Correctional Officer.

The other major change that has occurred in the Office of the Sheriff is that the 2009 Adopted Budget transferred administration of the House of Correction to the Office of the Sheriff. This was done primarily due to the use of excessive mandatory overtime at the House of Correction in recent years, a history of tax levy deficits and an audit report from the National Institute of Corrections that identified serious operational deficiencies at the

House of Correction. One major tenant of the audit report suggested that establishing a single correctional department under the Office of the Sheriff would be a significant step toward correcting problems at the House of Correction. The Office of the Sheriff has worked in 2009 and 2010 toward establishing the agency as one detention unit, comprised of the County Correctional Facility South (CCFS), (formerly the House of Correction) and the County Correctional Facility Central (CCFC), which has resulted in changes both at the South and Central Correctional Facilities.

These two major changes have resulted in a large increase in correctional staff at the CCFC. The CCFS has Correctional Officer Lieutenant positions that serve as the immediate supervisor to Correctional Officers. In recognition of a single correctional department under the Office of the Sheriff, the large increase in Correctional Officers at the CCFC and the need for a career ladder for the correctional staff, the Sheriff desires to abolish the Deputy Sheriff Sergeant positions currently budgeted in the CCFC and create Correctional Officer Lieutenant positions instead. The use of Correctional Officer Lieutenants as the immediate supervisory staff in the CCFC is consistent with the staffing patterns at the CCFS.

The Sheriff's Office has requested that the abolishment of the positions occur upon the filling of the Correctional Officer Lieutenant positions. Currently, 20.0 FTE Deputy Sheriff Sergeant positions in the Sheriff's Office are filled by Deputy Sheriff 1s on Temporary Assignment to Higher Classifications (TAHC). The Office of the Sheriff does not want a situation to occur where there are no filled supervisory positions in the CCFC due to the timing of the recruitment and filling of the new CO Lieutenant positions. Enabling the TAHCs to stay in place until the Lieutenant positions are filled would allow for a seamless transition from Sergeants to Lieutenants in the CCFC. No filled positions will be abolished through this action.

## FISCAL EFFECT

The abolishment of eighteen positions (18.0 FTE) of Deputy Sheriff Sergeant and the creation of eighteen positions (18.0 FTE) of Correctional Officer Lieutenant will result in decreased costs of $109,698 for 2011 for salary and social security costs and $135,817 in 2012 for salary and social security costs. Additional overtime savings may be achieved due to Correctional Officer Lieutenants accruing overtime on a straight time basis versus Deputy Sheriff Sergeants accruing overtime on a time and a half basis.

## RECOMMENDATION

In light of the ongoing transition from Deputy Sheriff's to Correctional Officer's in the CCFS , the recognition of the correctional facilities being operated within the same department, and the necessity to create a career ladder position for staff entering into these positions, it is

recommended that the request to create eighteen positions (18.0 FTE) of Correctional Officer Lieutenant and abolish eighteen (18.0 FTE) positions of Deputy Sheriff Sergeant be approved effective May 1, 2010.

DAS Analyst: Joe Carey

John Ruggini
Assistant Fiscal and Budget Administrator

CC:

Lee Holloway, Interim County Executive
Candace Richards, Interim-Director of Human Resources
Terrence Cooley, Chief of Staff, County Board
Rick Ceschin, County Board Fiscal and Budget Analyst
Richard Schmidt, Inspector, Office of the Sheriff
Renee Booker, Interim Director, Department of Administrative Services

File No.
(Journal)

(ITEM ) Request to Abolish 18 Positions of Deputy Sheriff Sergeant (Title Code 00061700) (PR 22B) and Create 18 Positions of Correctional Officer Lieutenant (Title Code 00058610) (PR 23CM) in the Office of the Sheriff

**A RESOLUTION**

WHEREAS, as a part of the 2005 Adopted Budget, the Office of the Sheriff began a program of eliminating Deputy Sheriff positions in the County Correctional Facility Central (CCFC) upon vacancy and replacing them with Correctional Officers.

WHEREAS, in 2005, there were 37.5 Correctional Officers budgeted in the CCFC, in 2011 there are 212 Correctional Officers budgeted. During the same time period, deputies have decreased in the Jail from 292 in 2005 to 39 in 2011.

WHEREAS, an audit report from the National Institute of Corrections suggested establishing a single correctional department under the Office of the Sheriff The Office of the Sheriff has worked in 2009 and 2010 toward establishing the agency as one detention unit, comprised of the County Correctional Facility South (CCFS), (formerly the House of Correction) and the County Correctional Facility Central (CCFC), which has resulted in changes both at the South and Central Correctional Facilities.

WHEREAS, in recognition of a single correctional department under the Office of the Sheriff, the large increase in Correctional Officers at the CCFC and the need for a career ladder for the correctional staff, the Sheriff requested to abolish the Deputy Sheriff Sergeant positions currently budgeted in the CCFC and create Correctional Officer Lieutenant positions instead.

WHEREAS, the Sheriff's Office has requested that the abolishment of the positions occur upon the filling of the Correctional Officer Lieutenant positions. Currently, 20.0 FTE Deputy Sheriff Sergeant positions in the Sheriff's Office are filled by Deputy Sheriff 1s on Temporary Assignment to Higher Classifications (TAHC).

WHEREAS, the Office of the Sheriff does not want a situation to occur where there are no filled supervisory positions in the CCFC due to the timing of the recruitment and filling of the new CO Lieutenant positions.

WHEREAS, enabling the TAHCs to stay in place until the Lieutenant positions are filled would allow for a seamless transition from Sergeants to Lieutenants in the CCFC, NOW THEREFORE,

BE IT RESOLVED, that the following position actions are approved for the Office of the Sheriff effective February 21, 2011:

| Action | Title | No. of Positions | Pay Range |
|---|---|---|---|
| Create | Correctional Officer Lieutenant | 18.0 | 23CM |
| Abolish | Deputy Sheriff Sergeant | 18.0 | 22B |

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/11/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Request to Abolish 18.0 Positions of Deputy Sheriff Sergeant (Title Code 00061700) (PR 22B) and Create 18.0 Positions of Correctional Officer Lieutenant (Title Code 00058610) (PR 23CM) in the Office of the Sheriff

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☒ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | ($109,698) | ($135,817) |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to Abolish 18.0 FTE of Deputy Sheriff Sergeant (Title Code 00061700) (PR 22B) and Create 18.0 FTE of Correctional Officer Lieutenant (Title Code 00058610) (PR 23CM) for the County Correctional Facility Central of the Office of the Sheriff effective February 21, 2011. Abolishment of the positions would occur upon the filling of Correctional Officer Lieutenant positions

B. The abolishment of eighteen positions (18.0 FTE) of Deputy Sheriff Sergeant and the creation of eighteen positions (18.0 FTE) of Correctional Officer Lieutenant will result in decreased costs of $109,698 for 2011 for salary and social security costs and $135,817 in 2012 for salary and social security costs. Additional overtime savings may be achieved due to Correctional Officer Lieutenants accruing overtime on a straight time basis versus Deputy Sheriff Sergeants accruing overtime on a time and a half basis.

C. There is no budgetary impact other than the reduction in expenditures stated in "B".

D. It is assumed that the positions will not be filled until there are vacancies within the Deputy Sheriff Sergeant classification. The 2011 expenditure reduction assumes the creation and abolishment of the position at the start of pay period 21. The 2012 expenditure reduction assumes a full year implementation. The fringe benefit rate assumed was $15,984 for health and 22.43% of salary for pension.

Department/Prepared By Joe Carey

Authorized Signature

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

**COUNTY OF MILWAUKEE**
**DAS – Division of Human Resources**
INTER-OFFICE COMMUNICATION

DATE : January 19, 2011

TO : Committee on Personnel

Candace M. Richards

FROM : Candace Richards, Interim Director of Human Resources

SUBJECT : **Creation Recommended by Finance Committee**

A review of the duties to be assigned to the new positions requested by the Office of the Sheriff has resulted in the following recommendation:

| Org. Unit | Title Code | No. of Positions | Recommended Title | Pay Range | Min/Max of Pay Range |
|---|---|---|---|---|---|
| 4000 | 58610 | 18 | Correction Officer Lieutenant | 23CM | $47,638-$59,044 |

Finance
Personnel
DAS-DHR
Referred
JAN 7 2011
County Board
Chairman

6

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

FILE NO. 11-59

DATE: December 29, 2010

TO: Sup. Lee Holloway, Chairman, Milwaukee County Board of Supervisors

FROM: Geri Lyday, Interim Director, Department of Health & Human Services

SUBJECT: **Request to Create Four Disability Benefits Specialist Positions in DSD**

**REQUEST**

The Interim Director of the Milwaukee County Department of Health & Human Services is requesting the creation of four Disability Benefits Specialist positions to be assigned to the Disability Resource Center (DRC).

**BACKGROUND/ANALYSIS**

In 2010, the Disabilities Services Division (DSD) began operating the DRC, which provides information and referral services to consumers with disabilities, ages 18 to 59. The DRC also assists consumers in understanding the long-term care options available to them and helps people apply for programs and benefits.

As one of the primary services provided by the DRC, the Disability Benefits Specialist (DBS) program is a required service for all State funded, certified Aging and Disability Resource Centers throughout Wisconsin. The DBS program assists all Milwaukee County residents who are interested in seeking and obtaining private or public benefits such as Family Care, Family Care Partnership, Supplementary Security Income (SSI), Social Security Disability Income (SSDI), Medicaid or other benefits for which they are eligible. Program attorney services are also provided through a contract between the State Department of Health Services (DHS) and Disability Rights Wisconsin attorneys.

In 2010, DSD contracted out the DBS function and expected to do so in the 2011 Budget. However, DSD now plans to perform this function utilizing County staff rather than a vendor due to program oversight concerns, closer working relationships with economic support staff as well as continuity of communication with other DRC staff and outside attorneys. By operating this program with internal staff, Milwaukee County would also be consistent with other ADRCs in the State of Wisconsin.

DSD is therefore, requesting the creation of four Disability Benefits Specialist positions. The vendor, Independence First, is currently under contract with Milwaukee County to provide these services from January to June for a not-to-exceed amount of $186,875. A contract with Independence First for the first half of 2011 is needed to recruit and train County staff to ensure continuous operations of this critical DRC function. If the new positions can be filled and trained prior to the end of Independence First's contract, the contract will not be fully expended.

**RECOMMENDATION**

It is recommended that these positions be created to support the DBS program for the Disability Resource Center and to ensure individuals with disabilities have access to public benefits and services for which they are eligible in Milwaukee County.

**FISCAL EFFECT**

The 2011 net estimated fiscal effect of the creation of the four Disability Benefits Specialists is $186,542, which reflects salary at step one in pay range 12Z, social security, and active health and pension. This cost assumes an estimated start date of May 2, 2011 and is offset with $186,875 in funds budgeted in the purchase of service contract line for DBS. These funds will no longer be obligated to an outside contract in the Disability Resource Center. Instead, DSD plans to peform this function internally with County staff.

The total amount budgeted for the DBS component of the DRC is $373,750. A not-to-exceed contract in an amount of $186,875 was executed with Independence First to perform this function through the end of June 2011. The remaining $186,875 is available to fund these four positions.

Approved by:

Geri Lyday
Interim Director Department of Health & Human Services

Cc: Steve Kreklow, Fiscal and Budget Administrator, DAS
John Ruggini, Assistant Fiscal & Budget Administrator, DAS
Antionette Thomas-Bailey, Fiscal & Management Analyst
Jennifer Collins, County Board Staff
Jodi Mapp, County Board Staff

**-COUNTY OF MILWAUKEE-**
INTEROFFICE COMMUNICATION

DATE : January 6, 2011

TO : Supervisor Michael Mayo, Interim Chairman, Board of Supervisors

FROM : John Ruggini, Assistant Fiscal & Budget Administrator, DAS-Fiscal

SUBJECT : Request to create 4.0 FTE Disability Benefits Specialist (PR 13) in the Disabilities Services Division (DSD) of the Department of Health and Human Services (DHHS).

## REQUEST

The Department of Health and Human Services (DHHS) is requesting to create 4.0 FTE Disability Benefits Specialist (PR 13) effective February 21, 2011.

## BACKGROUND/ANALYSIS

The Disabilities Services Division began operation of the Disabilities Resource Center (DRC) in 2010. The primary role of the resource center is to provide information and assistance, service access and prevention, disability benefits counseling, and access to publicly funded long-term care. In addition, the state requires that the DRC offer the Disability Benefits Specialist (DBS) Program as one of its primary functions.

The DBS program helps provide access to Milwaukee County Residents who want to apply for private or publicly funded benefits such as Family Care, Family Care Partnership, Supplementary Security Income (SSI), Social Security Disability Income (SSDI), Medicaid or other benefits for which they are eligible. If a client is denied benefits, the Disability Benefits Specialist also helps with determining the reason for denial and resolving the issue if possible. The program also has attorney services that are provided through a contract with the State Department of Health Service (DHS) and Disability Rights Wisconsin.

Currently, this function is performed through a contract with Independence First. At the start of the program, the State recommended that the department perform this function with internal staff. During the planning process for the DRC implementation, the department decided it would be best to issue a Request for Proposals (RFP) for this function to ensure that clients received quality services. After the first year of this operation, DSD was able to reexamine the program and its needs. It was determined that operating the program utilizing County staff would be a better option due to program oversight concerns, closer working relationships with economic support staff, continuity of communication and team building with other DRC staff and functions as well as the interface issues with the program attorney backup agency. As a result, the department is requesting the creation of 4.0 FTE Disability Benefits Specialist, which would report to the Disabilities Resource Center Manager. By operating this program with internal staff, Milwaukee County would also be consistent with other Aging and Disability Resource Centers in the State of Wisconsin.

The Disabilities Benefits Specialist will be responsible for assisting clients in accessing public or private benefits. These responsibilities include: providing information about

private or public government benefits; providing technical assistance on how to access benefits and information regarding the responsibilities of the program participants; assist applicants with gathering the appropriate verifying data, both financial and non-financial; provide advice and assistance in preparing and filing complaints, grievances, and appeals at the local and state levels, and beyond; provide representation as appropriate for individuals with developmental and physical disabilities, substance use disorders or mental health issues as needed in administrative hearings or other grievance steps; consult with DBF program attorneys for consideration in representation in administrative and judicial proceedings; identify and document concerns of clients being served that have disabilities; ensure that quality services are provided to clients; and offer choices of what community services and resources will be provided, who will provide these services and how they will be provided. By operating this program with internal staff, Milwaukee County would also be consistent with other Aging and Disability Resource Centers in the State of Wisconsin.

Given the annual cost of these positions at the top of the pay range ($261,181) and the cost of the annual contract ($373,750), it is fiscally prudent to bring this function in-house even when accounting for annual benefit cost increases of County Positions.

## RECOMMENDATION

To allow for more program oversight and the continuity of communication with other DRC staff and outside attorneys, the Department of Administrative Services, Fiscal Affairs recommends that the request to create 4.0 FTE Disability Benefits Specialist, effective February 21, 2010, be approved.

## FISCAL NOTE

Approval of the request to create 4.0 FTE Disability Benefits Specialist, effective February 21, 2010, will result in no fiscal impact to the County, as the costs of these positions will be paid for with the remaining funds of the contract.

Prepared by:
Antionette Thomas-Bailey
278-4250

John Ruggini
Assistant Fiscal and Budget Administrator

H:\BUDGET\DOCBDGT\FINANCE\MJAN\2011\MEMO'S, RESOLUTIONS, FISCAL NOTES\8000 DSD DISABILITY BEN SPEC POSITION STUDY.DOC

pc: Lee Holloway, Interim County Executive
Candace Richards, Interim-Director of Human Resources
Terrence Cooley, Chief of Staff, County Board
Jennifer Collins, County Board Fiscal and Budget Analyst
Rick Ceschin, County Board Fiscal and Budget Analyst
Geri Lyday, Interim Director, Department of Health and Human Services
Renee Booker, Interim Director, Department of Administrative Services

From the Committee on, Reporting on:

File No.

(ITEM NO. ) A resolution requesting to create 4.0 FTE Disability Benefits Specialist (PR 13) in the Disabilities Services Division of the Department of Health and Human Services (DHHS) effective February 21, 2011:

**A RESOLUTION**

WHEREAS, the Department of Health and Human Services request the creation of 4.0 FTE Disability Benefits Specialist (PR 13) for the Disabilities Resource Center; and

WHEREAS, the Disability Benefit Specialist would be responsible for providing information about private or public government benefits; providing technical assistance on how to access benefits and information regarding the responsibilities of the program participants; assist applicants with gathering the appropriate verifying data, both financial and non-financial; provide advice and assistance in preparing and filing complaints, grievances, and appeals at the local and state levels, and beyond; provide representation as appropriate for individuals with developmental and physical disabilities, substance use disorders or mental health issues as needed in administrative hearings or other grievance steps; consult with DBF program attorneys for consideration in representation in administrative and judicial proceedings; identify and document concerns of clients being served that have disabilities; ensure that quality services are provided to clients; and offer choices of what community services and resources will be provided, who will provide these services and how they will be provided; and

WHEREAS, the requested position actions are necessary to ensure the proper program oversight and continuity of communication with other DRC staff and outside attorneys; and

WHEREAS, the Department of Administrative Services, Fiscal Affairs recommends that the following request effective February 21, 2011, be approved: create 4.0 FTE Disability Benefits Specialist (PR 13); and

BE IT RESOLVED, that the following position actions are approved, for the Department of Health and Human Services effective February 21, 2011

| Action | Title | No. of Positions | Pay Range |
|---|---|---|---|
| Create | Disability Benefit Specialist | 4.0 | 13 |

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/7/10

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Request to create 4.0 FTE Disability Benefits Specialsit (PR 13)

**FISCAL EFFECT:**

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 172,106 | 240,4610 |
| | Revenue | 186,785 | 0 |
| | Net Cost | 14,679 | 240,461 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Approval of the creation of 4.0 FTE Disability Benefits Specialist for the Disabilities Resource Center (DRC) would allow the department to move forward with the filling of these positions.

B. The 2011 net estimated fiscal effect of the creation of the four Disability Benefits Specialists is $172,106. The total contract for Independent First to perform the Disability Benefits Specialist program function in 2011 is $373,750. A not to exceed contract in the amount of $186,785 was executed through the end of June 2011. The cost of these positions is completely offset by the remaining $186,785.

Althought the total costs of these positions in 2012 would be $239,711, there would be no fiscal impact as the cost of these positions would be included in the 2012 budget.

C. There would be no budgetary impact associated with the approval of this request as the funds are available in a different account. The department would need to perform a fund transfer to transfer the funds to the appropriate line item accounts.

D. The following fiscal note is based on the following assumptions: Salary at step one in pay range 13 ($16.2414 per hour), social security @ 7.65%, active health ($15,984), active pension (22.43%), and a start date of May 2, 2011.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By Antionette Thomas-Bailey

Authorized Signature

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

**COUNTY OF MILWAUKEE**
**DAS – Division of Human Resources**
INTER-OFFICE COMMUNICATION

DATE : January 19, 2011

TO : Committee on Personnel

FROM : Candace Richards, Interim Director of Human Resources

SUBJECT : **Creation Recommended by Finance Committee**

A review of the duties to be assigned to the new positions requested by the Department of Health and Human Services has resulted in the following recommendation:

| Org. Unit | Title Code | No. of Positions | Recommended Title | Pay Range | Min/Max of Pay Range |
|---|---|---|---|---|---|
| 8000 | TBD | 4 | Disability Benefits Specialist | 13 | $33,782 - $37, 908 |

**COUNTY OF MILWAUKEE**
**Behavioral Health Division Administration**
**INTER-OFFICE COMMUNICATION**

**DATE:** January 3, 2011

**TO:** Supervisor Michael Mayo, Chairman – Milwaukee Co. Board of Supervisors

**FROM:** Geri Lyday, Interim Director, Department of Health and Human Services

**SUBJECT: INFORMATIONAL REPORT FROM THE INTERIM DIRECTOR, DEPARTMENT OF HEALTH AND HUMAN SERVICES, REGARDING THE 2010 BEHAVIORAL HEALTH DIVISION CAPITAL BUDGET PROJECT AND ISSUES REGARDING THE RECENT STATEMENT OF DEFICIENCY**

## BACKGROUND

On June 3, 2010 BHD received a Statement of Deficiency (SOD) from the State of Wisconsin as a result of a recent State Centers for Medicaid and Medicare Services (CMS) survey. This was BHD's routine four-year survey that encompasses a comprehensive review of the physical plant and its operations. The majority of the citations BHD received were regarding the physical building. BHD was required to respond with an initial plan for corrective action by June 14, 2010 and an immediate corrective action on specified citations by June 25, 2010.

At the July 2010 meetings of the Committees on Health and Human Needs and the Finance and Audit, approved the expenditure authority for $1,825,890 in 2010 BHD Capital Funds to address all SOD related capital conditions by the final deadline of April 1, 2011. BHD has been providing monthly updates to the County Board since that time.

## DISCUSSION

The first requirement of the SOD was to respond to the Conditions, or immediate citations, listed below in Table A, by June 25, 2010. All Conditions were completed by BHD and reviewed by state surveyors during the week of June 28, 2010. At this time, BHD has no outstanding Conditions regarding the initial list for June 25, 2010. It was necessary for BHD to take immediate action to address the SOD citations requiring correction by the June 25, 2010 deadline. The risk of not demonstrating immediate and continuing efforts to respond to the citations would have resulted in sanctions by the State, with the possibility of losing Medicaid certification. Without such certification, the County would have lost significant revenue, similar to the recent occurrence at the State's mental health facility – Mendota Mental Health Institute. The Plan of Correction is a work-in-progress and the expectation by BHD and State surveyors is that continuous progress be made in correcting all cited conditions by April 1, 2011. The State

has at least five opportunities to review citations and conduct site visits/inspections before the final inspection April 1, 2011.

The following is a list of Conditions that were met by the initial June 25, 2010 deadline:

| **TABLE A** | |
|---|---|
| **Conditions/Citations** | **Status** |
| Maintain clear access to exits by removing storage | Completed |
| Remove various shelving | Completed |
| Clean and dust various office closets, storage spaces and ventilation grills | Completed |
| Flush floor and shower drains | Completed |
| Lock unused rooms and maintain log | Completed |
| Adjust waste storage per guidelines | Completed |
| Seal all holes, penetrations throughout BHD | Completed |
| Replace metal plate in Crisis | Completed |
| Replace tissue dispenser | Completed |
| Remove bed rails | Completed |
| Replace missing heat guards | Completed |
| Remove dust/lint in laundry room | Completed |
| Change various locks | Completed |
| Replace various dietary equipment | Completed |
| Replace insulation on some water pipes | Completed |
| Caulk various locations throughout BHD | Completed |
| General adjustments and fixes for doors including install of push/pull door releases, replacement of door hardware, removal of some doors, adjustments of door guides etc | Completed |
| Seal various walls for smoke barrier | Completed |
| Replace lighting in various closets/storage areas, replace aluminum plates and adjust other burnt out lighting | Completed |
| Remove storage from various areas and adjust to meet fire code | Completed |
| Replace damaged escutcheon sprinkler rings | Completed |
| Seal ceiling holes due to misaligned tiles | Completed |
| Electrical clearance issues | Completed |
| Replace damaged astragal | Completed |
| Adjust doors to have positive latches, repair self-closure mechanisms and change fire plan accordingly | Completed |
| Repair damaged floor areas in bathrooms | Completed |
| Replace gate in stairwell | Completed |
| Replace cover on heater | Completed |

| | |
|---|---|
| Replace refrigerator on CAIS | Completed |
| Replace door on fire hose container | Completed |

Due to the extremely short timeframe mandated by the State for responding to the Conditions, BHD Administration determined that applicable purchases and maintenance staff overtime were emergency costs that needed to be incurred immediately. This action was taken to ensure compliance with State regulations and avoid risk of decertification that could result in the loss of State Medicaid reimbursement to BHD. The cost estimate for year-to-date supplies/commodities and additional contract work (such as deep cleaning, moving vans, and dumpsters etc.) is $552,885 through December 15, 2010. The BHD maintenance overtime to date related to the SOD is $96,775. Additional Department of Transportation and Public Works (DTPW) skilled trades costs for labor and overtime is estimated at $210,368 YTD- bringing the total spent on corrective actions for SOD issues out of BHD operating funds to $860,028.

In addition to the immediate (conditional) items that have been completed, there are a number of citations requiring a longer timeframe for completion. These citations are displayed below and grouped as bond-eligible projects, Table B, and cash-financed projects, Table C. While some projects are complete and have final costs reported below, the cost estimates should be considered preliminary for projects that have yet to be completed, as plans are still being finalized and some bids have not yet been received. BHD continues to work with the Department of Administrative Services (DAS); the DTPW – Architectural, Engineering and Environmental Services (A&E); and Zimmerman Architectural Studios Inc, to obtain refined quotes. BHD is required to have all work, which addresses the citations completed by April 1, 2011 as documented in the SOD report.

**TABLE B**
***Bondable Items (based on information available December 27, 2010)***

| **Issue** | **Cost Estimate*** | **Due Date Per Plan of Correction** |
|---|---|---|
| Remove and replace Library Halon System | $35,000 | Completed on 10-25-10 |
| Door Replacement | $54,000 | Completed on 11-18-10 |
| Additional Sprinkler Heads | $13,750 | Completed on 9-30-10 |
| Construct 100,000 sq ft of seamless ceilings | $575,000 | April 1, 2011 |
| Repair 300 feet of foundation | $26,500 | Completed on 10-1-10 |
| Replace damaged window sills | $125,000 | Completed on 10-1-10 (BHD will complete other damaged sills in 2011) |
| Determine hazardous storage rooms and create smoke barriers | $324,000 | Completed on 11-1-10 (Additional work being done to prevent future citations) |
| Replace milk cooler and installation | $25,000 | April 1, 2011 – Equipment ordered in November 2010 |
| Dish Room, Tray Line Tiles and Laundry Repairs | $200,000** | April 1, 2011 |

| | | |
|---|---|---|
| Materials and labor (DTPW, BHD and Time and Materials Contractors) | $281,650 | On-going |
| Contingency (10%) | $165,990 | |
| **Total** | **$1,825,890** | |

**Items above represent initial quotes and have preliminarily been determined to be bond eligible. DAS- capital staff will continue to review and work with BHD staff to solidify actual costs and ensure all items are bond-eligible. If the scope of a project changes, it may be determined that cash financing needs to fund certain portions of the above listed projects. A 10% contingency has been included in the cost sub-total to account for any fluctuations that may occur as hard costs are obtained.*

***The Dish Room and Laundry facility repairs are a significant project within the SOD citations and are based on conceptual plan only. BHD is working on a plan and is considering consolidating space within the complex to streamline operations. This cost estimation will likely fluctuate based on the final plan and has been included in this request as a place holder to ensure all compliance costs were included in this request for County Board consideration.*

***TABLE C***
***Cash Items (based on information available December 27, 2010)***

| **Issue** | **Cost Estimate*** | **Time Frame** |
|---|---|---|
| Seal bathrooms to be water tight | $75,000 | March 1, 2011 |
| Replace sidewalks | $28,200 | Completed on 10-1-10 |
| Exit Lighting | $4,550 | Completed on 9-13-10 |
| Roof repair at Food Service Building and Hospital | Included in YTD purchases | Completed on 8-1-10 |
| Electrical Upgrades | Included in DTPW OT estimates and YTD purchases | Completed on 7-1-10 |
| Install Door Closers | Included in YTD purchases | Completed on 7-15-10 |
| Ventilation Addition | $53,250 | Completed on 12-1-10 |
| Medical Records Room fire walls and ventilation | $12,000 | March 1, 2011 |
| Materials and labor (DTPW, BHD and Time and Materials Contractors) | $38,144 (Preliminary estimate) | On-going |
| Contingency (10%) | $22,887 | |
| **Total** | **$234,031** | |

**All estimates are based on the best information available as of December 27, 2010 and are subject to change based on scope of the project and information gained from more detailed reviews. DAS staff will continue to review and work with BHD staff to solidify actual costs based on additional quotes. A 10% contingency has been included in the cost sub-total to account for any fluctuations that may occur as hard costs are obtained.*

Since the last report, BHD Operations and DAS have met to review all expenditures to determine what items (including staff time) are allowable under the capital budget. BHD is working with DAS to itemize each project for allowable costs for capital and cash funding streams. Once all the detail is complete, the DAS Capital Finance Manager will complete a fund

transfer to move costs from the BHD budget to the capital project. DAS and BHD hope to have this complete by the end of January 2011.

In addition, BHD has been working over the last several months for a solution to the issues in the SOD regarding the Dish Room, Tray Line and Laundry facilities. It has been determined by BHD, DAS and DTPW that the best approach is to change the use of the Dish room at BHD to avoid costly reconstruction and instead move food and tray line operations from the main BHD facility to the Food Service Building. This will require BHD to purchase some new equipment for food service and change some processes for food delivery but will also help streamline food service delivery and avoid significant construction costs within BHD. Currently, bids are being solicited and a new plan is being put together in conjunction with BHD, DTPW, DAS, A'viands and the State. BHD plans to return to the Board in the March cycle with final estimates for the change and any necessary fund transfers.

BHD has worked diligently to address immediate SOD Conditions and continues to move forward with the long-term projects to ensure all corrections are completed by the State deadline of April 1, 2011. The items included in Tables A, B, and C include all current citations noted in the SOD. BHD and DAS will provide the Board with informational reports as work progresses.

**RECOMMEDNATION**

This is an informational report. No action is necessary.

Respectfully Submitted:

Geri L. Lyday

Geri Lyday, Interim Director
Department of Health and Human Services

Cc: County Executive Lee Holloway
Renee Booker, DAS Director
Allison Rozek, Analyst – DAS
Jennifer Collins, Analyst – County Board
Jodi Mapp, Committee Clerk – County Board
Steve Cady, Analyst – County Board
Carol Mueller, Committee Clerk – County Board

**County Of Milwaukee**
Department of Family Care
Inter-Office Communication

Date: January 13, 2011
To: Michael Mayo, Chairman, Milwaukee County Board of Supervisors
From: Maria Ledger, Interim Executive Director, Department of Family Care
Subject: Position Authority for Fiscal Assistant II Position

The Department of Family Care is requesting position authority for a Fiscal Assistant II position, Class Code 00004041, Pay Range 04P in Org. unit 7993. During the 2011 budget process the Fiscal Assistant II position was funded but not created so the Department has the funding but not the position authority. The Department requires the authority to create the position for Fiscal Assistant II to serve as Representative Payee for Milwaukee County Department of Family Care members who are unable to manage their personal finances independently.

Thank you for consideration of this request.

Respectfully Submitted,

Maria Ledger
Interim Executive Director, Department of Family Care

cc Carol Mueller
Jodi Mapp

**-COUNTY OF MILWAUKEE-**
INTEROFFICE COMMUNICATION

DATE : January 12, 2011

TO : Supervisor Michael Mayo, Interim Chairman, Board of Supervisors

FROM : John Ruggini, Fiscal & Budget Administrator, DAS-Fiscal

SUBJECT : Request to create 1.0 FTE Fiscal Assistant II (TC 04041, PR 04P) in the Department of Family Care.

## REQUEST

The Department of Family Care is requesting the creation of 1.0 FTE Fiscal Assistant II (TC 04041, PR 04P) effective February 21, 2011.

## BACKGROUND/ANALYSIS

As part of the 2011 Budget, the Department of Family Care requested the creation of 1.0 FTE Fiscal Assistant II. However, this position was inadvertently funded but not created in the 2011 Adopted Budget, giving the department funding for the position without position authority.

This position will function as Representative Payee for members of the Department of Family Care who are unable to manage their personal finances independently. The primary responsibilities of this position include: paying bills for members who are unable to do this themselves; examining fiscal documents for payments; maintaining spreadsheets to include all payments received and how they are spent or saved; reviewing correspondence relating to the receipt and disbursements of funds; preparing written reports accounting for the use of funds; processing fiscal documents by assuming accuracy of data, resolving discrepancies, and preparing for payment; and submitting documentation to maintain or apply for Medicaid eligibility on an annual basis. Currently, this function is performed through a contract with agencies that provide Representative Payee services.

## RECOMMENDATION

To provide the department position authority, the Department of Administrative Services, Fiscal Affairs recommends that the request to create 1.0 FTE Fiscal Assistant II, effective February 21, 2010, be approved.

## FISCAL NOTE

Approval of the request to create 1.0 FTE Fiscal Assistant II (TC 04041, PR 04P) effective February 21, 2010, will result in no fiscal impact to the County, as the cost of this position was included in the 2011 Adopted Budget.

Prepared by:
Antionette Thomas-Bailey
278-4250

John Ruggini
Fiscal and Budget Administrator

pc: Lee Holloway, County Executive
Candace Richards, Director of Human Resources
Terrence Cooley, Chief of Staff, County Board
Jennifer Collins, County Board Fiscal and Budget Analyst
Rick Ceschin, County Board Fiscal and Budget Analyst
Geri Lyday, Director, Department of Health and Human Services
Renee Booker, Director, Department of Administrative Services

From the Committee on, Reporting on:

File No.

(ITEM NO. ) A resolution requesting the creation of 1.0 FTE Fiscal Assistant II (TC 04041, PR 04P) in the Department of Family Care effective February 21, 2011:

**A RESOLUTION**

WHEREAS, as part of the 2011 Budget, the Department of Family Care requested the creation of 1.0 FTE Fiscal Assistant II. However, when the budget was adopted there was an oversight and the position was funded and not created, giving the department funding for the position without position authority; and

WHEREAS, the Department of Family Care requests the creation of 1.0 FTE Fiscal Assistant II (TC 04041, PR 04P); and

WHEREAS, the primary responsibilities of the Fiscal Assistant II would include: paying bills for members who are unable to do this themselves; examining fiscal documents for payments; maintaining spreadsheets to include all payments received and how they are spent or saved; reviewing correspondence relating to the receipt and disbursements of funds; preparing written reports accounting for the use of funds; processing fiscal documents by assuming accuracy of data, resolving discrepancies, and preparing for payment; and submitting documentation to maintain or apply for Medicaid eligibility on an annual basis; and

WHEREAS, the requested position action is necessary to give the department position authority; and

WHEREAS, the Department of Administrative Services, Fiscal Affairs recommends that the following request effective February 21, 2011, be approved: create 1.0 FTE Fiscal Assistant II (Title Code 04041, PR 04P); and

BE IT RESOLVED, that the following position action is approved, for the Department of Family Care effective February 21, 2011

| Action | Title | No. of Positions | Pay Range |
|---|---|---|---|
| Create | Fiscal Assistant II | 1.0 | 04P |

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/13/10

Original Fiscal Note ☒

Substitute Fiscal Note ☒

**SUBJECT:** Request to create 1.0 FTE Fiscal Assistant II (PR 04P)

**FISCAL EFFECT:**

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Approval of the creation of 1.0 FTE Fiscal Assistant II for the Department of Family Care would give the department position authority for this position.

B. The 2011 net estimated fiscal effect of the creation of one Fiscal Assistant II is $43,124 This cost reflects salary at step five of pay range 04P, social security, active health ($15,984), active pension (22.43%), and a start date of May 2, 2011.

In 2012, the total annual cost of this position would be $60,082. There will be no budgetary impact in 2012 as the position will be included in the Department's budget.

C. There would be no budgetary impact associated with the approval of this request because the funding for this position is included in the 2011 Adopted Budget.

D. The following fiscal note is based on the following assumptions: Salary at step five in pay range 04P ($16.2364 per hour), social security @ 7.65%, active health ($15,984), active pension (22.43%), and a start date of May 2, 2011.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By Antionette Thomas-Bailey

Authorized Signature

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

**COUNTY OF MILWAUKEE**
**DAS – Division of Human Resources**
INTER-OFFICE COMMUNICATION

DATE : January 19, 2011

TO : Committee on Personnel

FROM : Candace Richards, Interim Director of Human Resources

SUBJECT : **Creation Recommended by Finance Committee**

A review of the duties to be assigned to the new position requested by the Department of Aging has resulted in the following recommendation:

| Org. Unit | Title Code | No. of Positions | Recommended Title | Pay Range | Min/Max of Pay Range |
|---|---|---|---|---|---|
| 7990 | 04041 | 1 | Fiscal Assistant 2 | 4P | $29,511 - $ 37,949 |

**MILWAUKEE COUNTY**
**DEPARTMENT OF FAMILY CARE**

**Inter-Office Communication**

Date: January 3, 2011
To: Finance and Audit Committee
Lee Holloway, Interim County Executive

From: Maria Ledger, Interim Executive Director.
Subject: Agency 7990 – Department of Family Care.
Revenue Deficit Report

As required under County Ordinance 56.02 this Inter-Office communication is to report that a revenue deficit greater than $75,000 in 2010 will occur in the major Revenue account in the Department of Family Care is as identified below:

| Revenue Account | Fund | Description | Budget Amount | Actual as of 09/30/2010 | Projected Amount | Budget Surplus (deficit) |
|---|---|---|---|---|---|---|
| 3726 | 002 | Care Mgmt Org Capitation | $236,918,727 | $208,876,466 | $230,907,829 | ($6,010,698) |

There are corresponding expense decreases to offset any adverse revenue impact from the above reduction in capitation revenue. The expense decreases are reflected in the submitted budget transfer to align Milwaukee County Department of Family Care Revenue and Expenses. The reason to decrease Care Management Organization Capitation revenue is due to changes in enrollment as a result of a competing MCO operating in Milwaukee County, capitation payments received from the Department of Health Services (DHS) for changes in member acuity, and changes in net capitation revenue received for the member cost share deductions. The budget transfer has a net impact of zero.

_____
Maria Ledger, Interim Executive Director
Department of Family Care.

CC: Carol Mueller
Steve Cady
Dept. of Administrative Services

# COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE : January 5, 2011

TO : Michael Mayo Sr., Chairman, County Board of Supervisors

FROM : Lisa Marks, Director, Department of Child Support Enforcement

SUBJECT : Authority to Pay Contract for Joxel Group LLC.

Policy

Section 56.30(9), of the Milwaukee County Ordinances, states that no work shall be performed by any professional service contractor until a written contract has been executed and signed by all appropriate officials.

Background

Joxel Group LLC, was contacted to provide designing and coordinating services needed to create a DVD for Milwaukee County Child Support payers incarcerated in the Wisconsin Prison System. DVDs will be distributed to facilities throughout Wisconsin to provide information to inmates with a Milwaukee County Child Support case. Verbal approval was received by all officials, but due to scheduling conflicts, signatures were not obtained before work began.

The video contains clips of incarcerated child support payers who have successfully managed their case in conjunction with the Milwaukee County Department of Child Support. Coordinating filming of those individuals was dependent on the scheduling of the Warden of their current facility. These clips are a key ingredient for an effective product.

Recommendation

The Department recommends that 56.30 (9) be waived and payment approved for the services performed by Joxel Group LLC.

Fiscal Note

Sufficient funds are available and were included in the 2010 budget for the $49,825 payment to Joxel Group LLC.

Lisa Marks
Director

cc: Lee Holloway, County Executive
Supervisor Willie Johnson Jr., Chairman, Judiciary Committee
Terrence Cooley, Chief of Staff
Renee Booker, Director, Department of Administrative Services
Rick Ceschin, Analyst, County Board
Linda Durham, Committee Clerk, County Board

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/11/2011

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Payment of Professional Service Contracts

**FISCAL EFFECT:**

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | | 0 |
| | Revenue | | |
| | Net Cost | | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The County Board is being requested to authorize, by resolution, the payment of an invoice for a professional service contract for Joxel Group LLC. In accordance with 56.30(9), the invoices are not being paid because contract work was performed prior to the contract being signed by all parties approved. The ordinance does allow for payment, if the board authorizes payment by resolution.

B. Approval of this resolution will authorize the department to pay for the contract work of $49,825 from 2010 available funds. This is a one-time cost for payment of the contract work.

C. There is no budgetary impact associated with this contract.

Department/Prepared By Lisa Jo Marks, Director

Authorized Signature

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

File No. -
(Journal, 2011)

A RESOLUTION

WHEREAS, Section 56.30(9) of the Milwaukee County Ordinances provides that no vendor shall begin work until all officials sign the executed contract; and

WHEREAS, the Department of Administrative Services is not permitted by Ordinance to exempt departments from Section 56.30(9) but is able to make payments following authorization of the Milwaukee County Board of Supervisors; and

WHEREAS, the Department of Child Support Enforcement needed to complete production of a bi-lingual - Spanish information DVD for Milwaukee County Child Support Payers incarcerated in the Wisconsin Prison System; and

WHEREAS, scheduling conflicts created a necessity to perform work; and

WHEREAS, work was performed by Joxel Group, LLC, prior to all officials signing the executed contract; and

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby authorize Child Support Enforcement and the Department of Administrative Service to pay invoice submitted by Joxel Group, LLC.

**Daniel J. Diliberti**
**Milwaukee County Treasurer**
901 N. 9th St. Rm. 102
Milwaukee, WI 53233

Inter-Office Memo

DATE: January 10, 2011

TO: Michael Mayo, Sr., County Board Chairman

FROM: Daniel J. Diliberti, Milwaukee County Treasurer

SUBJECT: Recommendation to piggyback onto the State Treasury Services (banking) contract.

In order to effectuate significant savings and cost avoidance, the Office of the Treasurer recommends that Milwaukee County piggyback onto the Wisconsin State Treasury Services (banking) contract by entering into a State Contract Participation Agreement.

I. Background:

On July 1, 2008, following an RFP process, the State of Wisconsin approved banking services contracts with US Bank through June 30, 2014. The State's banking contract leveraged a processing volume that exceeds 28 million payments per year in order to achieve the lowest possible fees. As part of this contract agreement, the State included a contract clause that gave local governments the opportunity to participate under the various State Banking Contracts and take advantage of the discounted pricing they receive from US Bank.

We are proposing herein to participate in the State contract for Treasury Management (banking) services in order to achieve an estimated $24,000/year savings over our current contract by taking advantage of the reduced banking service charges.

Albeit an incomplete listing at this time, we have identified various local governments that are already participating in the State banking contract for the very same reasons.

| | |
|---|---|
| Dane County | Milwaukee Metropolitan Sewerage District |
| City of Madison | Glendale River Hills School District |
| City of Franklin | Maple Dale Indian Hill School District |
| City of Muskego | |

II. Window of opportunity.

This is an opportune time to take action on this matter, since the County contract with US Bank is up for review in April 2011. This window of opportunity will allow us to make a change at this time to take advantage of the State Contract terms.

Milwaukee County already participates under the State's US Bank Merchant Services contract through action taken by the County Board last year (for an estimated savings of approximately $10,000 in credit card processing fees). No other banking firm was able to match the cost savings accrued from this Merchant Services contract.

III. Savings Accruals

A. Cost Savings: Taking part in the State Banking RFP and contract process will result in significant actual cost savings. The State of Wisconsin, through its RFP process that was open to all interested banking firms, was able to obtain optimal pricing by leveraging its banking services volume to obtain lower costs. Milwaukee County, with its lower volume of banking services, would not be able to attract as many bidders, nor be able to attract similar low-cost banking services generated by the State's high-volume banking transactions.

B. Reduced administrative costs: By including this participation clause in the State-wide RFP process, Milwaukee County - as well as other local governments around the state - will save on the administrative costs of duplicating the State RFP process in every locality - a process that would undoubtedly result in higher contract terms for stand-alone, lower-volume banking services contracts.

C. Reduced personnel costs: The award of the Wisconsin Banking Contract to US Bank (rather than another banking institution) was fortunate for Milwaukee County. Because of our existing contract with US Bank, participating in the State US Bank contract will provide continuity of service and avoid the disruptions that would otherwise be caused by a change in banks and the resulting requirement for retraining of fiscal staff in every county department to learn new on-line banking programs, equipment, processes, policies and procedures. At a time of county budget belt-tightening, increasing furlough days, and reduced staffing, piggybacking on to this cost-saving State contract will afford a seamless, no-cost contract transition for every county department already using US Banking services. The elimination of retraining in new software programs, combined with requirements to maintain uniform reporting and reconciliation of banking records, will benefit the county, which is constantly attempting to do more with less.

D. Continuity affords a reduction in costs of supplies and services: Continuing with the same banking services provider will also produce additional savings. The county pays for checks, deposit slips, and has imprinted the US Bank name/ address on much of the county's printed payment correspondence and computerized payment programs, on payment envelopes and lock boxes, on check books, and deposit bags used by all county departments. Any change in banking providers would result in the discarding of all materials and equipment that are proprietary to US Bank, as well as the purchasing of new supplies and equipment that meet the requirements of any new service provider.

E. Banking relationship: Currently, US Bank has a good working relationship with County departments. These contacts and relationships are beneficial to the resolution of problems, if and when they arise. A change in banking providers and personnel contacts would prove time consuming if and when unforeseen difficulties occur.

Given these significant savings in money, time and resources, it is recommended that approval be given for Milwaukee County to execute a State Contract Participation Agreement through 2014, along with a 5-year renewal option, contingent upon the recommendation of the County Treasurer and approval of the County Board.

Such action would afford Milwaukee County the opportunity to realize substantial savings, significant cost avoidance, and continuity of banking services for county departments.

_____

Daniel J. Diliberti
Milwaukee County Treasurer

# 0A RESOLUTION

Authorizing the Milwaukee County Treasurer to execute a State Contract Participation Agreement to enable Milwaukee County to piggyback onto the State Banking Services contract under the terms of which will benefit Milwaukee County, by recommending adoption of the following:

WHEREAS, The County Board file No.05-438 authorized the Request for Proposal (RFP) for Milwaukee County's banking services, which resulted in a 5-year contract award to US Bank; and,

WHEREAS, the State of Wisconsin, after an extensive RFP process, approved banking services contracts with US Bank through June 30, 2014. As part of this contract agreement, the State included a contract clause that gave other local governments the opportunity to participate under the State Banking Contracts and take advantage of the discounted pricing they receive from US Bank; and

WHEREAS, the State's banking contract leverages a processing volume that exceeds 28 million payments per year in order to achieve the lowest possible fees; participating in this State Contract would result in savings from reduced banking service charges for Milwaukee County estimated at $24,000/year; and,

WHEREAS, the recipient of the contract, US Bank, had the highest CRA (Community Reinvestment Act) rating. US Bank also has in place a supplier diversity program and a strategic sourcing effort to include MBE\DBE firms. US Bank also makes considerable community contributions in the areas of affordable housing, economic opportunity and public service; and,

WHEREAS, various other local governments are already participating in the State banking contract to take advantage of the savings available therein, including:

| | |
|---|---|
| Dane County | Milwaukee Metropolitan Sewerage District |
| City of Madison | Glendale River Hills School District |
| City of Franklin | Maple Dale Indian Hill School District |
| City of Muskego | ; and, |

WHEREAS, Milwaukee County already participates under the Merchant Services portion of the State's US Bank contract through action taken by the County Board last year (for an estimated savings of approximately $10,000 in credit card payment processing fees); and

WHEREAS, by entering into a State Contract Participation Agreement, savings would accrue to Milwaukee County in terms of considerable dollar savings, as well as time and benefits that will accrue from a no-cost seamless contract transition for county

departments during this period of county budget belt-tightening, increasing furlough days, and reduced staffing; and

WHEREAS, given these significant savings in money and resources, the County Treasurer recommends approval of the Wisconsin State Contract Participation Agreement for Milwaukee County Banking Services; now, therefore,

BE IT RESOLVED, that the Milwaukee County Treasurer is hereby authorized to execute a State Contract Participation Agreement to enable Milwaukee County to piggyback onto the State Banking Services contract and, if possible, include the option of an additional five year renewal contingent upon the recommendation of the County Treasurer and approval of the County Board.

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** 11-11-08

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Banking Services contract

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☒ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | -24,000 | -24,000 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |

**DESCRIPTION OF FISCAL EFFECT**

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

The County Board file No.05-438 authorized the Request for Proposal (RFP) process to solicit proposals for banking services. The US Bank proposals were rated first for both deposit and disbursement banking services and were recommended for selection. As a result, a five-year contract with US BANK for deposit and disbursement banking services was approved by the County Board and commenced on April 1, 2006.

This resolution would authorize the continuance of US Bank Treasury Services with Milwaukee County by entering into a Wisconsin State Contract Participation Agreement with US Bank through June 30, 2014 - with the option of another five year renewal contingent upon the recommendation of the County Treasurer and approval of the County Board.

I. Fiscal Summary:

This Contract Participation Agreement would reduce Milwaukee County Banking Services fees by approximately $24,000/year - totaling approximatlely $100,000 in savings in the nearly four-year term of the contract. (US Bank has agreed to make the terms of this participation agreement retroactive to the first of this year.)

This fiscal note was prepared by the Milwaukee County Treasurer.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

DD FISCAL NOTE for Banking services 2011

Department/Prepared By Daniel J. Diliberti, Milwaukee County Treasurer

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

# Enterprise Banking Services (Available to Local Governments)

**Enterprise Banking Services Contract (Available to Local Governments)**

**LOCAL GOVERNMENTS** - The State's banking contract leverages a processing volume that exceeds 28 million paym fees. Credit/debit card transactions are processed for $.05/transaction + the nationally-published interchange fees. Tl (including school districts and technical colleges) within the State of Wisconsin. Depending on the services needed, th Participation Agreements below. Please contact one of the following U.S. Bank representatives with any questions:

Credit/Debit Card Processing: Lynn Dederich, 414-747-9465, lynn.dederich@elavon.com

All other services: Teresa McBride, 414-765-4419, teresa.mcbride@usbank.com

Description of Contract Services

The State Controllers Office administers the Enterprise Banking Services Contract. The contract provides banking serv state moneys. The major service areas covered under the contract are:

- Depository and Check Presentment;
- Disbursement;
- Paper Lockbox;
- Electronic Lockbox (online acceptance of credit/debit card and e-check payments);
- Credit and debit card processing;
- Electronic Funds Transfer (includes ACH and Wire Transfer);
- Information Reporting.

Current Provider and Contract Term

The current Enterprise Banking Services provider is U.S. Bank. The current contract is in effect from July 1, 2008 throu

Contract Pricing

A current price list is available in the .pdf file below. The prices are fixed for the duration of the contract.

Contract Documents

The following documents comprise the Enteprise Banking Services Contract:

- **RFP**
- **Main Contract** and Appendices:
- **Appendix 1- Privacy and Confidential Information**
- **Appendix 2-Electronic Payment Gateway Services**
- Appendix 3 - Additional Cost Items (included in current contract pricing below)
- **Appendix 4-U.S. Bank Treasury Mgmt Svcs Terms and Conditions**
- **Appendix 4-Elavon Terms of Service**
- **Appendix 4-Elavon Bill Pay Addendum**

- **Appendix 4-Elavon Debit Addendum**
- **Appendix 4-Elavon Participation Agreement**
- **Appendix 4-Elavon Merchant Processing Fees**
- Appendix 4-Elavon Merchant Equipment Price List (contact the State Controller's Office)
- **Appendix 4-Current Interchange Rates-October 2009**
- **Appendix 5- Participation Agreement for Local Governments**
- **Contract Pricing**

Performance/Contract Administrators

The largest user state agencies meet quarterly with the Contractor to discuss performance issues. The Contra
should contact one of the following Contract Administrators with questions, or to report performance problems

| Name / Agency | Responsibility | Phone |
|---|---|---|
| Colleen Cox<br>colleen.cox@wisconsin.gov<br>Department of Administration-SCO | Day-to-day Treasury Operational Issues | (608) 266-3407 |
| Jeff Anderson<br>**jeff.anderson@wisconsin.gov**<br>Department of Administration-SCO | Performance management | (608) 266-8347 |

Main Contract

**State of Wisconsin**
**2008 Enterprise Banking Services Contract**

This 2008 Enterprise Banking Services Contract (the "Contract") is made and entered into as of the 1st day of July, 2008, by and among the State of Wisconsin Depository Selection Board (the "Board"), and U.S. Bank National Association (the "Contractor").

Whereas, the Board, on behalf of the State of Wisconsin and its departments and agencies (collectively, the "State"), has requested official sealed proposals pursuant to Request for Proposal for Enterprise Banking Services #27889-CE (the "RFP"); and

Whereas the Contractor, on behalf of itself and its wholly owned subsidiary, Elavon, Inc., has submitted its proposal dated November 7, 2007 (the "Proposal"); and

Whereas, the Board has determined that the Contractor's Proposal received the highest score from the evaluation committee,

Now, therefore, in consideration of the mutual covenants contained herein, the parties mutually agree as follows:

**A.** **Incorporation by Reference.** The RFP (including all appendices, exhibits and addendums), the Proposal, and the U.S. Bank Additional Terms and Conditions (consisting of (i) U.S. Bank Treasury Management Terms and Conditions, (ii) Elavon's Terms of Service, (iii) Elavon's Bill Payment Addendum to the Terms of Service, and (iii) Elavon's PIN-Based, Online Debit Card Addendum to the Terms of Service) are hereby incorporated herein by reference as if they were set forth in full herein and are hereby made a part of this Contract. In the event of any conflict among the provisions of the Proposal as accepted by the Board, the RFP, the U.S. Bank Additional Terms and Conditions and this Contract, the provisions of this Contract govern those of the RFP, the Proposal as accepted by the Board and the U.S. Bank Additional Terms and Conditions; the provisions of the U.S. Bank Additional Terms and Conditions control the Proposal and the RFP, and the provisions of the Proposal as accepted by the Board govern those of the RFP. The enterprise banking services described in the RFP and the Proposal are hereafter referred to as the "Services" and includes the Merchant Acquiring and Card Transaction Processing Services described in the RFP and the Proposal, which are hereafter referred to as the "Merchant Services."

**B.** **Term.** This Contract shall commence on July 1, 2008, and shall continue, unless terminated sooner by the Board or the Contractor, until June 30, 2014. In addition, the Depository Selection Board may, at its discretion, extend the Contract for two (2) additional two (2) year terms until June 30, 2016, and June 30, 2018, respectively.

**C.** **Termination.** The Board may terminate this Contract at any time in its sole discretion by delivering at least 180 days written notice to the Contractor. Upon termination, the Board's liability shall be limited to the pro rata cost of the services performed as of the date of termination. For Merchant Services, the Board remains liable for all chargebacks, returns, adjustments, fees, fines and penalties occurring post-termination related to Transactions processed prior to termination. The Contractor may terminate this Contract at any time in its sole discretion by delivering at least 24 months written notice to the Board except that for Merchant Services, the Contractor may terminate such Merchant Services as set forth in Elavon's Terms of Service. Upon such termination, the Contractor shall refund to the Board, within 30 days of such termination, all payments made hereunder by the Board to the Contractor for work not completed or not accepted by the Board.

**D.** **Cancellation.** The Board reserves the right to cancel this Contract in whole or in part without penalty due to nonappropriation of funds by the State or for failure of the Contractor to comply with the terms, conditions, and specifications of this Contract (subject to the progressive contract administration actions outlined in Section 13.3 of the RFP). For Merchant Services, the Board may

cancel the Merchant Services portion of the Contract in accordance with Section B(15)(b) of Elavon's Terms of Service.

E. **Subletting or Assignment of Contract, Intermediaries.** The State must approve in writing, any subcontractor that will perform services under this Contract. In addition, the Contractor shall remove a subcontractor from performing services under this Contract if the subcontractor has been placed on the ineligible list for state contracts per sec. 16.765 (8) Wis. Stats. The Contractor shall promptly notify the Contract Administrators in the event it intends to change the intermediaries, subcontractors or payment systems used in providing the services under this Contract. In no event will any subcontractor of Contractor, as of the date hereof and in the future, be knowingly debarred from providing services to the Board. Notwithstanding anything to the contrary herein, this section E shall not apply to subcontractors, if any, which Contractor may have already contracted with to provide certain operational aspects of banking services or Merchant Services to all its customers, nor does it apply to those Merchant Services provided by Contractor's wholly-owned subsidiary, Elavon, Inc. The Contractor and the State shall determine a mutually acceptable lead-time that is sufficient for the State to complete any work necessary to implement the change. Contractor may provide any Service using any payment system or intermediary it reasonably selects. The Contractor's performance of Services is subject to the rules and regulations of any such system or organization. The State shall comply with all laws, rules and regulations in connection with said Services. The State may choose Services to which the rules of the National Automated Clearing House Association (NACHA) are applicable. The State agrees to be bound by such rules, and agrees that no entries which violate United States law may be initiated.

F. **Additional Services and Pricing.** The Contractor shall not charge for services not identified in the Cost Proposal Worksheet provided in response to Section 12.2 of the RFP, and the additional cost items listed in Appendix 3 of this Contract. The Board reserves the right to negotiate with the Contractor reasonable fees for services that did not exist at the time of the awarding of the Contract. Upon failure to arrive at a negotiated fee schedule for these services that is satisfactory to both parties, the State may, at its option, contract for them separately.

G. **Service Quality.** The State shall continually monitor the quality of the Services delivered under this Contract. State agencies shall be instructed to report all service delivery problems to the Contract Administrator. In addition, the Contractor shall immediately report service delivery problems, including delays in lockbox processing, to the Contract Administrators and to the effected state agencies. The State shall promptly notify the Contractor in writing of any error in connection with any Service and any discrepancies between any records maintained by the State and any notice the State receives from the Contractor with respect to any Service, and shall provide the Contractor with any information it may reasonably request in connection therewith.

H. **Visits to the Contractor.** The Board or any one or more of the persons who serve as its staff or advise it shall have the right to, upon 24 hours advance notice, visit the Contractor at any time to observe and inspect the operations in providing service under this Contract. With respect to Merchant Services, any visits to Contractor must occur within normal business hours, with ten days advance written notice, at the Board's expense, and in compliance with Contractor's security procedures.

I. **Legislative Audit Bureau or Outside Auditors.** The Contractor shall cooperate with and, upon 24 hours advance notice, make space available for auditors from the Wisconsin Legislative Audit Bureau, federal agencies or any outside auditors employed by the Board. For Merchant Services, Contractor will, with at least ten days prior written notice, at the Board's expense, and in compliance with Contractor's security procedures, supply the Board with records and information pertaining to Transactions processed under the Contract.

J. **Computer Programs and Other Software.** All computer programs and other software which are developed by the Contractor solely for the operations contemplated under this Contract shall belong to and upon request shall be delivered both in written and electronic form to the State 24 months prior to the termination of this Contract (except for Merchant Services, as no computer programs or software will be developed solely for use by the State). The Contractor shall provide to the State upon

request all lockbox procedures and related documentation. If the Contractor is not awarded the next Enterprise Banking Services Contract, it shall reasonably assist the State and the successor throughout the conversion process. If any Service requires equipment or software to be operated by the State, the provision of the Service by Contractor shall be conditional on the proper use and maintenance of such equipment or software by the State. If the Contractor supplies equipment or software (other than software developed solely for the State), the Contractor shall remain the owner of such equipment or software, and the State shall insure it, use it solely in the manner specified by the Contractor and in connection with the relevant Service, not remove or modify any name or identifying mark on it, and return it to the Contractor upon termination of the Service.

K. **Contract Administration.** The Wisconsin Department of Administration - State Controller's Office shall oversee the contract administration for day to day operational issues and overall performance. The initial Contract Administrator for the Wisconsin Department of Administration - State Controller's Office shall be Jeff Anderson, Asset Management Supervisor. The initial Contract Administrator for the Contractor shall be James Spredemann, Vice President and Relationship Manager. The Contract Administrator for Merchant Services issues will be Janet Swanson, Client Executive.

L. **Indemnification and Hold Harmless.** The Contractor shall indemnify and hold harmless the State and all of its officers, agents, and employees from all suits, actions, or claims of any character brought for or on account of any injuries received by any person or property resulting from the negligent or willful operations of the Contractor or of any of its employees or agents in performing work under this Contract, except to the extent such suit, action or claim is caused by the negligence or willful misconduct of the State, its officers, employees or agents. For Merchant Services, Contractor's indemnification is limited to those suits, actions or claims resulting from the negligent or willful operations of the Contractor.

M. **Standard of Care, Limitation of Liability.** Contractor shall exercise ordinary care in providing Services and will be responsible for any loss sustained by the State only to the extent such loss is caused by Contractor's negligence or misconduct. The Contractor and the State acknowledge that damages may be incurred by the State due to nonperformance of Contract specifications. In no event shall the Contractor be responsible for any liability, loss or damage resulting from any delay in or failure of performance which is caused by any act of God or other catastrophe beyond the reasonable control of the Contractor. Notwithstanding the foregoing, with respect to Merchant Services, Contractor will not be responsible for any alleged damage due to additional costs to procure alternate Merchant Services, and further the provisions of Section B(8)(c) of Elavon's Terms of Service apply.

N. **Security Procedures and Communications.** Commercially reasonable procedures, including the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, tokens (including SecurID® Tokens) and other security devices, systems and software (the "Security Procedures"), designed to verify the origination (but not errors in transmission or content) of instructions, orders and other communications (each, a "Communication") sent by the Contractor and the State may be used in connection with Services. Contractor must provide commercially reasonable security measures. The Contractor shall not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication where the Contractor reasonably doubts its authorization, contents, origination or compliance with the Security Procedures. The Contractor shall have no duty to discover, and shall not be liable for, errors or omissions by the State. If Contractor complies with the Security Procedures in respect of a Communication, Contractor shall be entitled to act on that Communication and shall not be obligated to verify the content of such Communication, establish the identity of the person giving it, or await any confirmation thereof, and Contractor shall not be liable for acting on, any Communication sent in the name of State. Contractor reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assuming by State of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, token or similar security device, State shall not disclose such security device except to employees or agents authorized to act for State in connection with Services to the extent allowed by law. State shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such Security devices, and shall immediately notify

Contractor if the confidentiality or integrity of any such security device is breached or threatened. The State shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of the State's negligence or deliberate acts or otherwise, Contractor shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any security devices by the State.

O. **Severability and Headings**. If any provision of this Contract shall be found to be in violation of law, such provisions shall be considered to be a separate part of this Contract and shall be considered deleted, and the remainder of this Contract shall remain in full force and effect during the entire term of this Contract. Headings in this Contract are not to be considered a part of this Contract but are placed herein only for the convenience of the reader.

P. **Code of Ethics**. The Contractor shall not engage directly or indirectly in any financial or other transaction with any state official or employee which would violate the Wisconsin Code of Ethics for Public Officials and Employees, as set forth in Subchapter III of Chapter 19 of the Wisconsin Statutes, or Chapter ER-MRS 24 of the Wisconsin Administrative Code. The Contractor shall not offer any state officers or employees access to luxury boxes, corporate tents, special seating at sporting, concert or other entertainment events, or any other thing of value.

Q. **Dispute Resolution**. In the event that Contractor fails to provide the Services in material accordance with the Contract, the following escalation procedures shall be followed:

1. Contractor shall be immediately informed of the problem and shall contact the Board representative via telephone no later than five (5) business days after notification of the problem to discuss the resolution of the matter in dispute; and

2. If the parties cannot arrive at a mutually satisfactory solution within ten (10) business days after expiration of the notice provided above, the Board representative shall contact the next level executive of Contractor, stating that the dispute has still not been resolved and requesting a plan for the resolution of the problem. Further the Board representative may request a meeting at the Board's offices between the Board representative and such next level executive of Contractor in five (5) business day(s) from receipt of such request to resolve the problem.

**Appendix 1:** **Privacy and Confidential Information**

**Appendix 2:** **Electronic Payment Gateway Services**

**Appendix 3:** **Additional Cost Items**

**Appendix 4:** **U.S. Bank Additional Terms and Conditions**
U.S. Bank Treasury Management Terms and Conditions
Elavon Terms of Service
Elavon Bill Payment Addendum to the Terms of Service
Elavon Pin-Based, Online Debit Card Addendum to the Terms of Service

**Appendix 5:** **Participation Agreement for Local Governments**

In witness whereof, the parties have caused this Contract to be duly executed, intending to be bound thereby.

Accepted:

**State of Wisconsin Depository Selection Board**

By: _____
Michael L. Morgan, Secretary
Department of Administration

By: _____
Roger M. Ervin, Secretary
Department of Revenue

By: _____
Dawn Marie Sass, State Treasurer
Office of the State Treasurer

**U.S. Bank National Association**

By: _____

Title: Vice President

Attest: _____

Title: Vice President

# State of Wisconsin
# Enterprise Banking Services Contract
# Appendix 2 – Electronic Payment Gateway Service

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## 1.0 GENERAL OVERVIEW OF SERVICES

The Contractor shall provide services related to the processing of incoming electronic payments (hereafter referred to as "Electronic Payment Gateway Services"). The services to be provided are described in this contract appendix. The Contractor shall provide a gateway system that accepts credit card, debit card, pin-less debit card and Automated Clearing House (ACH) Electronic Payment Gateway Services for payments made through the Internet and through Interactive Voice Response (IVR).

## 2.0 TECHNICAL MODEL FOR INTERNET PAYMENTS

**Definitions**

Authentication - the process by which a web user submits identifying data (e.g. userID and password) and by which that data is corroborated against pre-existing, verified data.

Authorization

- For ACH payments: the process by which the Payer agrees to the Biller's terms and conditions to allow payments to be withdrawn from a Payer's account.

- For credit/debit card payments: the process by which the available card balance is compared to the payment amount. If the card balance is sufficient, a "hold" is placed upon the Payer's card balance for the amount of the payment.

Biller – A Wisconsin state agency or local government.

Payer - A customer of the Biller's application that chooses to enter into a payment transaction.

Real-time - the quality that a process occurs synchronously and on-demand as opposed to a process occurring some time after the "demand", or request, when other conditions traditionally must be met, such as in "batch" processing.

Registration - the process by which a web user creates a "record" or collection of information that contains payment account data such as credit card or checking numbers.

**Communication Protocols**

Payer to Contractor
Communication of data between the Payer and the Contractor must be supported over https, strongly encrypted.

Biller to Contractor
The Contractor shall support the following file transfer protocols:

- sftp (secure ftp) via SSH;
- download via https on the administration site.

The Contractor shall support strongly-encrypted https for inbound and outbound communications.

The communication protocols shall apply whether the Contractor initiates contact with the Biller or vice versa. The protocol support must be configurable at the level of the Biller application. Some applications may require simultaneous support of multiple protocols.

The Contractor shall provide the following technical model for Internet Receipts:

### 2.1 Electronic Payment Gateway Technical Model

The Contractor shall provide a technical model where the Biller hosts the storefront pages and the Contractor hosts the payment page(s). The technical steps in this model are as follows:

1) Payer may be authenticated at the Biller's Website;
2) Payer enters appropriate information on Biller-hosted storefront pages in preparation for making a payment attempt;
3) Biller responds to Payer with a page containing session variables (e.g. invoice/order #, Biller ID, etc.) that may be transmitted by Payer to Contractor;
4) Payer requests the Contractor-hosted payment page(s), transmitting the session variables in the request. If this is the Payer's first payment attempt at the Contractor's Electronic Payments Website, the Payer may be required to provide registration data and select a User Name and password. This registration requirement must be configurable at the level of the Biller application.
5) The Payer shall also have the option to enter their User Name and password if they have registered previously;
6) Once the Payer's credit/debit card or bank account information has been entered, it shall be passed to the Nova Network for authorization or the bank RTN shall be validated;
7) Authorization/RTN results are received by the Contractor;
8) Payer is presented with a confirmation number or a transaction failure message. Contractor also presents access (links and/or buttons), as necessary, back to Biller's site. The access is provided by the EXIT button on the pages that directs the Payer to the Biller specified URL.
9) The Biller may elect to receive Real Time Payment Confirmation (RTPC) or Real Time Nonpayment Notification (RTNN) messages. If the payment is confirmed, an RTPC message shall be passed from the Contractor to the Biller's application or database in real-time. If the payment is not confirmed, a RTNN message shall be passed from the Contractor to the Biller's application or database in real-time. RTPC and RTNN messages will be sent via http or https in XML or URL encoded formats.

## 3.0 FUNCTIONAL AND TECHNICAL REQUIREMENTS FOR CREDIT/DEBIT CARD PAYMENTS RECEIVED THROUGH THE INTERNET

### 3.1 Credit/debit card payment pages

The Contractor shall provide a set of standard payment page templates for registration, authorization, payment scheduling and confirmation. The Biller shall be able to place customized text messages on the payment pages and shall be able to include the State's e-payment top banner on each page. Real-time communications shall be used for authentication, enrollment, authorization, payment scheduling and confirmation of each transaction. All payment screens must provide a URL link that shall allow the Payer to view the Biller's privacy policy. The Contractor-hosted credit/debit card payment pages shall accept data from the Biller's Web application. The Contractor shall allow the Biller to push up to 10 custom data elements to the Epayment Gateway System through Session Transfer Variables and XML. Session Transfer Variables shall be passed in an encrypted https POST method from the Biller Website to the Contractor's payment site. The Biller shall have the option of displaying all or none of the custom data elements on the payment pages.

The Contractor's credit/debit card payment pages shall collect the appropriate information from the Payer to create the authorization request to NOVA. The Biller may choose whether to invoke Address Verification Service (AVS) or Card Verification

Data (CVD), where data entry for zip code and the CVD digits shall appear on the page.

### 3.2 Payer authentication

The Biller shall have the option to pass any Payer authentication information collected by the Biller to the Contractor's Electronic Payment Gateway Service through a Session Transfer Variable or XML along with the payment amount and due date.

### 3.3 Initiate authorization request into the NOVA Network

After collecting the necessary payment information, an authorization request shall be sent to NOVA. Authorization request or failure with the appropriate failure code shall be received back from NOVA.

### 3.4 Real-time return of payment results to Biller Web application

The Contractor shall return the confirmation data below to the Biller. The Biller shall have the option to receive the authorization results through a real-time XML or URL-encoded file upon the event of the Payer clicking the confirm button for the payment. At a minimum, the following data shall be included in the file:

- Transaction confirmation id
- Biller product code
- Payment amount
- Convenience fee
- Payment effective date
- Amount due
- Due date
- Transaction mode (sent, return, refund)
- Any product parameters sent in the session transfer or collected from the Payer

### 3.5 Processing of special transactions

Billers shall be able to manually enter credit and debit card authorization requests for orders received by mail, telephone, or fax through an Administrative Site. Billers shall be responsible for authenticating those Payers who call, mail or fax, and for safe-storing the documentation to support the authorization of payments.

### 3.6 Payer confirmation screens/e-mail

The Payer shall be presented with detailed payment information to be verified before processing the payment. Only valid payments shall be presented for verification (the Bank RTN numbers have been successfully checked or credit/debit card numbers have been successfully authorized). The Payer may choose to receive a confirmation e-mail. Upon clicking the Confirm button, Payers shall be presented a printable confirmation page that shall include a confirmation number.

The Payer confirmation screens shall be customizable for each application to allow the display of product parameter data entered by the payer or passed in the session transfer. Any of the data elements interfaced under Section 3.1 may be included on the confirmation page. In addition, a customizable, 500-character instruction field shall be available near the top of the confirmation page. The field shall be customizable at the application level to include additional Payer instructions.

### 3.7 Response time

The Contractor shall release a payment success or failure response from its Web server within an average of 3 seconds from the time the payment authorization request is received by the Contractor to the time the response is released by the contractor (excluding delays caused by NOVA). In the event the Contractor's server complex is unable to successfully support this response time, the Contractor shall be responsible for re-engineering and upgrading its server complex to meet the standard.

**3.8 Duplicate payments and payment statuses**

The Contractor shall provide safeguards that prevent duplicate payments from occurring. Clicking the "Back" or "Submit" buttons inappropriately and other similar scenarios that might produce a duplicate payment shall be eliminated. The Contractor shall track all payments that are initiated but the authorization is denied, along with the reason code.

**3.9 Deposit of settled transaction amount to Biller's bank account**

For Visa, MasterCard and Discover transactions authorized no later than 1:00 a.m. C.T., the Contractor shall provide settlement to the Biller such that the proceeds from the charges and credits are deposited through the Automated Clearing House into the Biller's bank account that morning, if it is a business day, or the next business morning if it is a weekend or holiday.

**3.10 Daily Remittance File**

No later than 8:00 a.m. CT. the following business day, the Contractor shall make a remittance file available to the Biller. The remittance file shall contain a listing of the transactions that are settling to the Biller's bank account that day.

**3.11 E-mail confirmation**

If a Payer requested a confirmation via e-mail message or has entered an e-mail address as a registered Payer, the Contractor shall send a confirmation an e-mail message to the Payer within 2 minutes of the completion of the payment transaction. The email shall reference the name of the Biller application, the confirmation number and other product parameters as determined by the Biller. In addition, an e-mail message shall be sent to the Payer if the payment is subsequently returned for any reason.

**3.11 Supported Internet Browsers**

The Contractor's Electronic Receipting Service shall support and test against a range of Internet Browsers. At contract execution, the following browser versions are supported for both Windows and Macintosh Operating Systems:

- Microsoft Internet Explorer (version 5.0 or higher)
- Mozilla Firefox (version 1.0 or higher) (becoming available in late 2008)

On at least a semi-annual basis, the Contractor will test new browser versions of Internet Explorer and Mozilla Firefox. The Contractor will repair the application to the best of its ability, retest and migrate the modified code to the production platform. Upon the conclusion of this test, the Contractor shall notify the State Contract Administrator in the event it can not support any new versions of these browsers.

**3.12 Compliance with credit/debit card operating rules**

The Contractor shall, at its sole expense, perform the necessary maintenance and upgrades to ensure that the Electronic Payment Gateway Services are compliant with all credit/debit card operating rules.

## 4.0 FUNCTIONAL AND TECHNICAL REQUIREMENTS FOR AUTOMATED CLEARING HOUSE (ACH) PAYMENTS RECEIVED THROUGH THE INTERNET (E-CHECKS)

**4.1 E-Check payment pages**

The Contractor shall provide a set of standard payment page templates for registration, authorization, payment scheduling and confirmation. The Biller shall be able to place customized text messages on the payment pages and shall be able to include the State's e-payment top banner on each page. Real-time communications

shall be used for authentication, enrollment, authorization, payment scheduling and confirmation of each transaction. All payment screens must provide a URL link that shall allow the Payer to view the Biller's privacy policy. The Contractor-hosted credit/debit card payment pages shall accept data from the Biller's Web application. The Contractor shall allow the Biller to push up to 10 custom data elements to the Electronic Payment Gateway System through Session Transfer Variables and XML. Session Transfer Variables shall be passed in an encrypted https POST method from the Biller Website to the Contractor's payment site. The Biller shall have the option of displaying all or none of the custom data elements on the payment pages.

Once the required payment information has been entered, NACHA regulations require the Payer to accept the terms and conditions including authorization of the payment transaction via the ACH network. Once the terms and conditions are accepted, the Payer is taken to the "Payment Verification" page where they shall be required to confirm the payment information prior to processing.

The Payer also has the opportunity to cancel the payment prior to processing, lessening the risk of payment errors. If the Payer wishes to cancel the payment, he or she shall be able to do so by selecting the cancel payment button. If the Payer elects to cancel the payment, the Main Menu is displayed.

If a Payer attempts to make a payment and the RTN comes back invalid, the Payer is transferred to the "Make a Payment" page where an error message is displayed indicating that the correct bank account information must be entered.

**4.2 Payment instructions**

The Contractor must allow the following options for payment instructions (options shall be configurable at the product level):

- Accept the payment amount from the Biller-hosted web application;
- Allow the Payer to specify the amount and date of the payment;
- Allow the Payer to edit scheduled payments up until one business day before the settlement date;
- Allow the Payer to make one payment for multiple bills (assumes that when and if the payment amounts are passed to the Contractor from the Biller's website through a session variable, each will contain a unique identifier).

**4.3 Non-recurring payments**

The Contractor must support user authorization of online, non-recurring payments by requiring the authenticated Payer to accept the online Terms and Conditions. Authorization shall be displayed for the Payer during payment initiation and the Payer must authorize the transaction by clicking the Accept button before a payment can be processed.

**4.4 Recurring payments**

The Contractor must support user authorization of online recurring payments by requiring the authenticated Payer to accept the online Terms and Conditions. Authorization shall be displayed for the Payer during payment initiation and the Payer must authorize the transaction by clicking the Accept button before a payment can be processed.

**4.5 Daily processing cut-off time and settlement**

All ACH payments initiated by the Payer by 8:00 p.m. Central Time shall be credited to the Biller's bank account between 5:00 a.m. – 9:00 a.m. the next business morning and shall be considered collected funds at that time. Debit transactions shall be posted at the end of the business day and shall also affect the collected balance for that day. Any debits received throughout the day and credits received after the 9:00

a.m. window are reported to the Contractor's Information Reporting system for intra-day reporting and to wire transfer for daylight overdraft monitoring but post at end of day.

The Contractor must issue a warning message to the Payer if the Payer attempts to schedule a payment for a settlement date that is past the bill due date, or on weekends, federal, or state holidays. This assumes the Payer has elected to allow late payments.

**4.6 ACH record formats**

The Contractor must create ACH files in either the CCD format or the WEB Standard Entry Class (SEC) code, depending on the entity making the payment.

The Contractor shall provide the following additional file formats:

- NACHA PPD
- TEL

**4.7 Bank Returns and ACH Rejects**

The Contractor shall provide services to automatically redeposit, one time, all transactions returned for insufficient or uncollected funds. A report of all re-deposited transactions shall be available through the Contractor's information reporting services, data transmission, fax or mail. The transaction shall be posted to the Biller's settlement account only if it is returned a second time.

The Contractor shall help Billers handle returned items. ACH return items are matched on a combination of the trace number, receiving financial institution routing/transit number, credit versus debit trancode, dollar amount and account number. If one of these fields does not match, the Contractor's return item reporting shall provide the return as received and the originated information that differs from the return. Any unmatched returns shall be reviewed and settled to the Biller's settlement account. The Contractor shall provide a report of all unresolved returns.

To facilitate the matching process, originated transactions shall automatically be kept on file for ten days following the effective date.

**4.8 Fraudulent transaction detection methods**

The Payer shall be authenticated at the Contractor's Website. The Payer must enter their Payer Authenticator to proceed. If it does not match, they shall receive an error message. Once a Payer registers, on subsequent visits, the Payer Authentication sent during the session transfer is verified against the Payer Authentication saved in Payer's registration.

The Contractor shall provide the ability for the Biller to regularly transmit authentication data (i.e. User ID's and Passwords) for loading into the Electronic Payment Gateway System, so that Payer's may be automatically logged in.

**4.9 Validating a Payer's account number structure and routing numbers**

The Contractor shall verify the Payer's routing number at the time it is entered into the payment transaction. The routing numbers shall be verified by a mod 10 check and Thompson check. The Contractor shall also perform a calculation on the routing transit number to validate the check digit. As an optional feature, the account number can be scrubbed against a "bad check" database through eFunds ClickCheck or a similar product utilized by the Contractor.

**4.10 Daily Remittance File**

No later than 7:00 a.m. CT. the following business day, the Contractor shall make a remittance file available to the Biller in .csv and/or .xml format. The remittance file

shall contain a listing of the transactions that are settling to the Biller's bank account that day.

All returns shall be integrated into the remittance file. In addition, the Contractor shall use the NOC information to update the information for registered Payers.

### 4.11 NACHA Operating Rules

All Payer authentication, enrollment, authorization, payment scheduling and confirmation shall be done in conformance with NACHA operating rules. The Contractor shall also follow NACHA rules for consumer (WEB) and corporate (CCD) entries.

### 4.12 NACHA Security Audit

Upon request, the Contractor shall provide proof of a successful security audit.

## 5.0 FUNCTIONAL AND TECHNICAL REQUIREMENTS FOR IVR RECEIPTS

### 5.1 Technical model for Contractor-Hosted IVR with Authentication to Biller Database

In this technical model, the Contractor hosts the IVR and authenticates the Payer through a real-time read of the Biller's data base. The technical steps in this model are as follows:

1) The Payer calls the IVR hosted by the Contractor;
2) The Payer enters the authentication information into the IVR;
3) The Contractor sends a real-time request to the Biller's database to verify the Payer's authentication information;
4) If the Payer's authentication information does not match the Biller's database, the IVR responds with a message that the Payer is not eligible and who to contact;
5) It the Payer's authentication information does match the Biller's database, the IVR requests the necessary payment information;
6) The payment information provided by the Payer is read back to the Payer and they are provided a choice to make changes or confirm the payment;
7) If the Payer chooses to confirm the payment, the Contractor shall forward an authorization request through NOVA or shall verify the bank Routing Transit Number (RTN).
8) If the authorization/RTN verification fails, the Payer shall receive a prompt to re-enter the payment information or choose a different card/account.
9) If the authorization/RTN verification is successful, the Payer is provided with a confirmation number.
10) Authorization/RTN results are passed from the Contractor back to the Biller's database via XML or session transfer variables. The Biller's web application is updated in real-time with the results.

### 5.2 Toll-free number

The Contractor shall obtain and maintain a toll-free number for each IVR application.

## 6.0 ONLINE TRANSACTION WAREHOUSE FOR BILLERS AND PAYERS

The Contractor shall provide an Online Transaction Warehouse for access by Billers and Payers. Transaction data shall be available online for a period of at least 24 months from the settlement date.

### 6.1 Administrative Access by Billers

Billers shall be able to access the transaction warehouse online using a User ID and password. Billers shall be able to establish Security Officer profiles with different access rights. The Security Officer shall be able to create additional administrative users, enable or disable entitlements to administrative users, and reset passwords.

The information retained in the transaction warehouse shall include but is not limited to:

- All payment information collected – date processed, date settled, amount, payment status (confirmed, settled, returned), confirmation numbers;
- All payment type information passed from the Biller or collected from the Payer – payment type (unique identifier that recognizes Biller's payment), payment description, Payer account number (or other unique payment identifier that determines where the payment is posted), authorizations, confirmations, and rejections;
- ACH information including trace number and return reason code.

Returns and Notifications of Change
For returns, the Contractor shall provide support and reporting within the Administrative Website. The Contractor shall also provide support and reporting through fax, and mailed reports.

## 6.2 Payer Enrollment, Transaction and Account Management

Upon entering the Contractor's Payment Website for the first time, Payers are presented the option of registering in the system. A Payer who elects to register shall supply personal information such as name, e-mail address, and a shared secret. To allow Payers access to stored accounts and view Payment History on subsequent visits to the site, a user ID and password are selected during enrollment and entered the next time the Payer enters the payment site.

Registered Payers can use account management functionality that enables them to choose the account from which they shall make a payment. The system shall store multiple bank accounts and credit card accounts for each registered Payer. Registered Payers may also schedule recurring payments indicating the amount of payment to be made, the payment account from which payment is to be made, the frequency of the payment and when payments are to begin.

All Payers can schedule, edit, and cancel future-dated payments. Payers specify the settlement date on the "Make a Payment" page and edit or cancel payments up until the cutoff time for the day prior to settlement.

Unregistered Payers must input payment account information each time they make a payment. Payers who have not registered can access future dated payments only via the payment confirmation number.

Registered Payers shall also be able to view their payment history and gain access to vital payment information such as: the date payment initiated, date processed, account number from which payment was made, payment amount or return amount and payment confirmation number. Returned payments shall be indicated in the Payment history.

Registered Payers shall access their account information online. They shall be able to selected View Payment History which shall allow them to view and print a history of their transactions across all Biller applications. Payers who have not registered may access the history of the payment by entering their confirmation number. By viewing payment history, Payers can see payments that were returned.

## 7.0 ADMINISTRATIVE, RECONCILIATION AND REPORTING TOOLS

### 7.1 Standard Reports

A standard daily deposit report showing the transactions to be posted to the Biller's settlement account shall be available for viewing by Billers online via the administrative Website. Billers shall be able to sort at different levels.

The Contractor shall provide the following transaction and accounting reports and queries using secure Web-based methods:

- Transaction summary report showing the total transactions and dollar amount processed for the specified period;
- Transaction detail report listing each individual transaction, including the processing result;

### 7.2 Ad-hoc Reports

Billers shall be able to query the online transaction warehouse in real-time for both credit/debit card and E-Check transaction data by value or range of values for at least the data elements below. Query results shall be viewed online and may be exported to MS Excel.

- Transaction Date
- Payment Channel
- Payment Method
- Payment Status
- Decline Type
- Payment Amount
- Custom product parameters

### 7.3 Customer Support Inquiries

The Administrative Website shall provide a query screen for state agency customer support staff to view payer information and payment transaction details. The screen shall allow searching by User ID, Last Name, Company Name, and Confirmation Number. The payment transaction detail provided with the query results shall include the payment amount, payment date, and status. For e-checks, the detail shall also include the RTN, the last 4 digits of the account number, the ACH trace number, the ACH transaction code, the account type, and the account category. For credit/debit card payments, the query results shall provide the last four digits of the account number, the card expiration date, the card type and the authorization number.

### 7.4 Daily cash receipt remittance file

The Electronic Payment Gateway Service shall provide a daily file of all accepted transactions for reconciliation with the Biller's Web application and with the daily cash deposit. For each Biller application, the Contractor shall create a daily remittance file in ASCII and/or XML formats (at the option of the Biller). The daily Cash Receipt Remittance Files shall be available on both the Administrative Website and on the Contractor's secured FTP server no later than 7:00 a.m. Central Time. If the files are delayed, the Contractor shall notify the State no later than 7:00 a.m. Central Time. Included in the notification shall be an estimate of when the files will be available.

The file shall contain the following minimum data elements:

- Biller ID
- Confirmation Number

- Time the Confirmation Number was issued
- Payment Method (Credit Card/ICheck)
- Receipt Channel (IVR, WEB, POS)
- Payment Amount
- Card Type
- Authorization Code
- Payer Name
- Payer Address
- User Name

The file shall also contain a footer record that total the transaction counts and amounts by payment type and card type.

## 8.0 THE IMPLEMENTATION PROCESS

### 8.1 Implementation Questionnaire

The Contractor shall provide an Implementation Questionnaire for the set-up of each Biller application. The Implementation Questionnaire shall allow the Biller to select all of the set-up options necessary for implementation. The questionnaire shall be in either MS Word or MS Excel format.

### 8.2 Implementation Specialist

The Contractor shall provide the State with an Implementation Specialist who is familiar with the State's e-payment applications. The Implementation Specialist shall:

- Receive the Implementation Questionnaire.
- Within one business day, provide the State with the date that the application will be available for testing.
- Provide the Biller with a URL link to the test application upon completion of the set-up.
- Confirm the URL's used for RTPC and RTNN messages, Payers returning from the payment system, and email confirmation messages.
- Establish the administrative organizations at the time the initial set-up is complete.
- Answer any questions during set-up.
- Answer any questions regarding the set-up of production applications.
- Ensure that a mirror test-application is established the day the application is launched into production.

The State shall utilize the following email priority designations within the subject line, and the Implementation Specialist shall respond within the stated time period:

| | |
|---|---|
| Low: | Response within 5 business days |
| Medium: | Response within 3 business hours (if submitted by 2:00 p.m. CT) |
| High: | Response within 1 business hour |

### 8.3 Application Set-up

Each new e-payment application shall be available for testing within 7 business days of receipt of the completed Implementation Questionnaire.

### 8.4 Testing

The new e-payment application shall allow the State to process test transactions similar to the production application. The transactions shall be available within the transaction warehouse during testing. The daily remittance files, RTPC and RTNN messages shall also be functional during testing. The credit/debit card authorization process will not

be available for the application during testing. The Contractor shall provide the Biller with dummy account numbers to be used during testing.

### 8.5 Application Set-up Problems

## 9.0 BILLER AND DEVELOPER SUPPORT

### 9.1 Biller Training

The Contractor shall provide Web-based, online, and interactive instructions for Billers on how to use the administrative tools within the Contractor's Electronic Receipting system. Billers shall be able to begin training during the user-testing phase. The training shall include:

- An overview of the Contractor's Electronic Payment Gateway Service;
- How to use Administrative functionality (including generating reports and adding, editing, changing, and deleting transactions);
- How Payers use the Contractor's Electronic Payment Gateway Service (including making a one-time payment, making recurring payments and managing accounts);
- Problem resolution.

### 9.2 Developer Support

The Contractor shall provide online answers to frequently asked questions for access by State of Wisconsin developers during the set-up of new applications.

## 10.0 PAYER SUPPORT

### 10.1 Online Help Pages

The Contractor shall provide standard online HELP to Payers. A help page shall be accessible to all users, from any page within the system. It shall contain, at a minimum, the following:

- Explanations of the online payment process;
- Explanations of the purpose of each page;
- Explanations of all data elements the user is asked to provide;
- Frequently asked questions and answers to common Payer problems.

### 10.2 Payer Call Center

The Contractor shall provide call center support for Payers 24 hours a day, 7 days a week. The call center shall be available through a toll-free telephone number. The call center shall answer general Payer questions about the payment process, including but not limited to:

- Resetting passwords (after verification of shared-secret);
- Problems with user-id's;
- Payment confirmation.

The call center shall refer application-specific questions to a state agency contact provided by the Biller.

Call center services shall be available on a per-application basis.

## 11.0 INFRASTRUCTURE, AVAILABILITY AND DISASTER RECOVERY

## 11.1 Infrastructure

The Contractor's infrastructure solution shall include: Firewalls, Web Servers, Application Servers and Database Servers. The firewall shall provide security as users attempt to gain access to the Contractor's Electronic Payment Gateway Service. The Web server shall host the Internet content and provide it to users in HTML format. The application server shall host the State's Internet registration and payment applications and shall easily scale during peak Internet periods, allowing users to have uninterrupted access to the application database through dynamic Web pages. The database server shall provide for the storage of the system's registration and payment information.

The Contractor's Electronic Payment Gateway Service shall at all times be in compliance with the Payment Card Industry (PCI) Data Security Standard as updated by Visa/MasterCard.

## 11.2 System availability

Monthly Performance Standard

The Contractor's Electronic Receipting Service shall be available 99.50 percent of the time during the hours of 6:00 a.m. CT and 12:00 a.m. CT during any calendar month.

Daily Performance Standard

On the last two calendar days of each month, the Contractor's Electronic Receipting Service shall be available 99.90 percent of the time during the hours of 6:00 a.m. CT and 12:00 a.m. CT.

Outages caused by any of the following reasons shall be excluded for purposes of determining monthly or daily system availability:

- Periods of scheduled or emergency maintenance activities or a scheduled outage between the hours of 12:00 a.m. CT and 6:00 a.m. CT
- Problems with Content or the State's programming errors;
- Problems caused by systems administration, commands, or file transfer performed by the State's representatives;
- Interruptions in third party networks that prevent users for the Internet from accessing the State Website;
- Denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of ware, acts against parties (including carriers and the Contractor's other vendors), and other force majeur events;
- Lack of availability or untimely response by the State to incidents that require the State's participation for problem source identification and/or resolution;
- The State's breach of its obligations under the Statement of Work.

## 11.3 Hot Back-up Facility

The Contractor shall maintain, at all times, a hot back-up facility that houses disaster recovery servers. Access control and physical security safeguards shall be implemented at both the production and back-up data centers.

The Contractor's Electronic Payment Gateway Service's server shall have both system and application data stored on mirrored EMC disk storage, allowing operations to continue in the event of a hard-disk failure. Data shall be replicated between the two data centers in order to maintain data synchronization in case of disaster recovery failover.

## 11.4 System scalability

The Contractor shall have the immediate capacity to process 50,000 Internet transactions and 50,000 IVR transactions per day for the Billers under this Agreement. The Contractor shall expand its capacity as necessary, to accommodate additional processing volumes under this Agreement.

**11.5 Quality metrics**

The Contractor shall provide a monthly report to the State on the following quality metrics:

- % availability and unplanned outage minutes for each Electronic Payment Gateway Service component:
  - Payment Website
  - Administrative Website
  - IVR
  - Real Time Payment Conformation
  - Real Time Eligibility Lookup
- Number of transactions processed by Biller and Payment Method.
- Average and maximum web response times by day.
- % of IVR responses within 1 second, 1-2 seconds, 2-3 seconds, > 3 seconds.

**11.6 Contractor notification of system outages**

The Contractor shall notify the Biller via e-mail within 30 minutes of the start of an outage or problem within any of the following Electronic Payment Gateway Service components:

- Payment Website
- Administrative Website
- IVR
- Real Time Payment Conformation
- Real Time Eligibility Lookup

Included within the email shall be:

- The component(s) affected.
- When the outage or problem started.
- The root cause of the outage or problem.
- An estimate of when the outage or problem will be resolved.

If the outage or problem lasts more than one hour, the Contractor shall provide hourly updates with any additional information.

The Contractor shall notify the Biller within 15 minutes of the resolution of an outage or problem within any of the components listed above.

**11.7 Contractor troubleshooting of state-identified functional problems**

The State may receive reports of system functional problems. The State shall send an email notification to the designated U.S. Bank Commercial Customer Service representative about the functional problem. The State shall include the following information about the functional problem within the email:

- The application reporting the problem
- Time the problem was first reported
- Description of the problem

- Payment screen where the problem occurred
- Payer Name
- Payment confirmation number if the payment was completed

Response Times
For functional problems that may be preventing Payers from successfully completing a payment, the Contractor shall respond to the State with an acknowledgement of the problem and an estimated time for resolution or the time for the next status update no later than 2 hours after the problem is first reported.

For other problems that do not affect Payers, the Contractor shall respond to the State with an acknowledgement of the problem and an estimated time for resolution no later than one business day after the problem is first reported.

### 11.8 Notification of system changes

The Contractor shall not introduce any changes in functionality or design to the product solution that are not backwards compatible with the Biller's Electronic Payment Gateway Service. The State shall be notified at least 60 days in advance of any such changes to the functionality or design of the product solution to allow for adequate lead time should the Biller opt to implement the change(s) to the Biller's Electronic Payment Gateway Service.

The Contractor shall provide an updated User Manual and technical specifications prior to the implementation of any change.

### 11.9 Disaster Recovery Plan

The Contractor shall be able to process all transactions within 72 hours of a disaster. All operating systems supporting the Contractor's Electronic Payment Gateway Service shall have backup and disaster recovery processes. All critical system components shall have a real-time, online backup. Multiple network paths shall connect the processors and the disk farm to enable rerouting of data.

The Contractor shall maintain a storage management strategy and a robust set of backup procedures. The strategy must efficiently utilize backup systems and capacities, as well as accommodate future growth.

The Contractor's disaster recovery plan shall include processes and procedures for:

- Nightly backups that are taken off site and secured at another secure location;
- Responsibilities of each member of the staff in case of system failure;
- Notification of key personnel in case of failure;
- Transfer and resumption of full operations/processing to the back-up data center to include disk monitoring, and off-site tape retention.

## 12.0 SECURITY

### 12.1 General

The Contractor shall secure the databases and servers that comprise the Electronic Receipting System. The Contractor shall provide adequate levels of physical security to protect against theft, tampering or damage. The Contractor shall protect the confidentiality, integrity and availability of the information collected, processed, stored and transmitted. Risks secured against shall include: interruption of computer services, unauthorized disclosure of information, loss of control over the system or physical damage or theft.

The Contractor shall provide personnel and access controls to protect against unauthorized access, including, but not limited to, password-protected access, access entitlement based on a "need to know" basis, separation of duties, employee background checks, and comprehensive security awareness training programs.

The Contractor shall provide adequate levels of network security to ensure the secure capture, storage and distribution of consumer financial information.

The Contractor shall notify the Biller in the event the security of their application has been compromised.

At the request and expense of the State, the Contractor shall submit to an external security audit.

**12.2 Payer-to-Contractor**

All payment pages shall use the https protocol under SSL 128-bit encryption. In transferring from the Biller application to the payment site, several data elements must be passed to create the customized Biller payment site. These variables shall be passed encrypted, in the https POST method. The Contractor shall supply the Biller with the encryption routine for the https POST routine. The Payer only requires a 128-bit browser to access the https payment site.

**12.3 Contractor-to-Biller/Biller-to-Contractor**

The Contractor shall support secured communications with the Biller. Data exchange shall comply with open, interoperable, secure standards to include transmission of data from and to the Biller using 1024-bit encryption (or higher) at the source and the support of a 128-bit secured socket layer (SSL) encryption. The Contractor's Electronic Receipting Service shall be able to accept a X.509 certificate and an LDAP bind through configurations at the iPlanet Web server.
When linking to a Biller site, the Contractor shall use an SSL certificate set to the 1024 bit encryption level. Whether a file or an HTML page is being delivered, its receipt is accomplished via the SSL protocol with 128-bit encryption protected by a site certificate from a credible Certificate Authority.

**12.4 Failure monitoring/audit logs**

The Contractor shall track all activity in logs to resolve disputes or reconstruct system events. Information recorded in the logs shall include transaction date and time, user identification or key identifier, Web transactions, IVR transactions, batch transactions, unique key data (enrollment ID, payment confirmation number) pertinent transaction data, success or failure indication of activity request.

The audit logs shall also track events of logins and logouts, any event where critical/secure data is viewed (payment information, personal information), any event that affects writing to the database (add, modify or delete), any event where information is passed to or from any external system, Java exceptions, database exceptions and other debugging information. Both the application and audit logs are meant for internal software debugging or tracking software or security incidents. It is not meant to be provided in any reporting to the Biller unless it is specifically requested.

**12.5 Denial of service attacks**

The Contractor shall employ a monitoring service that monitors the lines at all times. In the case of an attack, the Contractor shall work with the monitoring service to identify and trace the source of the problem so that the possibility of having an intruder breach the Electronic Receipting Service would be severely limited or eliminated completely.

If a perpetrator were actively engaged in attempts to "flood" the network, or disrupt connections between two computers, or disrupt service to a specific system or person, the Contractor's Computer Incident Response Team shall:

- Contain and/or eliminate the intruder via systemic means;
- Complete a Computer Incident Report;
- Analyze and upgrade the system to prevent the attack from reoccurring;
- Notify the proper authorities for legal action.

### 12.6 Spoofing

The Contractor shall utilize the following mechanisms to protect against spoofing:

1) Session Transfer Variables shall be encrypted as they are passed from the Biller's Website to the payment site, disallowing the modification of any of the data linked between the two sites;
2) Domain Name Services (DNS) is managed by the Internet Service Provider (ISP). The ISP provides a high level of security to protect these DNS servers. One of the first steps to prevent an attacker from gaining control over the traffic destined for the Biller's Website is to prevent the changing of DNS entries to re-direct traffic to a rogue Website.
3) Digital certificates for fully qualified domain names are obtained for the Contractor's Electronic Receipting Service. Only the domain owner can request certificates for the Contractor's registered domains. Certificates can only be issued to specific individuals at the Contractor. Once a certificate is obtained for the Website, the client browser checks the authenticity of the certificate against the domain. If the domain is "spoofed", the client shall receive a message on their browser indicating that the domain does not match the certificate.
4) Use of firewalls capable of detecting and preventing "spoofing" shall be deployed. The firewalls shall be capable of rejecting traffic that appears to originate from trusted zones but in reality is originated from untrusted sources. The firewalls shall also be capable of protecting against "TCP SYN" flooding attacks.

The Contractor shall utilize application monitoring to detect suspicious events and activity on the Biller's applications. These suspicious events and activities include repeated Shared Secret guessing attempts, repeated submission of malformed data to the application, or long-idle sessions. These suspicious activities shall be identified and captured for examination by security specialists. The Contractor's Electronic Payment Gateway Service shall have an automated response capability to freeze/block user accounts that appear to be the target of unauthorized access attempts. The freezing or blocking of a user account generally occurs when an authentication validation (Shared Secret) for the payment application fails three times in a row.

## 13.0 OTHER REQUIREMENTS

### 13.1 Web Standards

The Contractor shall comply with the State of Wisconsin guidelines for Web user interface design and presentation style within the constraints of the Contractor's product.

### 13.2 Section 508 Compliance

The Contractor's Electronic Payment Gateway Services must be 508 compliant.

### 13.3 Convenience Fees

The Contractor shall not charge any user, enrollment, convenience, surcharge or any other fees unless directed by the State. The State may elect to add a convenience or processing fee to the payment amount. For some applications, the State may require

that the convenience fee be shown as an additional and separate amount on the Payer's credit card or bank statement. This request must comply with all credit card associations' regulations.

### 13.4 Participation Agreements for Wisconsin Local Governments

The Contractor and the Local Government shall sign a Participation Agreement. The Participation Agreement shall not contain any terms that conflict with the Agreement. The initial Participation Agreements shall be for a term that ends no later than June 30, 2014. All Local Governments within the State of Wisconsin are eligible to sign the Participation Agreements.

### 13.5 Co-branding

Co-branding shall only be allowed with the prior consent of the State. For Local Governments, the Participation Agreement will indicate whether co-branding shall be allowed for the Contractor. Size and location are standard.

### 13.6 Subcontracting

At Contract start, the Contractor shall utilize Official Payments Corporation for the Department of Revenue credit/debit card tax payment application. The Contractor shall immediately notify the State in the event that any other subcontractors shall be utilized.

### 13.7 Privacy

Contractor shall not collect Social Security Numbers unless explicitly instructed by the Biller. Personal identifiers shall not be transmitted in the clear in open text anywhere along the transaction chain.

The Contractor shall not make any secondary commercial use of information/data collected from the Electronic Payment Gateway Service. The Contractor shall not share any information with third parties, subsidiaries or other entities.

Contractor shall provide their privacy and security policies to the State upon execution of the Agreement.

## 14.0 CONTRACTOR FEES

### 14.1 Billing/Monthly Invoice

The Contractor shall include the Electronic Payment Gateway Services fees within the monthly analysis statement of the associated settlement account.

### 14.2 Fee Schedule

| Item | Measurement | Fee[1] |
|---|---|---|
| ***Internet Implementation and Set-up fees*** | | |
| Per Biller Application | One-time | $950 |
| ***IVR Implementation and Set-up fee*** | | |
| Per implementation | One-time | $3,500 |

| ***Application Reporting Fee Per Biller Application*** | | |
|---|---|---|
| WEB w/o pre-registration | Monthly | $100 |
| WEB with pre-registration | Monthly | $300 |
| IVR | Monthly | $350 |
| IVR and WEB | Monthly | $375 |

| ***Payment Processing*** [1, 2] | | |
|---|---|---|
| 1 - 1,200,000 | Per confirmation number generated | .24 |

| | | |
|---|---|---|
| > 1,200,000 | Per confirmation number generated | .21 |
| IVR Surcharge | Per minute | .08 |

| ***Special Items*** | | |
|---|---|---|
| Payer Call Center Support | Per Minute | $.95 |
| Application-specific customization | Per hour | $150.00 |

1. Payment processing includes ACH Debit, Credit Card and Debit Card transactions initiated on the Internet and through Interactive Voice Response and then warehoused within the Contractor's Electronic Payment Gateway Service. Standard ACH and Merchant processing fees also apply.
2. The payment processing fee shall be calculated based on the annual confirmed transaction volume processed during the calendar year, January – December, and shall include all local government confirmed transaction volumes. The confirmed transaction volumes processed during the previous calendar year shall be the basis for the current calendar year fees.

## 15.0 Service Levels

| Contract Section | Contract Language | Service Level Standard |
|---|---|---|
| Appendix 1, Section 7.4 | The daily Cash Receipt Remittance Files shall be available on both the Administrative Website and on the Contractor's secured FTP server no later than 8:00 a.m. Central Time. If the files are delayed, the Contractor shall notify the State no later than 8:00 a.m. Central Time. Included in the notification shall be an estimate of when the files will be available. | The State has automated file transmission scripts that are run each day based on a 7:00 a.m. availability of the cash receipt remittance files.<br><br>If the files are delayed without adequate notification, the State has to perform research to determine why the file transfers were not successful. The estimated out of pocket cost for this research is $300.<br><br>Therefore, the Contractor shall reimburse the State $300 for each instance that the remittance files are not available by 8:00 a.m. Central Time and the Contractor has not notified the State of the delay by that time. |
| Appendix 1, Section 11.2 | The Contractor's Electronic Receipting Service shall be available 99.50 percent of the time during the hours of 6:00 a.m. CT and 12:00 a.m. CT during any calendar month. | The Service Level Standard shall be calculated monthly. In order to meet the standard, outages cannot exceed 223 minutes in a calendar month.<br><br>Prolonged outages that exceed 60 minutes in a calendar day shall be considered an "Out of Service Condition". An Out of Service Condition will occur if within the hours of 6:00 a.m. and 12:00 a.m. the combined outage time for the following Electronic Payment Gateway Services is 60 minutes or more:<br><br>• Web Payment Channel<br>• IVR Payment Channel<br>• Real Time Payment Confirmations<br>• Real Time Eligibility Lookups<br><br>A system outage that affects multiple channels will only be counted once.<br><br>U.S. Bank shall provide the State with an Out of Service Credit for each Out of Service Condition. The amount of the Out of Service Credit shall equal the Electronic Payment Gateway Service transaction processing fees for that day (does not include interchange, association and authorization fees paid to NOVA). All Out of Service Credits shall be credited to the State's Consolidated Analysis Statement during the month following the Out of Service Condition. |
| Appendix 1, Section | The Contractor shall notify the Biller via e-mail within 30 | U.S. Bank shall notify the State via email within 30 minutes of the start of an |

| | | |
|---|---|---|
| 11.6 | minutes of the start of an outage or functional problem within any of the following Electronic Payment Gateway Service components:<br>• Payment Website<br>• Administrative Website<br>• IVR<br>• Real Time Payment Conformation<br>• Real Time Eligibility Lookup | unplanned outage within any of the following e-payment services:<br><br>• Web Payment Channel<br>• IVR Payment Channel<br>• Real Time Payment Confirmations<br>• Real-Time Eligibility Look-Ups<br><br>If the State is not notified of an unplanned outage, agency staff will spend time troubleshooting their applications. The approximate service level failure cost incurred by an agency to perform this troubleshooting is $150/application.<br><br>Therefore, for each failure to notify the State timely of an unplanned outage, U.S. Bank shall pay the State $450 as reimbursement for agency staff time spent troubleshooting the problem. |
| Appendix 1, Section 11.7 | For functional problems that may be preventing Payers from successfully completing a payment, the Contractor shall respond to the State with an acknowledgement of the problem and an estimated time for resolution, or the time for the next status update, no later than 2 hours after the problem is first reported.<br><br>For other problems that do not affect Payers, the Contractor shall respond to the State with an acknowledgement of the problem and an estimated time for resolution no later than one business day after the problem is first reported. | Functional problems that affect the Payer's ability to successfully complete a payment result in customer service calls to the state agency. The approximate service level failure cost incurred by an agency each day there is an e-payment functional problem affecting Payer's is $250.<br><br>Therefore, for each e-payment application that experiences a functional problem affecting the Payer's ability to successfully complete a payment, the Contractor shall reimburse the State $250 per day, excluding the day the problem was reported, until the Contractor provides an estimated date/time of resolution. |

# Treasury Management Services

# Terms and Conditions

Thank you for choosing U.S. Bank Treasury Management Services. This document provides product information, disclosures and descriptions of the Treasury Management Services (“Services”) available at U.S. Bank.

U.S. Bank National Association
Member FDIC

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## I. INTRODUCTION

**1. Definitions**

**a.** "Agent" means any director, officer, employee, representative, affiliate, third-party vendor or any other person acting on behalf of the Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.

**b.** "Bank" means U.S. Bank National Association and each subsidiary or affiliate of U.S. Bank that provides Services to Customer.

**c.** "Business Day" means any day on which a majority of Bank's offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if Bank's offices are in fact open.

**d.** "Customer" means the State of Wisconsin its agencies, boards, commissions, councils, offices or a local government designated in the Participation Agreement.

**e.** "NOVA" means NOVA Information Systems, Inc. and any subsidiary or affiliate of NOVA that provides merchant processing services to Customer.

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

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

**a.** U.S. Bank Treasury Management Service Agreement and set-up materials thereto;

**b**. Terms of Service and Merchant Operating Guide;

**c.** Enterprise Cash Management Services Request for Proposal #27899-CE.

**d.** The 2008 Enterprise Banking Services Contract.

**e.** the provisions of any future deposit account agreement which the parties will in good faith subsequently negotiate and agree to.

**f.** the Uniform Commercial Code, as enacted in the State of Wisconsin;

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

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

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

Bank may change the terms of this Agreement only with the written approval of the Contract Administrator and/or the Depository Selection Board. Any and all amendments to this Agreement must be in writing and executed by the Bank and the State of Wisconsin.

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

Services provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement.

**5. Disclaimer of Warranties**

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

## II. TERMS APPLICABLE TO ALL TREASURY MANAGEMENT SERVICES

**1. Services**
Bank may provide Services that are not specifically included in the Services section of this Agreement. By accepting and using any Service, Customer agrees that the Service will be governed by this Agreement. Certain Services included in this Agreement may not be available or may not be provided in certain market areas. Customer shall not be bound by the specific terms and conditions for the Services described in the Services section of this Agreement to the extent Customer is not using such Service(s).

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

**3. Representations and Warranties**
Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or performed by it has been obtained.

**4. INTENTIONALLY OMITTED**

**5. INTENTIONALLY OMITTED**

**6. Deposit Accounts**
Most treasury management services require that Customer maintain one or more deposit accounts with Bank. All checks, wire transfers, ACH payments and other items deposited into such accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against the account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer's accounts.

**7. Security Interest**
Customer grants to Bank a consensual possessory security interest in Customer's deposit accounts maintained with Bank and the funds held therein to secure payment of all of Customer's obligations under this Agreement.

**8. Information Sharing**
Subject to Appendix 1 of the 2008 Enterprise Banking Services Contract (Privacy and Confidential Information), Customer agrees that Bank may share information: (a) with Bank's affiliates (i.e. entities related to Bank by common control or ownership) that offer financial products and other services, including those identified in this Agreement and with our administrative or service units that perform these functions; (b) with non-affiliated entities that assist Bank in providing services to Customer.

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

**10. Check Samples, Forms Approval and Service Implementation**
Bank reserves the right to approve the form of Customer's checks, drafts, deposit slips and similar documentation. Prior to initiating a new account or Service, or at any other necessary time, Customer agrees to provide all information and conduct any test that Bank may reasonably request, including, without limitation, Implementation Documents, signature cards, test tapes, transmissions, corporate resolutions and other documents. Bank may also request samples of Customer's checks, drafts, deposit slips and similar items to ensure, in Bank's sole discretion, whether such items meet Bank's quality control and processing standards.

In the event that Bank determines that any item or test does not meet its specifications, Bank will so advise Customer. Customer acknowledges that Services will not commence or continue until such time as an approved item or test is provided to Bank and determined by Bank to be satisfactory. Customer shall be responsible for initial product installation, whether or not Bank provides telephone or on-site installation support.

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

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

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

responsible for the procedures to assure the internal confidentiality of its own security procedures, security devices and codes and assumes all risk of accidental disclosure or inadvertent use of any security device by any party whatsoever, whether such disclosure or use is on account of Customer's negligent or deliberate acts or otherwise. If Customer or its Agents have reason to believe that any security procedures or Codes have or may become known by unauthorized persons (whether or not employed by Customer), Customer shall immediately notify Bank by telephone and confirm such verbal notification in writing to Bank within 24 hours. Bank will replace the security procedures and Codes in accordance with Bank's security procedures. Customer shall be solely responsible for funds transfer instructions and other communications initiated before Bank received Customer's notice and had a reasonable time to act on such notice. Bank reserves the right to change any or all of the security procedures or codes by giving verbal or written notice to the Customer. Customer's obligation to maintain the confidentiality of all security procedures shall survive the termination of any Service or this Agreement. This section is subject to Appendix 1 of the 2008 Enterprise Banking Services Contract (Privacy and Confidential Information).

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

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

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

**14. Computer Equipment and Software**
Many Services require the use of computer hardware and software or other equipment. Customer is solely responsible for maintaining its computer and equipment in good working order, with the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support the Bank's security procedures. Customer agrees to install upgrades and other system enhancements within a reasonable time of being requested to do so by Bank. License Agreements for necessary software shall either be embedded in the software or separately documented. Customer agrees to comply with all applicable software license agreements (following Customer's review of the same) whether or not such agreements have been executed by Customer. Customer has no rights or ownership in any software provided by or through Bank (other than software developed solely for the Customer) and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software. Customer shall return all software and user manuals associated with any software upon request.

**15. Transactions on Non-Business Days/Cutoff Times**
Transactions, deposits, payment orders, entries or other requests by Customer received by Bank on a non-Business Day or after established cutoff deadlines may be treated by Bank as received on the next business day. Bank may change any cutoff time or other deadline only after it provides a minimum of 30 days written notice to the customer.

**16. Customer-initiated Transactions and Instructions**
Bank will honor Customer's transactions and instructions (including adjustments, amendments and cancellations) only when Customer has complied with this Agreement and related policies and procedures. Bank will be under no obligation to honor, either in whole or in part, any transaction or instruction that:

**a.** exceeds Customer's collected or available funds on deposit with Bank;

**b.** Bank has reason to believe may not be authorized by Customer;

**c.** involves funds subject to a hold, dispute or legal process preventing their withdrawal;

**d.** violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority; or

**e.** Bank has reasonable cause not to honor, for the protection of either Bank or Customer.

**17. Inconsistent Name and Account Number**
If Customer or third party acting at the Customer's instruction initiates a fund transfer instruction or payment order ("Payment Order") to Bank that describes the person to receive the proceeds of such Payment Order (the "Beneficiary"), the Beneficiary's bank, or an intermediary bank by name and an account or other identifying number, Bank and subsequent parties to the Payment Order may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Customer's obligation to pay the amount of the Payment Order to Bank is not excused in such circumstances.

**18. Intercompany Services/Authority to Transfer or Commingle Funds**
Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by the Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the account holder of each account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven (7) years after termination of the Service, adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with that account holder's bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is presumed not to be in violation of any agreement, bylaw or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer and commingling of funds authorized hereunder.

**19. Customer Records**
This Agreement and the performance of Services by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules (including the NACHA Rules, NCHA Rules, and ECCHO Rules), or by contract regarding the maintenance of records or from employing adequate audit, accounting and review practices as are customarily followed by similar businesses. Customer shall retain and provide to Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file or entry for thirty (30) days following receipt by Bank of the deposit, file, entry, transmission or other order affecting an account.

**20. Account Communications and Review Period**

Customer agrees to regularly and promptly review and verify all statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges, and other transactions ("Account Communications"). Customer may elect to receive Account Communications electronically, including without limitation, delivery by posting to a password protected website. Customer acknowledges that Account Communications provided by Bank through electronic delivery is deemed to constitute good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses the Account Information. Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than forty-five (45) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Customer ("Review Period"), notify Bank of any error or discrepancy between Customer's records and any Bank notice or statement, or any transaction or transfer Customer believes was not authorized. If Customer fails to notify Bank of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction.

In accordance with NACHA rules, Customer must report an unauthorized ACH debit entry to the Customer's account by the established deadline on the business day following the settlement date of the unauthorized entry. Otherwise, Customer's sole recourse is to the originator of the transaction.

**21. Limitation of Bank's Liability for Services**
In addition to greater limitations on Bank's liability that may be provided elsewhere in this Agreement, Bank's liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own negligence or willful misconduct. Bank will not, under any circumstances, be liable for any special, incidental, indirect, consequential, punitive or similar losses or damages, whether or not the likelihood of such losses or damages was known by either party at the time Customer first obtains Services from Bank or at the time any instruction or order is given to a Bank pursuant to any Service, and whether such losses or damages arise from tort, contract or otherwise. Bank's maximum liability for any loss of interest shall be calculated using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. Notwithstanding the foregoing, Bank shall not be liable for any losses or damages to the extent caused by the willful misconduct or negligent action or inaction of Customer, or any Agent or employee of Customer, Bank shall not be liable for any damage, cost, loss, liability or delay caused by accident, strike, fire, flood, war, riot, terrorist act, acts of nature, any cause which is attributable to a third party, or any other cause or event that was beyond Bank's reasonable control.

**22. Dispute Resolution**
**a. Governing Law.** Except as otherwise provided herein, this Agreement shall be governed by the laws of the State of Wisconsin, without regard to conflicts of law principles.

**e. Adverse Claims**. If Bank receives an adverse claim against any account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees that Bank may place a hold on the affected account. Any such hold will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Assuming compliance with this section, Bank shall have no liability for dishonored transactions due to the hold, and Customer agrees to reimburse Bank all costs, including attorney fees, incurred due to such adverse claim.

**23. Necessary Third Party Service Providers**
**a. Third Party Networks.** Some Services are provided by Bank through access to a third party network, such as SWIFT, any applicable automated clearinghouse operating network and FED Wire. Such Services are dependent upon the availability of the third party network on conditions acceptable to Bank. Bank reserves the right to discontinue the Service or provide the Service through an alternative third party network. Bank does not warrant and shall not be responsible for Services received by Customer from any third party network chosen by the Customer.

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

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

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

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

**27. Assignment**
Except in the case of a merger or assignment arising under operation of law, neither party may assign or transfer its rights or obligations hereunder to any other person or entity without the other party's written consent, whose consent shall not be unreasonably withheld.

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

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

**(i)** this Section and all other relevant sections of this Agreement, including, without limitation, sections governing the specific Treasury Management Services that are offered online;

**(ii)** the other agreements, laws and regulations described in section I.2. of this Agreement; and

**(iii)** the applicable Terms of Use, as defined in section III.2. below.

**2. Terms of Use**
Bank may post terms or rules of Use ("Terms of Use") governing Customer's use of the Internet Services on Bank's website(s) for accessing such Services. Provided Customer has reviewed and approved the Terms of Use or subsequent revisions to the same in writing (which Customer agrees to do in good faith and within a reasonable time of Bank's presentment of the same to Customer), such Terms of Use shall supplement and amend the terms set forth in this section. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern. Customer's initial use of an Internet Service shall constitute an acceptance of the Terms of Use posted on the website. Customer will be notified of any changes in accordance with section II.24. hereof. Neither Bank nor Customer will contest the validity, enforceability, or admissibility of hard copy printouts of the Terms of Use for any website or notices of changes to such Terms of Use provided in accordance with this section. Copies of such Terms of Use or notices, if introduced as evidence in tangible form in any judicial or administrative proceeding, will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form.

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

Customer is responsible for maintaining the security and confidentiality of all IDs, passwords and other security devices issued to or by Customer (collectively, "Customer's Internal Security Devices"). Customer shall not permit unauthorized individuals to use Customer's Internal Security Devices to access any website. Customer shall promptly notify Bank if Customer has actual knowledge that the security of any website has been compromised. Bank shall not be liable for any claims, losses, damages, costs, expenses, fines and other liabilities arising out of Customer's failure to maintain the security and confidentiality of Customer's Internal Security Devices or arising out of the unlawful use of any website by Customer or any person who obtains access to the website using Customer's Internal Security Devices.

**4. Other Customer Responsibilities**

**a. Equipment and Software**. Customer is responsible for obtaining (from Bank, in some instances), installing and maintaining the computer and communications equipment (including, without limitation, personal computers and modems), software, web browsers, Internet access and communications services necessary to access and use the Internet Services in accordance with this Agreement.

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

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

**5. Disclaimer of Warranties**

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

## IV. TERMS APPLICABLE TO SPECIFIC TREASURY MANAGEMENT SERVICES

The following are additional terms and conditions applicable to specific Treasury Management Services offered by Bank.

### A. E-PAYMENT SERVICE

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

**1. Internet**

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

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

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

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

**e. Payer Authentication**

**2. Compliance with laws and regulations**

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

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

To make an automated payment via a touch-tone phone, Payers may access the IVR system by calling a toll-free number provided by Bank or Customer. Customer shall have previously forwarded a one-time file of existing Payers ("pre-registration file") to Bank. In order to make a payment via the IVR system, Payers are required to input information that matches their user information in the pre-registration file.

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

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

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

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

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

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

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

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

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

## B. BILL CONSOLIDATOR PAYMENT SERVICES

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

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

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

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

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

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

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

## C. INFORMATION REPORTING AND TRANSACTION SERVICES

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

**1. Introduction**
If requested by Customer and agreed to by Bank, Bank will grant access to Bank's System(s) in the manner agreed to by Bank. Customer agrees to be bound by any terms of use and license agreements associated with these Systems, provided Customer has reviewed and approved the pertinent use and license agreements in writing (which Customer agrees to do in good faith and within a reasonable time of Bank's presentment of the same to Customer).

**2. Information Reporting**
Bank is authorized to store, process, transmit and make available through Bank's agencies and Systems and through third party data processing providers ("Providers") information regarding accounts designated by Customer. Bank or Providers will transmit to Customer information regarding its account(s) and/or other financial data through the System on a periodic basis. Customer may elect to receive data through one or more delivery mechanisms, including, without limitation, the Internet, computer dial-up, telephonic delivery, facsimile, CD-Rom or unsecured e-mail. Section II.12. shall apply in the event Customer elects to receive unsecured reports via an Electronic Transmission. Balance and related information for Customer's accounts(s) held at other financial institutions may be made available by these financial institutions or Providers that input information into Bank's System. Bank will use reasonable care in submitting data into the System, but assumes no responsibility for the accuracy or timeliness of the account information and other financial data supplied by other financial institutions or Providers.

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

**4. Security Procedures/System Administrator**
Customer agrees to operate the System in accordance with the procedures established by Bank. Bank reserves the right to reject any transaction or service request that is not made in accordance with these procedures. Customer agrees to designate one or more System Administrator(s). The System Administrator is responsible for setting up Services available through the System and for establishing internal security procedures related to such Services, including, without limitation, system-wide configuration of Bank accounts, assigning users, establishing authority levels, establishing authorization requirements, distributing and re-setting passwords and other internal security devices related to the Services. Designation of the System Administrator may be amended or revoked from time to time upon notice to Bank. Bank shall have a reasonable time to act on any such notice. Customer is solely responsible for maintaining a secure work environment to ensure against use of the System by unauthorized individuals. Security procedures to be followed by Customer include, without limitation, informing Agents that any passwords should not be shared with anyone and to secure physical access to the terminals used for services when an Agent has logged on to the system or otherwise.

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

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

**a.** any inaccuracy or incompleteness in the input of an order or instruction from the Customer;

**b.** any failure by Customer to obtain a confirmation of an order or instruction; or

**c.** any cancellation or attempted cancellation by Customer of an order or instruction.

**7. Accuracy and Timeliness of Information**
Bank will use reasonable efforts to provide the information requested through the Services in a prompt fashion. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's system prior to being made available pursuant to the Services. .

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

## D. ELECTRONIC DEPOSIT SERVICES

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

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

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

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

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

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

**c.** "Check Image Metadata" means information about the Check Image, as well as pointers to the actual image data (also known as image tags).

**d.** "Customer System" means the computer hardware, software and web-based applications located at Customer's site that is used by Customer to prepare Electronic Deposits and to access the OED services or ECLD services. For OED services, the Customer System shall comprise of a scanner and other hardware, software and web-based applications, all of which may be supplied by Bank.

**e.** "ECLD system" means Bank's Electronic Cash Letter Deposit computer systems and databases that Customer may access in order to obtain the ECLD services.

**f.** "ECLD services" means the Electronic Cash Letter Deposit services that allow organizations that receive check remittance payments by mail or dropbox to deposit all payments electronically at Bank, as further described in the User Manual.

**g.** "Electronic Deposit" means electronic information (including Check Images, Check Image Metadata, MICR Data, dollar amount or ACH Entry information), obtained from capturing information from an original paper check and related remittance documentation, that is transmitted to Bank for deposit, processing and collection.

**h.** "Electronic Deposit Services" means the ECLD services or OED services or other similar products or systems offered by Bank and selected by Customer.

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

**j.** "OED system" means Bank's On-Site Electronic Deposit Service computer systems and databases that Customer may access in order to obtain the OED services.

**k.** "OED services" means the On-Site Electronic Deposit Services that allows organizations that receive check remittance payments by mail or in a walk-up or dropbox environment to deposit all payments electronically at Bank, as further described in the User Manual.

**l.** "Payor Customers" means clients and/or customers of Customer that submit original paper checks or check information to Customer for payment obligations owed to Customer.

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

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

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

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

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

**4. Determination of Items Eligible for Electronic Deposit**
**a.** Only original paper checks that qualify as a source document may be converted to an ARC Entry, POP Entry or BOC Entry under NACHA Rules. Customer is responsible for maintaining current information in the OED system or ECLD system on those Payor Customers that have opted-out of ARC Entry conversion. If Customer has selected a processing option that uses ACH Entries to collect payments from Payor Customers, Bank will apply certain automated internal edits and screens to the MICR Data and/or Check Images submitted by Customer to determine whether the original paper check is a source document that qualifies for conversion to an ACH Entry. Customer acknowledges and agrees that Customer is the Originator of such ACH Entries under NACHA Rules regardless of whether Customer or Bank initiates the ACH Entry into the payment system.

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

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

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

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

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

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

Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

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

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

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

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

**c.** If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items. .

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

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

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

**10. Storage of Check Images**
Bank shall store Check Images, MICR Data and ACH Entry information on the OED system or ECLD system, and shall make Check Images, MICR Data or ACH Entry information available to Customer according to the User Manuals. If the Electronic Deposit Services are terminated, Customer may obtain an FTP transmission or any other available format of Check Images, MICR Data or ACH Entry information processed using the Electronic Deposit Services.

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

**12. No Authorization to Create Substitute Checks**
Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the OED system or ECLD system, or otherwise transmitted to Customer, to print a Substitute Check for any reason.

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

**14. Remittance Documentation**
For OED services, Customer may use the Customer System to scan and read remittance documents associated with check payment.

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

**16. Customer Responsibility**
With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer agrees Bank shall not be liable for any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach of a representation or warranty as set forth in section 15 above, (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry; or (d) for any loss caused by Bank's acceptance or creation of a Check Image, MICR Data,
Substitute Check, Demand Draft, PIL or ACH Entry instead of presentment of the original paper check; or (e) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This section 16 shall survive termination of the Agreement.

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

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

**19. Accuracy and Timeliness of Electronic Deposit Services**
Bank will use reasonable efforts to provide the Electronic Deposit Services in a prompt fashion, Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's deposit or payments system prior to being made available pursuant to the Electronic Deposit Services.

**20. User Manual**
Bank will provide Customer with one or more user manuals ("User Manual") in paper or electronic format that will set forth the OED services' or ECLD services' policies and procedures with which Customer agrees to comply. Bank may, with at least 30 days notification, make amendments to any User Manual. Bank owns or has obtained all proprietary rights to the User Manual and Customer agrees not to duplicate, distribute or otherwise copy the User Manual without Bank's prior written consent. The User Manual will at all times remain the property of Bank, and Bank reserves the right to request Customer to return all printed copies of the User Manual within thirty (30) days of termination of the Electronic Deposit Services.

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

## E. ACH SERVICES

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

**2. Entry Origination/Processing Dates/Deadlines**
Customer may initiate Entries in the manner and format agreed to by Bank. ACH files transmitted to Bank shall be in an unbalanced file format. Customer agrees that all ACH Entries (regardless of SEC Code) that involve the exchange or transmission of banking information via unsecured electronic networks shall be encrypted or transmitted via a secure session, using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology. Bank will establish a deadline for the receipt of Entries from Customer ("Deadline"). Bank may establish different Deadlines for Entries depending on the method of delivery employed by Customer and all such Deadlines are subject to change. Bank must receive Customer's Entries at or prior to the Deadline for the Entries to be processed on the ACH Business Day of receipt. Entries received after the Deadline will be processed on the next ACH Business Day. Entries with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made.

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

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

**5. Entry Limits and Payment**
Customer shall at all times maintain a settlement account with Bank for the purpose of funding Customer's Entries ("Account").

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

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

**7. INTENTIONALLY OMITTED**

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

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

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

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

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

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

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

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

**12. Customer Representations/Indemnity**
Customer represents and warrants to Bank that each Entry complies with the terms of this Agreement and NACHA Rules, does not breach any warranty of Customer or Bank contained in this Agreement and NACHA Rules, complies with applicable state and federal laws, including, without limitation, the Electronic Funds Transfer Act, Regulation E and regulations promulgated by the Office of Foreign Assets Control, is accurate, timely, and authorized and that any Debit Entry is for a sum that on its settlement date is due and owing from the Receiver to Customer or is a correction of a previously transmitted erroneous Credit Entry. With respect to each ACH Entry (regardless of SEC Code), Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law and NACHA Rules to any person, Receiving Depository Financial Institution, or any other transferee.

Receiver authorizations shall expressly authorize Bank to transmit corrective entries to Receiver's accounts to correct a prior Entry and shall authorize Customer to release to Bank all information concerning its Receivers that is required by Bank to recover such Entries. Customer shall immediately cease initiating Entries upon receiving actual or constructive notice of the termination or revocation of the Receiver's authorization. Customer will retain each authorization received by Customer for such period of time as may be required by the Rules or applicable law and shall provide Bank with copies of such authorizations upon request. Bank shall not be liable for any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly out of any Entry initiated by Customer in violation of this Agreement.

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

**a.** Each check is eligible under NACHA Rules to be collected via an RCK Entry.

**b.** Customer has no knowledge of any insolvency and it has good legal title to the returned item.

**c.** All signatures on the returned item are authentic and authorized, and the returned item is without alteration, not subject to claims or defenses, and will not be presented to the paying bank.

**d.** The RCK Entry accurately reflects the item and any information encoded after issue in magnetic ink is correct. (RCK Entries cannot be used for collection fees.)

**e.** Any restrictive endorsement placed on the item is void or ineffective.

**f.** Customer has provided clear and conspicuous notice of its electronic check representment policy in advance of receiving the item to which the RCK Entry relates.

**g.** The Customer will provide to Bank immediately upon request a copy of the front and back of the returned item, provided that the request is made within seven (7) years of the settlement date of the RCK Entry.

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

**a.** Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry.

**b**. Customer has employed commercially reasonable methods of authentication to verify the identity of the Receiver.

**c.** Customer has taken commercially reasonable steps to verify that routing numbers are valid.

**d.** Customer has established a secure Internet session prior to the key entry by the Receiver of any banking information and through the transmission of the data to Customer. Currently, 128-bit RC4encryption technology is the standard for financial transactions and is considered commercially reasonable. If technological advancements drive the commercially reasonable standard to change, Customer agrees to comply with the new standard.

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

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

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

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

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

**(iii)** the Receiver's name;

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

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

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

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

If Customer chooses to provide the Receiver with written notice confirming the Receiver's oral authorization, Customer will disclose to the Receiver during the telephone call the method by which such notice will be provided.

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

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

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

Rules and makes the following additional representations and warranties regardless of which entity initiates the ARC or BOC Entry on its behalf:

**a.** Prior to the receipt of each check, Customer has provided clear and conspicuous notice to the Receiver: (i) that receipt of the check is authorization for a payment as a check transaction or for a one-time ACH debit to the Receiver's account; (ii) that funds may be withdrawn from the Receiver's account the same day payment is made; (iii) that the Receiver will not receive the check back from the Receiver's financial institution; and (iv) of Customer's phone number for inquiries regarding BOC Entries.

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

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

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

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

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

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

**h.** Customer shall retain a reproducible and legible image, microfilm or copy of the front of the Receiver's source document for two years from the settlement date of each ARC or BOC Entry, and shall immediately provide same to Bank upon request, unless bank's BOC service automatically retains such image.

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

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

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

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

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

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

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

**18. Third Party Vendors**
If Customer initiates Entries through a third party vendor or processor ("Vendor"), Vendor is the agent of Customer and not of Bank. If Customer uses a Vendor, Customer shall be deemed to have authorized Bank to follow the instructions of such Vendor to the same extent and under the same conditions as would apply if the instructions came direct from Customer and Customer shall be responsible for insuring that such Vendor fully complies with the Rules and this Agreement. Bank is not responsible for the acts or omissions of Vendor.

**19. Third Party Sender**
If Customer is transmitting Entries as a third party vendor or processor on behalf of originators ("Third Party Sender"), Customer agrees to be bound by the applicable terms provided in this Section E and NACHA Rules. Customer warrants to Bank that the originator has agreed to assume the responsibilities of an Originator under NACHA Rules and that ACH Entries shall not be initiated in violation of laws of the United States. Customer represents that it has executed an ACH agreement with each Originator and that the agreement binds the Originator to the NACHA Rules. Customer shall provide Bank with the list of Originators, copies of the agreements, and other information deemed reasonably necessary to identify the Originators within two (2) banking days of Bank's request. Bank reserves the right to review the list of Originators for which Customer is transmitting the Entries and to reject any in Bank's sole discretion. As Third Party Sender, Customer agrees that Bank shall not be liable for any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly from the failure of the Originator to perform its obligations as an Originator under NACHA Rules. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the NACHA Rules. Customer shall cooperate fully and respond within five (5) banking days to any inquiry from Bank relating to potential NACHA Rule inquiries or violations.

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

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

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

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

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

## F. WIRE TRANSFER SERVICES

**1. Introduction**
**a. Governing Law.** Bank sends outgoing and receives incoming wire transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider in accordance with section II.23.A.). All funds transfers are governed by this Agreement, Subpart B of Regulation J of the Federal Reserve Board, OFAC regulations, and all other applicable federal, state and local laws and regulations. Customer agrees not to initiate or receive a wire transfer payment order in violation of applicable federal, state or local law.

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

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

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

**4. Routing/Time Deadlines**
Bank may use means and routes that Bank thinks in its own discretion are suitable for each outgoing wire transfer. Bank will establish from time to time a specific time of day after which Bank will not accept an incoming payment order to be processed on the day of receipt. Payment orders received after Bank's established deadline or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank's wire department is not open will be considered received on the next Business Day.

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

**6. Payment Orders**

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

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

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

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

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

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

**g. Mainframe Batch Wire Transfers**

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

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

**7. Confirmation of Outgoing Wire Transfers**

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

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

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

**8. Advices**

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

**b. Advices by Facsimile.** If Customer selects advices by facsimile ("fax"), Customer shall exercise extreme care in maintaining its own security in the receipt of fax advices. Customer acknowledges that the information to be received by fax may include confidential information, including, without limitation, names, amounts, phone numbers, originating account information, and the text of incoming wires. Customer further acknowledges that it alone assumes full responsibility for maintenance of its internal security procedures to keep such information confidential. Bank shall not be liable for any and all claims, demands, expenses, liabilities and damages, including attorney fees at trial and on any appeal or petition for review, incurred by Bank arising directly or indirectly from the transmission by fax of an incoming wire transfer advice.

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

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

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

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

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

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

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

**11. Additional Limits on Bank's Liability**
Bank is responsible only for performing the Services described in this Section. Bank shall not be responsible for the acts or omission of Customer, any Federal Reserve Bank or other financial institution, any transmission or communication, or any other person and no such person shall be deemed to be Bank's Agent under this Agreement.

## G. DATA TRANSLATION SERVICES

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

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

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

**4. Entry Origination/Processing Dates/Deadlines**
Customer may from time to time deliver to Bank requests to format information for payments and/or other data translation via the agreed upon means (collectively, "Data Translation Request(s)"). All Data Translation Requests shall conform to the content, format, deadlines and other specifications that may be established by Bank in this Agreement and related documentation, or communicated to Customer. Bank may establish different deadlines for Data Translation Requests depending on the method of delivery employed by Customer and all such deadlines are subject to change. Bank must receive Customer's Data Translation Requests at or prior to the deadline established for processing on the business day of receipt. Data Translation Requests received after the deadline will be processed on the next business day. Customer will be notified if a Data Translation Request is rejected in accordance with procedures established by Bank. Customer represents and warrants that all information in each Data Translation Request delivered to Bank by Customer shall be accurate, timely, authorized and will otherwise comply with all applicable laws, rules and regulations.

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

**6. Payment Order Requests**
Customer agrees that its requests to initiate payment orders utilizing Data Translation Services ("Payment Order Requests") shall be governed by this Section, the sections of this Agreement governing the applicable payment mechanism, and all other applicable laws, rules and regulations governing the relevant payment mechanism. Except as may be provided elsewhere in this Section or Agreement, Customer may not amend or revoke Payment Order Requests after they have been

received by Bank. Customer acknowledges that the rules of NACHA and other electronic funds transfer systems as well as paper check processing systems may make any credit provisional until the financial institution crediting the account of the beneficiary specified in a Payment Order Request receives final settlement and that if the financial institution does not receive final settlement, it is entitled to a refund and Customer shall be deemed not to have paid the beneficiary. Payment Order Requests with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made. Customer is solely responsible for initiating Payment Order Requests sufficiently in advance to meet Customer's contractual obligations to its vendors and/or customers. Bank shall not be responsible for any late payment or finance charges that may result from Customer's failure to allow sufficient lead-time to make a Payment Order Request. Customer authorizes Bank to execute all Payment Order Requests, and settle to the Customer's account all Payment Order Requests, delivered to Bank in compliance with the terms of this Agreement, including the security procedures. Customer authorizes Bank to use whatever means Bank, in good faith, deems reasonable under the circumstances to execute each Payment Order Request, including selection of a funds transfer system, routing, and means of transmission. Customer also authorizes Bank, without prior notice or demand, to debit Customer's account for any other amount payable under this Agreement and to credit the account for any amount payable to Customer.

**7. Check Payment Requests**

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

**8. Security Procedures**

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

**a. File Confirmation Procedures.** File confirmation procedures utilizing Data Translation Services are solely for the purpose of verifying Bank's receipt of the Payment Order Requests but not for identifying errors in transmission or content. Where file confirmation procedures are required by Bank or selected by Customer, Customer shall provide Bank with the total items and dollar value of Payment Order Requests or any other necessary information ("Control Totals"). Customer may provide Bank with Control Totals by calling Bank's Interactive Voice Response ("IVR") or by sending a data file to Bank. After Bank receives Customer's Payment Order Requests, Bank will compare the Payment Order Requests to the Control Totals. If the Control Totals match the Payment Order Requests, Bank will process the Payment Order Requests. Bank will not process Payment Order Requests if Bank does not receive conforming Control Totals on or before the established Payment Order Requests delivery deadline on the Business Day it receives the Payment Order Requests. Bank will notify Customer if the Control Totals do not match the Payment Order Requests, or if Bank receives Payment Order Requests without receiving Control Totals or vice versa.

## H. COURIER SERVICES

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

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

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

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

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

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

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

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

## I. CASH VAULT SERVICES

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

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

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

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

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

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

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

**4. Withdrawals**
**a.** Bank may provide Customer with United States currency and coin in designated denominations from time to time as requested by Customer through the Bank's automated ordering system ("Cash Orders"). Customer must comply with all of Bank's policies and procedures

regarding the placement and delivery of Cash Orders, including, without limitation, the maintenance of a designated password. Customer shall be responsible for maintaining the confidentiality of Customer's password and restricting access to the system to authorized Agents. All Cash Orders will be charged to the account designated by Customer and must be picked up by Customer's Agent or sent by registered mail to a street address. Only armored couriers may pick up Cash Orders directly from a cash vault operated by Bank. Bank may release any Cash Order to any individual that Bank reasonably believes to be Customer's Agent. Customer shall be responsible for any Cash Order after receipt thereof by the Agent. Bank may specify a daily Cash Order limit and Customer agrees that it will not initiate a Cash Order in excess of the designated limit. In no event shall Customer initiate a Cash Order in excess of the immediately available funds in the designated account.

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

**(i)** The preferred order for currency is in standard full strap quantities only.

**(ii)** Coin may be ordered in standard full box units (50 rolls), individual rolls or loose standard bags only.

**(iii)** A charge for the face value of the monies ordered will be made to the Account on the day the order is processed by Bank.

**(iv)** Orders for coin and currency may be placed no later than the cut-off time established by Bank from time to time for delivery on the next banking day. Depending on Customer's location, select cash vault sites may require a minimum two-day lead time for coin and currency orders.

**(v)** Bank must be notified of any discrepancies pertaining to currency or coin orders within two banking days of receipt by Customer of such currency or coin. Customer must return documentation to back-up outages such as strap, coin, wrapper and/or box.

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

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

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

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

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

## J. U.S. BANK EASYTAX[SM]

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

**2. Submission of Information**
Customer shall initiate an ACH Entry furnishing Bank with complete and accurate master file information which shall enable Bank to file tax deposits with the appropriate tax authorities in a timely manner. The Services provided by Bank hereunder shall be based solely upon the information furnished by Customer to Bank. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Customer bears sole and exclusive responsibility to verify that the information provided to Bank is complete and accurate. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to information which is inaccurate, incomplete or otherwise incorrect. The Service provided hereunder does not relieve Customer of any duty imposed on Customer by law to maintain records or from verifying and, if necessary, immediately correcting in writing all data received from Bank relating to the Service. Customer does not have the right to delete or amend any ACH Entry after it has been received by Bank unless Customer has previously requested, and Bank has agreed to provide, ACH Adjustment Services. If ACH Adjustment Services are provided, subject to certain limitations, Customer may initiate an amendment to its ACH files after receipt by Bank. Such amendment may be initiated via fax and all faxed communications must be received by Bank prior to the established deadlines in order to be effective. Customer agrees to be bound by any instructions, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures. Customer shall indemnify and hold Bank harmless from and against all liability, loss and damage (including attorneys' fees and other costs incurred in connection therewith) arising out of the use of information provided by Customer.

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

**4. Receipt of Funds**
Funds received by Bank from Customer shall be held as a deposit liability of Bank to Customer until such time as such funds are due and paid to the appropriate tax authorities. Customer is not entitled to interest on such funds and Bank may invest such funds solely for Bank's benefit.

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

**6. Liability**
Bank shall not be liable for any penalties assessed by reason of failure of Customer to make any tax payments. Interruption of the Service or performance hereunder for any reason shall not relieve Customer of its obligation to make any required tax deposits, and Bank shall not incur any liability to Customer for failure by Customer to make any such deposit. If Customer elects to make a tax deposit by any means other than through Bank, Bank shall not be liable for any penalties or interest arising from any error in due date or other calculations for deposits made within the period in which such other deposit was made. Bank may choose to provide its EasyTax Service through a third-party vendor. Bank and its third party vendor's liability to Customer is limited to correcting any error made by the Bank or third-party vendor. The sole and exclusive remedy, at law or in equity, against Bank or third party vendor is limited to money damages in an amount not to exceed the total amount paid to Bank for EasyTax fees during the twelve (12) months preceding the event giving rise to the liability. Neither Bank nor third party vendor will be liable for special, incidental, or consequential damages. Customer acknowledges that the EasyTax Service would not be available or would be available at substantially increased rates without the liability and remedy limitations set forth in this agreement.

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

## K. PAPER-BASED DISBURSEMENT SERVICES

### 1. Controlled Disbursement

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

**b. Funding Procedures.** On each Business Day, Bank shall electronically provide Customer with a report of the total aggregate amount of all presented disbursement checks, and ACH transactions posted in the early morning ACH window, net of the prior day adjustment and other charges to the Disbursement Account (the "Total Clearings"). Customer agrees to maintain sufficient collected balances in the Funding Account by the established deadline to fund the Total Clearings. Bank is hereby authorized to debit the Funding Account in an amount equal to the actual or estimated Total Clearings and to transfer funds in said amount for credit to the Disbursement Account. Bank reserves the right to convert the Disbursement Account into a standard prepaid checking account at any time upon notice to Customer.

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

**d. Daily Dollar Limit.** A daily dollar limit (the "Dollar Limit") may be established from time to time by Bank with respect to the Disbursement Account with reasonable notification to the State. Bank shall have no obligation to pay disbursement checks and ACH transactions (collectively, "Items") in excess of the Dollar Limit. Bank may, at any time, either verbally or in writing (but shall not be deemed obligated to) notify Customer of any change made by Bank in the Dollar Limit. Establishment of the Dollar Limit should not be interpreted or construed by Customer as any commitment or agreement by Bank to provide any credit or loans to Customer, nor as an agreement or commitment to debit the Funding Account when doing so would create a negative balance therein.

**e. Special Circumstances.** Customer acknowledges that Bank, under some circumstances beyond its control, may at times be unable to provide a report of the total amount of its Total Clearings early enough for Customer to make a complete and acceptable funding of the accounts. Customer nevertheless agrees to fund the Funding Account completely by using an estimate of the Total Clearings.

**f. Action Affecting Accounts.** Should Bank receive any process, summons, order, injunction, execution, levy, lien, garnishment, or adverse claim notice (either by a governmental authority or third party) (hereinafter referred to as "Process"), which Bank reasonably believes will adversely affect the Funding Account or the Disbursement Account, Bank may, at its option and without liability, refuse to honor orders to pay or withdraw sums from any Disbursement Account and may either hold the Funding Account balance herein until such Process is disposed of to the satisfaction of Bank or pay the balance over to the source of the Process in accordance with applicable law.

**g. Return of Items Unpaid.** Bank reserves the right, with reasonable notification to the State, to return unpaid any or all Items presented for payment against the Disbursement Account in the event that:

**(i)** there are insufficient collected and available balances on deposit in the Funding Account by the established deadline to fund the Total Clearings;

**(ii)** debits cannot be posted because the Disbursement Account or Funding Account is frozen, blocked, closed or because of any other condition; or

**(iii)** any communications failure or other condition prevents Bank from monitoring Customer's Dollar Limit and/or the Items presented for payment.

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

### 2. Drafts/Warrants

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

**b. Draft/Warrant Format.** All drafts/warrants shall contain on the face of the item the words "draft" or "warrant," and "payable through U.S. Bank." Customer will also encode all drafts/warrants in accordance with Bank specifications. Customer agrees to immediately make any changes to the format of the drafts/warrants or encoding when requested to do so by Bank and will be solely responsible for its failure or refusal to comply with Bank's specifications.

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

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

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

**f. Controlled Funding**

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

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

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

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

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

## L. POSITIVE PAY SERVICES

**1. Introduction**

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

**2. Format Specifications**

Customer shall comply at all times with Bank's format and data transmission standards for the Positive Pay Service. Customer agrees to issue checks, drafts, warrants or other items (collectively, "Items") in accordance with Bank's specifications and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding. Customer shall supply Bank with sample Items for testing.

**3. Positive Pay**

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

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

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

**d. Teller Positive Pay.** All positive pay accounts will interface with the Bank's teller system unless otherwise agreed by Bank. Bank will compare Items presented for cash at a branch of the Bank with

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

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

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

**4. Reverse Positive Pay**

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

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

## M. LOCKBOX SERVICES

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

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

**3. Proprietary Rights**
Bank possesses all proprietary rights to written material, including, without limitation, all computer programs written for Bank's Lockbox processing system, portable media, listings, and other documentation originated and prepared by Bank. Customer shall not duplicate, sell, or use in any manner such programs or documentation without the prior written consent of Bank.

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

**5. Transmission of Information**
Bank shall transmit to Customer remittance information or other information received at the lockbox ("Lockbox Information") via secure electronic transmission. Customer acknowledges that the Lockbox Information may include consumer information that is confidential and may be subject to privacy laws and regulations, including unauthorized access or breach notification regulations. Customer further acknowledges that Bank has a duty to protect Lockbox Information and ensure that it is safely delivered to Customer and that Bank has deemed secure electronic transmissions to be the safest mechanism for delivery. If Customer elects to receive the Lockbox Information using other delivery means including paper reports, CDs, DVDs, or other portable electronic media, Customer acknowledges that such delivery means are susceptible to risk and agrees that Bank shall not be liable for any obligations, liability or losses that results from the non-receipt, disclosure, dissemination, alteration or unauthorized access of the Lockbox Information.

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

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

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

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

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

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

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

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

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

## N. RETAIL LOCKBOX CHECK CONVERSION SERVICES

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

**1. Processing Options**
Depending on current technological availability and the processing options selected by Customer, checks received from Payor Customers at Customer's designated U.S. Bank lockbox will be processed via ACH, original paper check presentment, or captured into Check Images and/or MICR Data. Bank may seek to collect such Check Images and/or MICR Data through the check collection system by presenting or exchanging Check Images and/or MICR Data, or using Check Images and/or MICR Data to create a Substitute Check, a Demand Draft or a Photo-In-Lieu ("PIL") for collection.

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

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

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

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

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

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

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

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

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

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

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

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

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

**5. Processing of Checks**
**a.** Bank shall image all checks that are mailed to Customer's lockbox and shall process checks based on the processing options selected by Customer. Bank shall send Customer a file containing information on all payments that have posted to Customer's lockbox account. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks

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

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

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

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

**c.** If Customer elects to have its returned paper items directed to another financial institution or entity apart from Bank, Bank shall not be liable for any late returned items.

**8. Representment of Returns**

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

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

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

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

**11. No Authorization to Create Substitute Checks**
Customer agrees that Customer and any of its agents may not use the Check Images created by, or stored in, the RLCC system or other similar system, CDs or DVDs, or otherwise transmitted to Customer, to print a Substitute Check for any reason.

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

**13. Customer Responsibility**
With respect to each original paper check, Check Image or Electronic Deposit, Customer agrees Bank shall not be liable for any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach of a representation or warranty as set forth in section 12 above, (b) as a result of any act or omission of Bank in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry; or (d) for any loss caused by Bank's creation of a Check Image, MICR Data, Substitute Check, Demand Draft, PIL or ACH Entry instead of presentment of the original paper check; or (e) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This section 13 shall survive termination of the Agreement.

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

**15. Accuracy and Timeliness of RLCC services**
Performance of the RLCC services may be affected by external factors such as communication networks latency, mail delays and other factors beyond Bank's control. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.

## O. RETURNED CHECK MANAGEMENT

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

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

**2. Redeposited Returned Items**
Upon Customer's request, Bank will automatically redeposit checks returned unpaid due to insufficient funds. Customer has a right to be notified whenever a check Customer deposits is returned unpaid. To simplify collection of these items, Customer agrees to waive this right of notification for redeposited items. If these items are returned a second time, Customer will receive a standard notification together with the original, replacement paper document, or electronic image, of the Returned Items. Bank reserves the right to place a hold on any redeposited Returned Item.

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

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

**5. Late Returns**
Bank will not submit any late return claims for Returned Items, unless requested by Customer and subject to the late return fees described in the Implementation Documents or in the fee schedules provided by Bank to Customer. Bank will not give preliminary credit to Customer for any late return claims. If any late return claim is accepted, Bank shall credit Customer's designated account, as soon as, but not before, the funds relating to such late return claim are made available to Bank by the financial institution to which said late return claim was made. Bank shall not be liable for any loss or damage (including attorneys' fees and other costs incurred in connection therewith) relating to or arising out of any late Returned Item, including those claimed or incurred under Regulation CC of the Board of Governors of the Financial Reserve System ("Regulation CC") or otherwise as a result of: (a) any delay in returning an item to the depositary bank; (b) any noncompliance with the expeditious return and notice-of-nonpayment requirements of Regulation CC; and (c) any breach of warranty made by Customer or Bank.

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

**7. Electronic Return Services**
National Automated Clearinghouse Association ("NACHA') Rules allows Customer to utilize ACH to electronically collect certain checks that have been returned unpaid for insufficient funds. In the event that Customer, Bank or its third party vendor initiates an ACH entry on Customer's behalf for check collection purposes ("RCK Entry") on Returned Items, Customer agrees that such RCK Entry will comply with all relevant provisions of this Agreement and NACHA Rules. Customer shall provide clear and conspicuous notice of its electronic check representment policy at the time the check is initially presented to Customer.

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

**a.** Customer has obtained the consumer's authorization to collect Returned Item fees and has provided the consumer with an electronic or hard copy of the authorization.

**b.** The authorization (i) is signed by the consumer and the signature stands alone and relates to the authorization language; (ii) is identifiable as an ACH debit authorization and clearly and conspicuously states its terms; (iii) contains information about how the consumer may revoke the authorization; and (iv) if stamped on the back of the check, is in the endorsement space provided.

**c.** Customer shall retain the original or microfilm copy of the authorization for two years from the termination or revocation of the authorization.

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

**10. Compliance with Law**
Bank shall not be liable for any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly out of Customer's failure to comply with the provisions of this Agreement or applicable law, regulations and operating rules, including without limitation, the NACHA Rules.

## P. COMMERCIAL SWEEP ACCOUNTS – LOAN OPTION

### A. Definitions

**1.** "Account" means Customer's deposit account at Bank which Customer has designated as being covered by the Services described herein.

**2.** "Available Funds" means the total of the collected funds in the Account as of the close of business on any Business Day, determined in accordance with the manner in which Bank generally provides credit for deposited checks.

**3.** "Business Day" means any day other than a Saturday or Sunday on which Bank is open to the public for carrying on substantially all of its banking functions.

**4.** "Credit" means any loan arrangement which is designated as a line of credit where Bank has agreed will be subject to the Services described herein.

**5.** "Credit Agreement" means any loan agreement, promissory note, guaranty or other agreement, instrument or document which evidences, secures or guarantees the Credit.

**6.** "Deficiency Amount" means the amount by which the Target Balance exceeds the amount of Available Funds as of the close of business on any Business Day.

**7.** "Event of Insolvency" means any of the following: (i) Customer or Guarantor shall die or cease to exist; (ii) any Guarantor shall attempt to revoke its guaranty or other obligation to Bank, or such guaranty or other obligation shall become unenforceable in whole or in part; (iii) any bankruptcy, insolvency or receivership proceeding, or any assignment for the benefit of creditors, shall be commenced under any Federal or state law by or against Customer or any Guarantor; (iv) Customer or any Guarantor shall become the subject of any out-of-court settlement with its creditors; or (v) Customer or any Guarantor is unable or admits in writing its inability to pay its debts as they mature.

**8.** "Excess Funds" means the amount of Available Funds as of the close of business on any Business Day which exceeds the Target Balance.

**9.** "Guarantor" means any guarantor, surety, accommodation party or joint obligor of the obligations of Customer under the Credit.

**10.** "Target Balance" means that amount of funds which Customer desires to maintain in the Account and which is mutually agreeable to Bank and Customer from time to time.

**11.** "Transaction" means either a Loan Transaction or a Repayment Transaction.

### B. Initiation of Transactions

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

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

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

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

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

## Q. COMMERCIAL SWEEP ACCOUNTS – INVESTMENT OPTION

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

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

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

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

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

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

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

### 2. Investment Options

**a. Repurchase Agreements**

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

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

**b. Eurodollar Investments**

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

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

**c. Mutual Funds**

**(i) Terms.** If Customer chooses the Mutual Fund sweep option, excess funds will be invested in the First American fund offered for this service. Bank affiliates serve as investment advisor, custodian, transfer agent, and accounting services agent and receive compensation for such services as disclosed in the prospectus for the selected fund.

**(ii) Customer Acknowledgments.** BY ACCEPTING THIS SERVICE, CUSTOMER HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE PROSPECTUS OF ANY DESIG-NATED FUND. CUSTOMER FURTHER ACKNOWLEDGES THAT BANK IS NOT PROVIDING ANY INVESTMENT ADVICE HEREIN TO CUSTOMER AND MAKES NO REPRESENTATION OR WARRANTY AS TO THE SUITABILITY OR SAFETY OF THE INVESTMENTS IN ANY FUND OFFERED UNDER THIS SERVICE.

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

## R. MASTER REPURCHASE AGREEMENT (MRA)

**1. Applicability**

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

**2. Definitions**

**a.** "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

**b.** "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;

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

**d.** "Buyer's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Seller's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;

**e.** "Confirmation", the meaning specified in Paragraph 3(b) hereof;

**f.** "Income", with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;

**g.** "Margin Deficit", the meaning specified in Paragraph 4(a) hereof;

**h.** "Margin Excess", the meaning specified in Paragraph 4(b) hereof;

**i.** "Margin Notice Deadline", the time agreed to by the parties in the relevant Confirmation, or otherwise as the deadline for giving notice requiring same day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);

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

**k.** "Price Differential", with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360

day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

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

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

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

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

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

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

**r.** "Repurchase Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;

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

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

**3. Initiation; Confirmation; Termination**

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

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

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

**4. Margin Maintenance**

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

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

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

**d.** Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

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

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

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

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

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

**8. Segregation of Purchased Securities**
To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this MRA. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this MRA shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraph 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

**Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities**
Seller is not permitted to substitute other securities for those subject to this MRA and therefore must keep Buyer's securities segregated at all times, unless in this MRA Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]* [may]** be subject to liens granted by Seller to [its clearing bank]* [third parties]** and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to re-segregate substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]* [any]** lien or to obtain substitute securities.
* Language to be used under 17 C.F.R. ß403.4(e) if Seller is a government securities broker or dealer other than a financial institution.
** Language to be used under 17 C.F.R. ß403.5(d) if Seller is a financial institution.

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

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

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

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

**10. Representations**
Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this MRA, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing in advance of any

Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this MRA on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this MRA and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this MRA and the Transactions hereunder will not violate any law, ordinance, charter, bylaw or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

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

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

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

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

**d.** If the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the non-defaulting party, without prior notice to the defaulting party, may: (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and (ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the non-defaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source. The parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the non-defaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

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

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

**g.** The defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.

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

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

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

any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

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

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

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

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

**16. Governing Law**
This MRA shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

**17. No Waivers, Etc.**
No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this MRA and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Paragraph 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

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

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

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

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

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

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

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

**20. Disclosure Relating to Certain Federal Protections**
The parties acknowledge that they have been advised that:

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

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

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

# TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among the **State of Wisconsin**, **Elavon, Inc**. f/k/a **NOVA Information Systems, Inc.** and **U.S. Bank National Association**. The TOS and the other portions of the Agreement govern the Merchant's participation in the Program.

## Section A – Definitions

1) **DEFINITIONS**.
   a) **ACH**: Automated Clearing House.
   b) **Agreement**: This TOS, any Addendum (including the Bill Payment Addendum to the Terms of Service and the PIN-Based, Online Debit Card Addendum to the Terms of Service), the Merchant Application, the Merchant Operating Guide, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.
   c) **American Express**: The American Express Company.
   d) **Authorization**: Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.
   e) **Authorization Cod**e: The code sent by an Issuer in response to an Authorization request.
   f) **Automated Clearing House (ACH)**: The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.
   g) **Bankruptcy Proceeding**: With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
   h) **Card Not Present**: The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
   i) **Card Present**: The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
   j) **Cardholder**: (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose

name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

k) **Chargeback**: A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

l) **Confidential Information**: All information or items proprietary to Elavon or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with Elavon and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

m) **Convenience Fee**. Any fee or charge for the use of a Payment Device in a Transaction.

n) **Credit Card**: A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); or (iii) any card bearing the symbol of any other Credit Card Association.

o) **Credit Card Associations**: (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

p) **Credit Card Rules**: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

q) **Credit Transaction Receipt**: A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.

r) **Debit Card**: A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to make a payment by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.

s) **Debit Card Rules**: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

t) **Demand Deposit Account (DDA)**: The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.

u) **Diners**: Diners Club International Ltd.

v) **Discover**: Discover Financial Services, Inc.

w) **EBT Card**: A card utilized for electronic benefits transfers.

x) **Effective Date**: The date set forth in the 2008 Enterprise Banking Services Contract.

y) **EFT Networks**: (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

z) **Elavon**: As applicable, Elavon, Inc. f/k/a NOVA Information Systems, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. f/k/a NOVA Information Systems, Inc.

that provides processing services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member.

aa) **Electronic Check Service Association**: Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by Elavon from time to time.

bb) **Electronic Check Service Rules**: All applicable rules and operating regulations of the Electronic Check Service Associations, and all rules, operating regulations, and guidelines for Electronic Check Service Transactions issued by Elavon from time to time, including without limitation, all amendments, changes, and revisions made thereto from time to time.

cc) **Electronic Commerce Transaction**: A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant or a Merchant uses the Internet to submit the Transaction for processing to Elavon.

dd) **Electronic Gift Cards (EGC)**: A special card purchased by a customer that is redeemable for in-store merchandise or services.

ee) **Interchange**: The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between Elavon and the Issuer.

ff) **Issuer**: The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

gg) **JCB**: JCB International Co., Ltd.

hh) **Laws**: All applicable state, federal and local laws, rules, regulations, orders and decrees, as amended from time to time.

ii) **Loyalty Cards**: A special card given to customers who are frequent shoppers of an establishment pursuant to which the customer may receive a discount or other reward.

jj) **Mail Order/Telephone Order (MO/TO) Transaction**: For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.

kk) **MasterCard**: MasterCard International Incorporated.

ll) **Member**: U.S. Bank National Association. The Member may be changed by Elavon at any time.

mm) **Merchant (or you)**: The State of Wisconsin, and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B. The State of Wisconsin will not be responsible for any Merchant that joins this Agreement by executing a Participation Agreement.

nn) **Merchant Application**: Any document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.

oo) **Merchant Operating Guide**: The operating manual provided by Elavon to its Merchants. The Merchant Operating Guide may be amended from time to time by Elavon in its sole discretion.

pp) **National Automated Clearing House Association (NACHA)**: The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.

qq) **Payment Device**: Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check, (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.

rr) **Payment Network**: Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.

ss) **Payment Network Regulations**: Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and/or the Electronic Check Service Rules.

tt) **Person**: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.

uu) **POS Device**: A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.

vv) **Prepaid Cards**: A reloadable card having available funds to the Cardholder paid for in advance.

ww) **Program**: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

xx) **Reserve Account**: The account established pursuant to Section (B)(6).

yy) **Reserve Amount**: The amount established pursuant to the calculation set forth in Section (B)(6).

zz) **Reserve Event**: The events designated in Section (B)(6).

aaa) **Retrieval Request**: A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

bbb) **TOS**: These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

ccc) **Transaction**: Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).

ddd) **Transaction Receipt**: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.

eee) **Value Added Services**: Any product or service provided by a third party unaffiliated with Elavon or Member to assist Merchant in processing Transactions, including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.

fff) **Visa**: Visa U.S.A., Inc.

2) **RULES OF CONSTRUCTION**. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words “hereof,” “herein,” and “hereunder,” and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section B - General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.

## Section B - General Provisions

3) **ACCEPTANCE OF PAYMENT DEVICES**. Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Credit Cards are set forth in the TOS. The terms and conditions for the acceptance of any Payment Devices or methods other than Credit Cards shall be set forth in one or more addenda (each an “Addendum”), which shall incorporate the TOS by reference. Each Addendum shall be governed by the TOS, as well as by the terms set forth in the Addendum.

4) **DEPOSIT OF TRANSACTION RECEIPTS**.

a) **Funds**.

i) **Deposits**. You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, Elavon, and Member will deposit to the DDA all funds evidenced by

Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to Elavon and Member for all amounts owed under the agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA.

ii) **Provisional Credit**. All Transaction Receipts and deposits are subject to audit and final checking by Member and Elavon, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or Elavon may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Elavon's sole discretion.

iii) **Original Transaction Receipts**. Under no circumstances will Member or Elavon be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and Elavon.

b) **Chargebacks**. You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including all Chargebacks. You will pay Elavon and Member for all Chargebacks. You agree to accept for Chargeback, and will be liable to Member and Elavon in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize Elavon and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding Chargebacks.

5) **DEMAND DEPOSIT ACCOUNT (DDA)**.

a) **Establishment and Authority**. You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize Elavon and Member to debit the DDA for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize Elavon's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement when such products or services are requested by you. You must obtain prior consent from Member and Elavon to change the DDA. If you do not get that consent, Elavon or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Elavon and Member have the right to rely upon written instructions submitted by you to request changes to the DDA. You may request from Elavon written confirmation of Elavon's and Member's consent to change the DDA.

b) **DDA**. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. Elavon and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. You authorize Member or Elavon to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at Elavon's direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Elavon and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the

Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.

c) **Asserted Errors**. It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. You must promptly examine all statements relating to the DDA and immediately notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Elavon within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to Elavon within said thirty (30) days, Elavon and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or Elavon for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of your written notice. During that sixty (60) day period, Elavon will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying Elavon.

d) **Depository Institution**. Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA. You hereby release Elavon and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement.

e) **ACH Authorization**. You authorize Member, Elavon, and their respective vendors and agents to initiate debit/credit entries to the DDA and the Reserve Account, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement and until all of your obligations to Elavon and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide Elavon and Member such information regarding the new DDA as they deem necessary. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from you to reflect in its system any change to your DDA.

6) **RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF**.

a) **Reserve Account**.

i) **Establishment**. Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and Elavon for any and all amounts owed by you. Member and Elavon shall have sole control of the Reserve Account.

ii) **Reserve Amount**. The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, Elavon will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality.

iii) **Reserve Event**. The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e)

termination of the Agreement for any reason, (f) nonpayment of amounts owed to Elavon or Member, and (g) the occurrence of an adverse change in your financial condition.

iv) **Funding**. Member and Elavon may fund the Reserve Account up to the Reserve Amount by any one or more of the following means.
   (1) Member and Elavon may require you to deposit into the Reserve Account funds in an amount determined by Elavon;
   (2) Member and Elavon may deposit into the Reserve Account funds they would otherwise be obligated to pay you.

v) **Use of Funds in Reserve Account**. Member or Elavon may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or Elavon. Also, Member or Elavon may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Elavon. Further, you agree that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

vi) **Termination of Reserve Account**. Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.

b) **Recoupment and Set-off**. Member and Elavon have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to Elavon and Member, you must create or maintain the Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to Elavon and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.

c) **Remedies Cumulative**. The rights conferred upon Member and Elavon in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and Elavon under the Agreement, at law or in equity. Rather, each and every right of Member and Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

7) **FEES; OTHER AMOUNTS OWED; TAXES**.

a) **Fees**. You will pay Member and Elavon fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees. Such fees will be calculated once each month for the previous month's activity. Elavon will send you an invoice reflecting the fees due, which you must pay within thirty (30) days of the invoice date. In addition to all other available remedies, and except in regard to good faith disputes under s. 16.528(e) of the Wisconsin Statutes, Elavon and Member may offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe you under this Agreement or any other agreement. In addition, you will pay Elavon at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement will not be amended by Elavon for the Initial

Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.

i) **Participating Merchants**. Merchants who participate in this Agreement by executing a Participation Agreement may choose to be debited instead of invoiced for their fees. In such case, Elavon will calculate and debit the fees from the DDA once each month for the previous month's activity, or such fees will be deducted from the funds due that Merchant under the Agreement.

b) **Other Amounts Owed**. You will immediately pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing), and any other payments due under the Agreement, except that any fees will be paid within thirty (30) days after receipt of invoice . Elavon or Member may debit these amounts (including any fees outstanding for more than 120 days) from your DDA by ACH, and in the event such ACH does not fully reimburse Elavon or Member for the amount owed, you will immediately pay Elavon or Member such amount except in regard to good faith disputes under s. 16.528(e), Wisconsin Statutes. Elavon will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

c) **Taxes**. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If you are a tax-exempt entity, you will provide Elavon and Member with an appropriate certificate of tax exemption.

8) **ACCURACY OF INFORMATION; HOLD HARMLESS; LIMITATION OF LIABILITY; PERFORMANCE**.

a) **Accuracy of Information**. You represent and warrant to Member and Elavon that all information provided to Elavon in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify Elavon in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept payment services, type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. You will provide any additional information requested by Elavon within a reasonable time. You will hold harmless Member and Elavon for all losses and expenses incurred by Member or Elavon arising out of any such change, whether or not reported to Elavon, or your failure to provide requested information. Elavon may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize Elavon and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon Elavon's or Member's receipt of the Merchant Application.

b) **Hold Harmless**. As between Merchant, Elavon and Member, Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute with any Cardholder or third party relating to any Transaction or any breach by Merchant of any of its obligations under this Agreement for which Member and Elavon are not directly or indirectly at fault. Merchant hereby releases Elavon and Member from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with such Transactions and Merchant breaches.

c) **Limitation of Liability**., In addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by you during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars

($50,000). In no event will Elavon, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.

d) **Performance**. Neither Elavon nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Elavon or Member and without the fault or negligence of Elavon or Member.

9) **REPRESENTATIONS AND WARRANTIES.** You represent and warrant to Elavon and Member as of the time the Agreement is effective, and reaffirm to Elavon and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:

a) **Information**. All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and officers of Merchant. Elavon has the right to rely upon written instructions submitted by you to request changes to your business information. You may request written confirmation of Elavon's consent to the changes to your business information. You will not submit Transactions for processing to Elavon or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Elavon.

b) **Authority to Execute**. Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.

c) **No Litigation**. There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to Elavon in writing.

d) **Transactions**. All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with Elavon.

e) **Compliance with Laws and Regulations**. You will comply with all Laws and Payment Network Regulations.

f) **Business Use**. You are obtaining and using the processing services from Elavon for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.

10) **AUDIT AND INFORMATION**.

a) **Audit**.

i) **Elavon or Member Audit.** Subject to the applicable privacy and confidentiality provisions contained in Appendix 1 of the Enterprise Banking Services Contract, and in the event that Elavon or Member reasonably suspect that they are subject to a financial risk due to your actions or omissions, you authorize Elavon and Member to perform an audit or inspection of your operations to confirm compliance with the Agreement at Elavon or Member's expense.

ii) **Payment Network Audit.** In the event of a known or suspected data compromise, security incident or the occurrence of suspicious activity, you will obtain and submit a copy of a forensic audit from a qualified incident response assessor of the information security of your business at your expense when requested by Elavon or Member as required by the Payment

Network Regulations. You acknowledge and agree that the Payment Networks have the right to audit your operations to confirm compliance with the Payment Network Regulations.

b) **Information**.

i) **Authority**. You authorize Elavon and Member to make, from time to time, any business or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.

ii) **Financial Information**. Upon the request of either Elavon or Member, you will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to Elavon and Member such other information regarding your financial condition as Elavon and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

c) **Customer Identification**. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow Elavon and Member to identify you.

11) **RESPONSIBILITY FOR ACTIONS**. You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.

12) **FRAUD MONITORING**. You are solely responsible for monitoring your Transactions and the actions of your officers, directors, employees, agents, business invitees, third party vendors including Value Added Services, and those of any other Person who, with or without your consent or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. Elavon and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.

13) **BUSINESS CONTINUITY**. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction incurred by Merchant. Elavon is under no duty to recreate lost Transactions that have not been transmitted to Elavon in the proper format.

14) **THIRD PARTIES**.

a) **Products or Services**. You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to Elavon previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will hold Elavon and Member harmless from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither Elavon nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon. Elavon and Member will be responsible for any third parties retained by Elavon or Member to process Transactions for Merchant, provided that such third parties are identified on Schedule C.

b) **Use of POS Devices Provided by Others**. In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to Elavon and Member

via a data processing system or network compatible with Elavon's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Elavon will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

15) **TERM AND TERMINATION**.

a) **Term**. Unless terminated as set forth below, the Agreement will remain in effect for a period of six (6) years ("Initial Term") following the Effective Date. The Agreement may be renewed for two successive two (2) year terms ("Renewal Term"). Should Merchant continue processing Transactions after the Renewal Term, then the parties agree that the terms of this Agreement will govern such Transaction processing.

b) **Termination**.

i) **Merchant**.

(1) The Agreement may be terminated by you by providing 180 days written notice.

(2) The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or Elavon, provided you give Member and Elavon written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party you claim to be in breach of the Agreement.

(3) The Agreement may be terminated by you in the event that sufficient legislative appropriation is not available, provided that you give Elavon and Member notice prior to termination.

(4) The Agreement may be terminated by you if Member or Elavon files a petition in bankruptcy, becomes insolvent, or dissolves.

ii) **Elavon or Member**.

(1) The Agreement may be terminated by Member or Elavon effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to you at least one hundred twenty (120) days prior to the expiration of the then current term.

(2) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:

(a) The garnishment or attachment of your deposit accounts with Member, the DDA, the Reserve Account, or any of your property in the possession of Elavon or Member.

(b) The assignment of your assets generally for the benefit of creditors.

(c) The commencement of a Bankruptcy Proceeding by or against you.

(d) Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.

(e) Any Payment Network requires Member or Elavon to terminate this Agreement or cease processing transactions for you.

(3) The Agreement may be terminated by Elavon or Member if, after providing one hundred twenty (120) days written notice, any of the following conditions remain:

(a) The occurrence of Excessive Activity (defined in Section C(24)(c)).

(b) The acceptance of Card Not Present Transactions without proper disclosure to Elavon and Member as set forth herein.

(c) The failure to pay Elavon or Member any amount you owe Elavon or Member.

(d) The failure by you to perform a material obligation of this Agreement.

(e) The occurrence of an adverse change in your financial condition.

Elavon's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of Elavon or Member to terminate the Agreement expressed elsewhere.

c) **Notice of Termination**. Notice of termination by Merchant, Elavon, or Member must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) **Action Upon Termination**.

i) **Accounts**. All your obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until you pay all amounts you owe Elavon or Member or amounts for which you are liable under the Agreement. You must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination. If a Reserve Account is established by Elavon, then any balance remaining after Chargeback rights have expired and all other amounts owed by you have been paid will be disbursed to you.

ii) **Equipment**. If your equipment is leased, you are obligated to honor the terms and conditions of your leasing contract. If your equipment is owned by Elavon, you must return all equipment owned by Elavon within ten (10) business days and immediately pay Elavon any amounts you owe for such equipment.

iii) **Return to Elavon**. All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of Elavon and must be returned to Elavon or destroyed within ten (10) business days after termination of the Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by Elavon arising out of any failure to return or destroy such materials following termination.

16) **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™**.

a) **Compliance with Laws and Payment Network Regulations**. You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Elavon. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) electronic fund transfers; and (iii) confidential treatment of information. You will assist Member and Elavon in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and Elavon all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.

b) **MATCH™**. You acknowledge that Member and/or Elavon is required to report Merchant's business name and, if applicable, the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by Elavon and Member, and the listing itself.

c) **Security Program Compliance**. You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also

shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, Elavon will provide you with the respective website links to obtain the current requirements of the Visa and MasterCard programs. You are responsible for your own actions or inactions, those of your officers, directors, shareholders, employees and agents, including any third party vendors with whom you contract to perform services for you. You shall hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, and agents, including any third party vendors from whom you procure Value Added Services or third party POS Devices also comply with the program requirements of such Payment Network. Elavon and Member will be responsible for any third parties retained by Elavon or Member to process Transactions for Merchant, provided that such third parties are identified on Schedule C.

**d) Data Compromise**. You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and obtaining any waivers necessary for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to any data incident that occurs in your systems or systems within your control including your employees and agents and Value Added Service providers, and all costs Elavon or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits, at your expense. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident. If Elavon or Member suffer a data incident and Cardholder or customer information has been accessed from Elavon or Member, their employees or agents, or systems within Elavon's or Member's control, then Elavon and Member will follow all Payment Network Regulations with respect to such data incident and, solely with respect to the parties to this Agreement, will be liable for all costs Merchant incurs as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and the cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance.

17) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS**.

a) **Use of Trademarks**. You may display the promotional materials provided by Elavon in your place of business. Your use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for your products or services.

b) **Confidentiality**.

i) **Cardholder and Transaction Information**. You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and

Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B(16)(d), Merchant shall immediately notify Elavon of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) Elavon or Member; or (iv) elsewhere.

ii) **Bankruptcy**. In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:
(1) Return this information to Elavon, or
(2) Provide acceptable proof of destruction of this information to Elavon.

iii) **Elavon or Member Confidential Information**. You shall at all times protect Elavon's and Member's Confidential Information. To the extent provided by law, including Wisconsin Public Record Law, subch. II, Chapter 19 of the Wisconsin Statutes, you will not disclose any of Elavon's or Member's Confidential Information to any third party except as required by Laws. The parties recognize that under s. 19.36, Wisconsin Statutes, computer programs and data, trade secrets, and financial identifying information are exempted from disclosure and Merchant agrees not to disclose such information.

c) **Passwords**. If you receive a password from Elavon to access any of Elavon's databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Elavon if you believe Elavon's databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and hold Elavon and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.

d) **Proprietary Interest**. Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.

18) **MISCELLANEOUS PROVISIONS**.

a) **Entire Agreement**. Deleted.

b) **Construction**. Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

c) **Assignability**. The Agreement may be assigned by Member or Elavon, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If you, nevertheless, assign the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as you.

d) **Notices**. Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Elavon. Any written notice to Elavon, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.

e) **Bankruptcy**. You will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. You will include Elavon on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Elavon under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

f) **Attorneys' Fees**. Deleted.

g) **Customer Contact**. You authorize Member and Elavon to contact your customers or their Issuer if Member or Elavon determines that such contact is necessary to obtain information about any Transaction between you and a customer.

h) **Telephone Recording**. For quality assurance and training purposes, you authorize Elavon to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.

i) **Information Sharing**. You understand and agree that Elavon may disclose any information gathered by Elavon to (i) Elavon's "affiliates" (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement when such products and services are requested by you and to Elavon's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Elavon in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

j) **Communication with Merchant**. You agree that Elavon and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone or U.S. mail.

k) **Amendments**. Member and Elavon may propose amendments or additions to Section C of the Agreement or the Merchant Operating Guide. Member or Elavon will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Elavon is entitled to pass through to you any fee increases imposed upon Elavon by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors. All changes to Section B of the Agreement will be in writing and signed by the parties.

l) **Severability and Waiver**. If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by Merchant, Elavon or

Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement.

m) **Independent Contractors**. Elavon, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.

n) **Privacy Laws.** In addition to Section (B)(17)(b) above, Merchant, Elavon and Member must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of Elavon to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a "covered entity" or "business associate", as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain "protected health information" as defined by HIPAA. Elavon is not a "business associate" as defined by HIPAA and it is not Elavon's practice to store or accept any information that would cause it to be a "business associate" under HIPAA.

o) **Survival**. All obligations hereunder shall survive termination of the Agreement, including, without limitation, Sections (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(11), (B)(14), (B)(15)(d), (B)(16), (B)(17) and (B)(18)(f) of the TOS.

p) **Counterparts; Facsimile Signatures; Delivery**. The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

## Section C – Acceptance of Visa and MasterCard

19) **ACCEPTANCE OF VISA AND MASTERCARD**. Merchant agrees to the following provisions in addition to the Definitions in Section (A) and the General Provisions of Section (B) above:

20) **VISA AND MASTERCARD DEFINITIONS**. For purposes of this Section, "Credit Card" shall be deemed to be limited to a: (i) credit/business product of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product of MasterCard; or (iv) consumer debit/prepaid product of MasterCard as applicable. The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards. The consumer debit/prepaid products of Visa are those products that for which Transactions by the Cardholder are paid by accessing the Cardholder's asset account immediately including: (i) consumer Visa check cards such as Classic, Gold, Platinum and Visa Check Card II; and (ii) consumer prepaid/EBT cards such as Visa Buxx, Visa Payroll, Visa gift cards (including incentives, promotional, and rebate), child support cards, unemployment cards, insurance claim cards, customer service cards, state disbursement cards (not including unemployment or child support), flexible spending account cards, general purpose reloadable and one-time use prepaid cards, and student aid college cards. The consumer debit/prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EBT cards and payroll cards. The credit/business products of MasterCard include all other MasterCard products.

21) **HONORING CREDIT CARDS**.

a) **Honoring Cards**. Merchant may choose to accept (i) only the credit/business products of Visa and/or MasterCard; (ii) only the consumer debit/prepaid products of Visa and/or MasterCard; or (iii) both the credit/business products and consumer debit/prepaid products of Visa and/or MasterCard. You must indicate your decision to accept a limited category of products on the Merchant Application and if you wish to discontinue acceptance of either category of products, you must provide Elavon with thirty (30) days advance written notice. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, Elavon and Member are not required to reject the Transaction and you will be charged our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.

b) **No Minimum or Maximum**. Merchant shall not establish minimum or maximum Credit Card Transaction amounts.

c) **Cardholder Identification**. In Card Present Transactions, you will identify the Cardholder and check the expiration date and signature on each Credit Card. You will not honor any Credit Card if: (i) the Credit Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Credit Card, is blank, or uses language to the effect of “see id”; or (iii) the account number embossed on the Credit Card does not match the account number on the Credit Card’s magnetic stripe.

d) **Credit Card Recovery**. You will use reasonable, peaceful means to recover any Credit Card: (i) on Visa Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Credit Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number, or the Credit Card does not have the “Twin Globes” hologram on the lower right corner of the Credit Card face.

e) **Surcharges**. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Credit Card, except as permitted by the Credit Card Rules. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check, or similar means rather than by Credit Card.

f) **Convenience Fees.** You may not assess Convenience Fees unless you have disclosed such fees to Elavon previously in writing and you have been approved by Elavon to assess such fees. If you complete a Transaction and assess a Convenience Fee without having disclosed such fee previously in writing and obtained Elavon’s consent, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations. Transactions that include a Convenience Fee must comply with each of the following requirements:

   i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.
   ii. The Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition or utility charges.
   iii. You must provide a true "convenience" in the form of an alternative payment channel outside of your customary payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.

iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not want to pay the fee.

v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.

vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).

vii. Additional Visa Convenience Fee Requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) the fee must be assessed by the *same Merchant actually providing the goods and services*; and (v) the fee may not be assessed by a different merchant.

viii. Additional MasterCard Convenience Fee Requirements are as follows: (i) the fee may be tiered, percentage based, or flat; and (ii) the fee may be authorized and settled separately from the primary transaction.

ix. Merchants who accept both Visa and MasterCard Credit Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat Convenience Fee and must combine all charges into one authorization and clearing Transaction.

x. To the extent Merchant's state or other governing body has passed legislation that requires Convenience Fee assessment by government agencies as a component of card acceptance, such laws may conflict with the Payment Network Regulations. Merchant bears all responsibility for, and agrees to hold Elavon and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.

xi. Convenience Fees may be prohibited by Laws in some States. Merchant may not charge Convenience Fees where prohibited by Laws.

xii. In no event is a Convenience Fee to be referred to as a surcharge or advertised as an offset to processing fees.

xiii. If you have received approval from Visa to participate in the Tax Payment Pilot Program, then you may assess a variable service fee so long as: (i) only eligible tax payments are accepted (personal income, personal property, real property, unemployment, business income and sales and use taxes); (ii) Cardholders are notified of the fee and given the opportunity to opt-out of the Transaction; (iii) the variable fee must be processed as a separate Transaction and not combined with the tax payment; (iv) the variable fee may be assessed on all payment channels and the fee cannot be higher than any other card-based payment offered through the same channel; and (v) you submit appropriate reports of CISP compliance to Visa and receive Visa approval and certification annually.

g) **Return Policy**. You must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Credit Card Rules, any limitation you have on accepting returned merchandise.

h) **No Claim Against Cardholder**. You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or Elavon refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to Elavon.

i) **Disputes With Cardholders**. All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither Elavon nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Credit Card Rules.

22) **AUTHORIZATION**.

a) **Required on all Transactions**. You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any Card present Transaction, whether or not an Authorization Code is provided, you must obtain a swiped or imprinted sales draft signed by the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.

b) **Effect**. An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.

c) **Unreadable Magnetic Stripes**. For Card Present Transactions, if you authorize and present Transactions electronically and your terminal is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

23) **PRESENTMENT OF TRANSACTION RECEIPTS**.

a) **Transaction Receipts**.

i) **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions)**. You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:

(1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
(2) Merchant name and location.
(3) Location Code (i.e., merchant identification number issued by Elavon).
(4) Transaction amount, including applicable taxes.
(5) Transaction date.
(6) Space for Cardholder signature for Card Present Transactions.
(7) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
(8) Authorization Code.
(9) Terms and conditions of the sale, if restricted.

If the Merchant is accepting consumer debit products of Visa or MasterCard, no data referencing the Cardholder's PIN number shall be printed on the receipt.

ii) **Electronic Commerce Transactions**. You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:

(1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
(2) Merchant name.
(3) Merchant online address.

(4) Purchaser name.
(5) Authorization Code.
(6) Transaction amount.
(7) Transaction date.
(8) Customer service contact, including telephone number.
(9) Terms and conditions of the sale, if restricted.

b) **Signatures**. In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS.

c) **Reproduction of Information**. For Card Present Transactions, if the following information embossed on the Credit Card is not legibly imprinted on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.

d) **Truncation**.
   i) The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "*," or "#," and not with blank spaces or numeric characters.
   ii) Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.
   iii) These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.

e) **Delivery and Retention of Transaction Receipts**. For Card Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or terminal-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer period as the Credit Card Rules or the Laws may require).

f) **Electronic Transmission**. If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to Elavon or its designated agent in the form specified by Elavon no later than the close of business on the date the Transactions are completed. If Member or Elavon requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.

24) **RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING**.

a) **Retrieval Requests**. You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.

b) **Chargebacks**. You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and Elavon in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay Elavon and

Member on demand the value of all Chargebacks. You authorize Elavon and Member to offset from incoming Transactions and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Credit Card Rules regarding Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.

i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
ii) Unauthorized use of a Credit Card as alleged by the Cardholder,
iii) Dispute by the Cardholder over the quality of goods or services,
iv) Failure by Merchant to provide goods or services,
v) The Transaction Receipt does not bear the Cardholder's signature,
vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

c) **Excessive Activity**. Your presentation to Elavon of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement as set forth in Section B(15)(b)(ii)(3). "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and Elavon to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.

d) **Credits**.

i) **Credit Transaction Receipt**. You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to Elavon. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to Elavon, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide Elavon with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.
ii) **Revocation of Credit**. Member or Elavon may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.
iii) **Reprocessing**. You will not resubmit or reprocess any Transaction that has been charged back.

e) **Fraud and Factoring**. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that Elavon may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate

suspicious or unusual deposit activity. Elavon and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.

25) **OTHER TYPES OF TRANSACTIONS**.

a) **Mail Order/Telephone Order (MO/TO)**. You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to Elavon previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service ("AVS") on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or "TO," or mail order or "MO," as appropriate. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

b) **Recurring Transactions**.

i) **Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from Elavon or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.

ii) **Limitations on the Resubmission of Recurring Transactions**. In some limited instances, you may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.

iii) **Recurring Transaction Receipts**. You must print legibly on the Transaction Receipt the words "Recurring Transaction." You must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.

iv) **Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.

v) **Recurring Transactions With Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days

prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.

c) **Multiple Transaction Receipts**. You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.

d) **Deposits**.

i) **Prior Consent**. You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to Elavon previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules.

ii) **Acceptance**. If you have disclosed such method of sale to Elavon previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Credit Card Rules. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words “deposit” or “balance” on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled “balance” until the goods have been delivered to Cardholder or until you have fully performed the services.

e) **Future Delivery**. You will not present any Transaction Receipt or Credit Transaction Receipt to Member or Elavon for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless you have disclosed such method of sale to Elavon previously in writing and you have been approved by Elavon to submit such Transactions. If you have disclosed such method of sale to Elavon previously in writing, you represent and warrant to Member and Elavon that you will not rely on any proceeds or credit resulting from such sales Transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until you have fully performed the services.

f) **Electronic Commerce**.

i) **Electronic Commerce**. You may not solicit or accept Electronic Commerce sales Transactions unless you have disclosed such method of sale to Elavon previously in writing, and you may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to Elavon and Member. If you submit Electronic Commerce sales Transactions without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and the Payment Network Regulations. You understand that sales Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to Electronic Commerce Transactions, whether or not: (i) such Transactions have been encrypted; and (ii) you have obtained Elavon’s consent to

engage in such Transactions. Encryption is not a guarantee of payment and does not waive any provision of the TOS or otherwise validate a fraudulent Transaction. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions. All communication costs and compliance with Laws related to Electronic Commerce Transactions will be your responsibility. You understand that Elavon will not manage the telecommunications link for Electronic Commerce Transactions and that it is your responsibility to manage that link. Merchant authorizes Elavon and Member, at Merchant's costs and expense, to perform an annual audit and examination of Merchant's website and a due diligence review as required by the Payment Network Regulations for Electronic Commerce Merchants.

ii) **Requirements**. For goods to be shipped on Electronic Commerce sales Transactions, you may obtain authorization up to seven (7) days prior to the shipment date. You need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided the additional amount represents shipping costs. Further, your Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) your method of Transaction security. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the applicable Payment Network rules on securing such data. You may not retain or store CVV2/CVC2 data after authorization for record keeping or additional authorization processing.

26) **INTERCHANGE**. Interchange qualification requirements, as defined by the Credit Card Associations, affect the Merchant's fees or surcharges owed for Transactions. Merchant will pay a higher discount rate, higher fees, and surcharges for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which the Merchant was approved.

**Section D – Acceptance of American Express, Discover, Diners or JCB**

27) **ACCEPTANCE OF AMERICAN EXPRESS, DISCOVER, DINERS, AND/OR JCB CARDS**. If Elavon provides authorization and/or data capture services to Merchant for American Express, Discover, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the Definitions in Section (A) and the General Provisions of Section (B) above.

28) **ACCESS**. Upon request and fulfillment of the following conditions, Elavon will provide access to authorization and/or data capture services for American Express, Discover, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Discover, Diners, and/or JCB and who have entered into a separate agreement with American Express, Discover, Diners, or JCB, respectively; provided, however that neither Elavon nor Member shall be responsible for funding such Transactions.

29) **FORWARDED INFORMATION**. Elavon will forward certain information pertaining to Merchant, including, but not limited to, contact information and DDA numbers, to one or more of such Card Associations, unless Elavon receives from Merchant written instructions to the contrary.

**SCHEDULE A**
**SCHEDULE OF FEES**

See response to Section 12.2 of the RFP (attached) or Appendix 3,
as discussed in Section F of the 2008 Enterprise Banking Services Contract

# SCHEDULE B
# AFFILIATED ENTITIES

| EIN | EIN Name |
|---|---|
| 39-2038117 | ADOL PREGNANCY PREV BOARD |
| 39-0806261 | MEDICAL COLLEGE OF WISCONSIN |
| 39-1286049 | OFFICE STATE EMPLOYMENT RELATIONS |
| 39-6006492 | UNIVERSITY OF WISCONSIN SYSTEM |
| 39-0806261 | UW HOSPITALS & CLINICS |
| 39-6028867 | WI ADMINISTRATION, DEPARTMENT OF |
| 39-6006422 | WI AGRICULTURE, TRADE & CONSUMER PROTECTION, DEPT OF |
| 39-1187694 | WI ARTS BOARD |
| 39-6006425 | WI ASSEMBLY CHIEF CLERK |
| 39-6008090 | WI ASSEMBLY SGT. |
| 39-1911568 | WI BOARD OF COMMISSIONERS OF PUBLIC LANDS |
| 39-1388102 | WI BOARD ON AGING & LONG TERM CARE |
| 39-0988984 | WI CIRCUIT COURT |
| 39-1361032 | WI COMMERCE, DEPARTMENT OF |
| 39-1652221 | WI CORRECTIONS, DEPARTMENT OF |
| 39-6006489 | WI COURT OF APPEALS |
| 39-1657652 | WI DISTRICT ATTORNEYS, DEPARTMENT OF |
| 39-1155267 | WI EDUCATIONAL COMMUNICATIONS BOARD |
| 39-1206337 | WI ELECTIONS BOARD |
| 39-1103756 | WI EMPLOYE TRUST FUNDS, DEPARTMENT OF |
| 39-6006441 | WI EMPLOYMENT RELATIONS COMMISSION |
| 39-1286049 | WI EMPLOYMENT RELATIONS, DEPARTMENT OF |
| 39-1190583 | WI ETHICS BOARD |
| 39-1835272 | WI FINANCIAL INSTITUTIONS, DEPARTMENT OF |
| 39-6006469 | WI HEALTH & FAMILY SERVICES, DEPARTMENT OF |
| 39-1051231 | WI HIGHER EDUCATIONAL AIDS BOARD |
| 39-6006447 | WI HISTORICAL SOCIETY |
| 39-1209764 | WI HOUSING AND ECON DEV AUTH |
| 39-6006451 | WI INSURANCE, OFFICE OF THE COMMISSIONER OF |
| 39-6006423 | WI INVESTMENT BOARD |
| 39-1313200 | WI JUDICIAL COMMISSION |
| 39-6006427 | WI JUSTICE, DEPARTMENT OF |
| 39-1078038 | WI LEGISLATIVE AUDIT BUREAU |
| 39-6006453 | WI LEGISLATIVE COUNCIL |
| 39-1141451 | WI LEGISLATIVE FISCAL BUREAU |
| 39-1026074 | WI LEGISLATIVE REFERENCE BUREAU |
| 39-1934253 | WI LEGISLATIVE TECHNOLOGY SERVICE BUREAU |
| 39-6006456 | WI LIEUTENANT GOVERNOR, OFFICE OF THE |
| 39-1646004 | WI LOWER WISCONSIN STATE RIVERWAY BOARD |
| 39-6006460 | WI MILITARY AFFAIRS, DEPARTMENT OF |
| 39-6006436 | WI NATURAL RESOURCES, DEPARTMENT OF |
| 39-6006443 | WI OFFICE OF THE GOVERNOR |
| 39-1286051 | WI PERSONNEL COMMISSION |
| 39-1271286 | WI PUBLIC DEFENDER BOARD |
| 39-6006487 | WI PUBLIC INSTRUCTION, DEPARTMENT OF |
| 39-6006468 | WI PUBLIC SERVICE COMMISSION |
| 39-1089259 | WI REGULATIONS & LICENSING, DEPARTMENT OF |
| 39-6006473 | WI RETIREMENT COMMITTEE |
| 39-6006491 | WI REVENUE, DEPARTMENT OF |

| | |
|---|---|
| 39-6006474 | WI REVISOR OF STATUTES BUREAU |
| 39-6006476 | WI SECRETARY OF STATE |
| 39-1257323 | WI STATE FAIR PARK BOARD |
| 39-6006479 | WI STATE SENATE |
| 39-6006489 | WI SUPREME COURT |
| 39-6006494 | WI TECHNICAL COLLEGE SYSTEM |
| 39-1911760 | WI TECHNOLOGY FOR EDUCATIONAL ACHIEVEMENT |
| 39-1834745 | WI TOURISM, DEPARTMENT OF |
| 39-6006446 | WI TRANSPORTATION, DEPARTMENT OF |
| 39-6006488 | WI TREASURER, STATE |
| 39-6006493 | WI VETERANS AFFAIRS, DEPARTMENT OF |
| 39-6006449 | WI WORKFORCE DEVELOPMENT, DEPARTMENT OF |

This Schedule B to the Terms of Service is dated as of the Effective Date.

# SCHEDULE C
# THIRD PARTIES RETAINED BY ELAVON OR MEMBER

# Bill Payment Addendum to the Terms of Service

This Bill Payment Addendum to the Terms of Service is entered into as of the Effective Date by and among the State of Wisconsin, Elavon, Inc. f/k/a NOVA Information Systems, Inc. and Member. Merchant, Elavon and Member may be referred to collectively herein as the "Parties."

WHEREAS, Merchant, Elavon and Member are parties to that certain Terms of Service ("TOS"); and

WHEREAS, pursuant to the TOS, the terms and conditions for the acceptance of any additional Payment Devices shall be set forth in one or more addenda, which shall incorporate the TOS by reference; and

WHEREAS, Merchant has requested that Elavon and Member provide to Merchant Bill Payment Transaction processing services;

WHEREAS, the Parties maintain that it is their interest to enter this Addendum regarding Merchant's utilization of those services.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises of the Parties hereinafter set forth, and intending to be legally bound hereby, the Parties hereto covenant and agree as follows:

## Section A – Definitions

1) **Additional Definitions**.
   a. **Addendum:** This Bill Payment Addendum and all additions to, amendments, and modifications of, and all replacements to the Addendum, as applicable.
   b. **Bill Payment**. PIN-less Debit Card payment Transactions resulting in funds transfer from Cardholders to Merchants in connection with payments for recurring services (excluding casual or occasional purchases) for which a corresponding invoice is periodically presented to the Cardholder by the Merchant, and which Transaction is initiated via a telephone (Voice Recognition Unit, Interactive Voice Recognition) or Internet device.
   c. **Effective Date**: The date set forth in the signature block herein.
   d. **EFT Networks**: (i) STAR Network Inc., NYCE, Accel, and Pulse; and (ii) any other organization or association that hereafter authorizes the Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
   e. **Elavon Debit System:** Elavon's electronic Debit Card Transaction processing system for provision of Debit Card authorization, data capture, and settlement services.
   f. **Internet Payment Screen**. The screen displayed to a Cardholder during an Internet Bill Payment Transaction payment process which allows the Cardholder to select the payment method and to confirm understanding and agreement with payment terms, shipping and return policy.
2) **Rules of Construction**. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS or this Addendum shall refer

to the TOS or this Addendum as applicable and not to any particular provision of the TOS or Addendum. The word "day" shall mean "calendar day", unless specifically stated otherwise. This Addendum incorporates the TOS by reference as if it were fully set forth herein. In the event of a conflict between the terms of this Addendum and the TOS, the terms of this Addendum shall prevail.

**Section B – Acceptance of Bill Payment Debit Cards**

3) **Debit Card Rules.** Merchant shall comply with and be bound by the Debit Card Rules, which are incorporated by this reference as if fully set forth herein.
4) **Bill Payment Transaction Fees.** Fees for Bill Payment Transactions are set forth in the response to Section 12.2 of the RFP or Appendix 3, as discussed in Section F of the Enterprise Banking Services Contract.
5) **Display Of Debit Card Marks.** Unless otherwise informed by Elavon, Merchant shall prominently display the most current versions of the EFT Network's names, symbols, and/or service marks, as appropriate, on the Internet Payment Screen or utilize them in its telephone script messages, and may display such marks on promotional materials to inform the public that such Debit Cards will be honored at Merchant's place(s) of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement.
6) **Authentication**. Prior to entering into a Bill Payment Transaction, Merchant must authenticate the Cardholder using information that is not commonly known, but is only known by the Cardholder and Merchant, such as the Cardholder's account number with Merchant or information present on the Cardholder's hard copy bill from Merchant. Merchant must submit its authentication procedures to Elavon for approval by the appropriate EFT Networks, and Merchant warrants that it will follow such authentication procedures for each Bill Payment Transaction. The use of an authentication procedure, or the approval of such procedure by an EFT Network, is not a guarantee of payment, and Merchant remains liable for any Chargebacks resulting from any Bill Payment Transactions.
7) **No Minimum Or Maximum.** Merchant shall not establish minimum or maximum Bill Payment Transaction amounts. Merchant must accept Bill Payment Transactions on terms no less favorable than the terms under which Merchant accepts other Payment Devices.
8) **Convenience Fees.** Merchant may not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Debit Card unless permitted by all of the applicable Debit Card Rules.
9) **Purchases Only.** Merchant shall support Bill Payment Transactions involving purchases only. Merchant may not initiate a Debit Card Transaction or a Credit Card Transaction for returns or refunds, and must utilize other payment avenues (such as cash, check, or invoice adjustment) to return funds to a Cardholder.
10) **Prohibited Transactions**. Merchant shall initiate Transactions only for services approved by Elavon. In no event shall Merchant initiate, allow, or facilitate a gambling or gaming transaction, or fund a stored value account for such purposes.
11) **Internet Transaction Receipt Requirements.** At the time of any Internet Bill Payment Transaction, Merchant shall make available to each Cardholder a Transaction Receipt (printable from a screen or via e-mail) that complies fully with all Laws and containing, at a minimum, the following information:
    a. Amount of the Bill Payment Transaction, or if a convenience fee applies, the amount debited from the Cardholder's account (exclusive of the convenience fee, shipping, handling and other fees), and the amount debited from the Cardholder's account

(inclusive of the fees);

b. Date and local time of the Bill Payment Transaction;
c. Type of Transaction;
d. Type of account accessed;
e. Truncated Debit Card number (showing the final four (4) digits);
f. Trace or retrieval number;
g. Merchant name;
h. Merchant ID;
i. Merchant's web site home page URL;
j. Promised shipment time period (for Internet Transactions which involve shipment of goods);
k. Cardholder's name;
l. Authorization code;
m. Description of the bill payment;
n. Customer service contact; and
o. Fees imposed by the Merchant on the Cardholder, including shipping and handling fees, taxes, and convenience fees, as applicable.

12) **Additional Internet Requirements.**

a. **Internet Payment Screen and Sales Policy**. Merchant must prominently display on the Internet Payment Screen the Merchant's name, telephone number, city and state. Merchant must also obtain explicit confirmation that the Cardholder understands and agrees that the funds will be immediately debited from their account upon approval of the Transaction, before submission of the Bill Payment Transaction. Merchant must display a clearly visible and conspicuous notice on the Internet Payment Screen of the imposition of any convenience fee or the payment of a rebate for a Bill Pay Transaction prior to submitting the payment request from the Cardholder. Such notice must include: (i) a heading of "Fee Notice" in at least 14-point type; (ii) text in at least 10-point type; and (iii) the amount of the convenience fee or rebate and the name of the party imposing the convenience fee or the Merchant that receives the convenience fee.

b. **Communication and Encryption**. Merchant must participate in an approved authentication program as designated by the EFT Networks. All authentication information must be encrypted upon entry into the Internet device and must never leave the Internet device in cleartext form. The Internet device used by Merchant must meet or exceed the minimum communication and encryption protocol set forth by the EFT Networks.

13) **Telephone Transaction Requirements**. At the time of a telephone Bill Payment Transaction, Merchant shall provide each Cardholder with Transaction information that complies fully with all Laws and containing, at a minimum, the following information:

a. Approval or denial of the Bill Payment Transaction,
b. Amount of the Bill Payment Transaction, or if a convenience fee applies, the amount debited from the Cardholder's account (exclusive of the convenience fee, shipping, handling and other fees), and the amount debited from the Cardholder's account (inclusive of the fees);
c. Trace number;
d. Authorization code or confirmation number;
e. Customer service contact; and
f. Fees imposed by the Merchant on the Cardholder, including shipping and handling fees, taxes, and convenience fees, as applicable.

14) **Technical Problems**. Merchant shall ask a Cardholder to use an alternative means of payment if the Elavon Debit System or the electronic interface with any EFT Network is

inoperative.

15) **Adjustment.** A Bill Payment Transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing only by means of a written request from Merchant to Elavon. The request for adjustment must reference a settled Bill Payment Transaction that is partially or completely erroneous or a denied pre-authorize Transaction for which the pre-authorization request was approved. An adjustment must be completed within forty-five (45) days after the date of the original Bill Payment Transaction.
16) **Merchant Warranty**. In order to accept Bill Payment Transactions, Merchant warrants that it is: (i) a municipal, state or other public utility system operated for the manufacture, production, or sale of electricity, natural or artificial gas, water or waste collection; (ii) an insurance service provider that is licensed by a state to sell property, casualty, life and health insurance policies and that the Transaction involves the payment of premiums on such policies; (iii) a public or private provider of telecommunications services, including telephone, cellular, digital and cable services, which is licensed and governed by any federal, state or municipal authority; (iv) a public or private provider of cable or satellite media services, which is regulated by the Federal Communications Commission or any other federal, state or municipal authority, or (v) any other acceptable Merchant type, or covered under a pilot program approved by, the EFT Networks.
17) **Termination/Suspension of Bill Payment**. When requested by any EFT Network in its sole discretion, Merchant will immediately take action to: (i) eliminate any fraudulent or improper Transactions, (ii) suspend the processing of Bill Payment Transactions; or (iii) entirely discontinue acceptance of Bill Payment Transactions.
18) **Responsibility**. Merchant will be responsible for, and will at its own expense defend itself against, any and all claims, losses, costs, damages, liabilities or expenses that are suffered as a result of a Bill Payment Transaction, except to the extent caused by Elavon or Member.
19) Except as supplemented herein, the TOS remains unaltered and in full force and effect.

APPENDIX 4-
ELAVON DEBIT

Elavon

(State of Wisconsin) Debit Addendum dtd 05.29.08 FINAL

**PIN-Based, Online Debit Card Addendum**
**to the Terms of Service**

This PIN-Based, Online Debit Card Addendum to the Terms of Service is entered into as of the Effective Date by and among the **State of Wisconsin** ("Merchant"), **Elavon, Inc. f/k/a NOVA Information Systems, Inc.** ("Servicer") and **Member**. Merchant, Servicer and Member may be referred to collectively herein as the "Parties."

WHEREAS, Merchant, Servicer and Member are parties to that certain Terms of Service ("TOS"); and

WHEREAS, pursuant to the TOS, the terms and conditions for the acceptance of any additional Payment Devices shall be set forth in one or more addenda, which shall incorporate the TOS by reference; and

WHEREAS, Merchant has requested that Servicer and Member provide to Merchant PIN-based, online Debit Card Transaction processing services;

WHEREAS, the Parties maintain that it is their interest to enter this Addendum regarding Merchant's utilization of those services.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises of the Parties hereinafter set forth, and intending to be legally bound hereby, the Parties hereto covenant and agree as follows:

**Section A – Definitions**

1) **Additional Definitions**.
   a. **Addendum:** This PIN-Based, Online Debit Card Addendum and all additions to, amendments, and modifications of, and all replacements to the Addendum, as applicable.
   b. **Debit Card:** Any PIN-based, online Debit Card.
   c. **Effective Date**: The date set forth in the signature block herein.
   d. **EFT Networks**: (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE EFT Association, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes the Servicer and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
   e. **PED**: A Pin Entry Device that is used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization request originating at a terminal with electronic capability.
   f. **PIN**: A Personal Identification Number.
   g. **PIN Pad**: A secure device with an alphanumeric keyboard which conforms with the Debit Card Rules and the PCI Data Security Standard, and requirements established from time to time by Servicer, and through which a Cardholder may enter a PIN.
   h. **POS Device**: A terminal or other point-of-sale device at a Merchant location that incorporates: (i) a Track 2 Magnetic Stripe Reader; (ii) communicates electronically, directly or indirectly, with the Servicer's Debit System; (iii) uses a receipt printer capable of providing a receipt conforming to the Debit Card Rules and Regulation E; (iv) uses a journal printer, journaling facility or terminal-generated receipt; (v) uses an encrypted alphanumeric

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PIN Pad; and (vi) uses a keyboard that can perform actions, functions and data entry. POS Device also includes a Pin Entry Device (PED) that is used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization request originating at a terminal with electronic capability.

i. **Servicer Debit System:** Servicer's electronic Debit Card Transaction processing system for provision of Debit Card authorization, data capture, and settlement services.

2) **Rules of Construction**. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS or this Addendum shall refer to the TOS or this Addendum as applicable and not to any particular provision of the TOS or Addendum. The word "day" shall mean "calendar day", unless specifically stated otherwise. This Addendum incorporates the TOS by reference as if it were fully set forth herein. In the event of a conflict between the terms of this Addendum and the TOS, the terms of this Addendum shall prevail.

**Section B – Acceptance of PIN-Based, Online Debit Cards**

3) **Debit Card Rules.** Merchant shall comply with and be bound by the Debit Card Rules, which are incorporated by this reference as if fully set forth herein.
4) **Debit Card Transaction Fees.** Fees for Debit Card Transactions are set forth in the response to Section 12.2 of the RFP or Appendix 3, as discussed in Section F of the Enterprise Banking Services Contract.
5) **Display Of Debit Card Marks.** Unless otherwise informed by Servicer, Merchant shall prominently display the most current versions of the EFT Network's names, symbols, and/or service marks, as appropriate, at or near the POS Device and may display such marks on promotional materials to inform the public that such Debit Cards will be honored at Merchant's place(s) of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement, and Merchant must remove the marks immediately upon termination.
6) **Use And Availability Of POS Devices And Pin Pads**.
   a. A Cardholder's Debit Card information and PIN are confidential. The Merchant may not request or require a Cardholder to disclose his or her PIN at any point during a Transaction.
   b. During the Transaction process, the Merchant must provide a reasonably secure area for Cardholders to enter their PIN into the PIN Pad.
   c. Merchant shall cause a POS Device and PIN Pad to be readily available for the use of all Cardholders at all of Merchant's business locations where Debit Cards are accepted. Merchant shall take all reasonable steps to ensure that all POS Devices and PIN Pads operated at Merchant's business locations function with a minimum of error, in a reliable manner, and in accordance with the standards established from time to time by Servicer and the EFT Networks.
   d. Merchant shall use a POS Device to initiate every Debit Card Transaction, and Merchant shall require that either the Cardholder or the Merchant insert and "swipe" the Debit Card through the POS Device to initiate every Debit Card Transaction, except as set forth herein. No Debit Card Transaction may be initiated unless the Debit Card is physically present.
   e. Merchant shall require that each Debit Cardholder enter his or her PIN utilizing a PIN Pad at the POS Device when initiating a Debit Card Transaction. Merchant may not require a Debit Cardholder to sign a Transaction Receipt or other receipt, or require any other means of identification.
7) **No Minimum Or Maximum.** Merchant shall not establish minimum or maximum Debit Card Transaction amounts except to establish a maximum Cash Back dollar amount not to exceed $200.00.

8) **Surcharges.** Merchant may not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Debit Card unless permitted by all of the applicable Debit Card Rules.
9) **Pre-Authorization Requests.** Merchant may initiate pre-authorization requests pursuant to the following procedures:
    a. The Cardholder must enter the PIN on the PIN Pad.
    b. The Debit Card must be inserted and "swiped" through the POS Device.
    c. The pre-authorization request must be for a specific dollar amount. The subsequent purchase pre-authorized hereunder must be completed within two (2) hours after the original pre-authorization request.
    d. Funds shall not be transferred with respect to a pre-authorization request.
    e. In order to complete the subsequent purchase pre-authorization, Merchant shall transmit a completion message indicating the actual dollar amount of the Debit Card Transaction, and shall comply with all requirements of a purchase Debit Card Transaction, at that time, except that entry of a PIN and "swiping" of a Debit Card is not required to complete the subsequent purchase if these steps were properly taken in order to pre-authorize such purchase. Such subsequent purchase shall not be authorized or completed unless the actual dollar amount of the purchase is less than or equal to the amount specified in the pre-authorization request.
    f. If Merchant initiates pre-authorization requests, it shall support the processing of partial pre-authorizations.
10) **Debit Card Transactions.**
    a. Merchant shall support the following Debit Card Transactions:
        i. Purchases, and
        ii. Merchandise credits.
    b. Merchant may also support the following Debit Card Transactions if supported by the applicable EFT Network:
        i. Purchase with cashback, and
        ii. Balance inquiries.
    c. Prohibited Transactions. Merchant shall initiate Transactions only for products or services approved by Servicer. In no event shall Merchant initiate, allow, or facilitate a gambling or gaming transaction, or fund a stored value account for such purposes.
11) **Transaction Receipt Requirements.** At the time of any Debit Card Transaction (other than a balance inquiry or pre-authorization request), Merchant shall make available to each Cardholder a Transaction Receipt that complies fully with all Laws and containing, at a minimum, the following information:
    a. Amount of the Debit Card Transaction;
    b. Date and local time of the Debit Card Transaction;
    c. Type of Transaction;
    d. If during the Debit Card Transaction the Cardholder is prompted to select the type of account used, then the type of account accessed must be displayed on the Transaction Receipt;
    e. Truncated Debit Card number (showing the final four (4) digits;
    f. Merchant's name and location at which the Debit Card Transaction was initiated; <u>and</u>
    g. Trace or retrieval reference number.
12) **Merchandise Returns.** Merchant may electronically perform a merchandise return (if permitted by the applicable EFT Network) for a Debit Card Transaction only at the same Merchant named on the Transaction Receipt where the original Debit Card Transaction was initiated. If permitted, a merchandise return requires the following procedures:
    a. The Cardholder must re-enter the PIN on the PIN Pad,
    b. The Debit Card must be inserted and "swiped" through the POS Device, and
    c. Merchant must transmit the reference number or authorization number and the exact dollar amount of the Debit Card Transaction to be returned.

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13) **Balance Inquiries.** Merchant may accommodate balance inquiries if the applicable EFT Network and the Issuer support the balance inquiry function provided that the Merchant requires that the Cardholder enter their PIN on the PIN Pad and insert and "swipe" the Debit Card through the POS Device.
14) **Purchase With Cash Back.** Merchant may offer purchase with cashback Transactions pursuant to the following procedures:
    a. For each purchase with Cash Back, Merchant shall transmit in its Transaction message the amount of cash given to the Cardholder (if permitted by Servicer's Debit System).
    b. If a request for Authorization of a purchase with Cash Back is denied solely because the cash requested exceeds the Debit Card Issuer's limit on cash withdrawals, Merchant shall inform the Cardholder of the reason for the denial and that a new purchase Transaction in the amount of the purchase alone might be approved.
    c. The amount of Cash Back may be limited by the EFT Networks or Issuer.
15) **Technical Problems**. Merchant shall ask a Cardholder to use an alternative means of payment if the Servicer Debit System, the POS Device, or the PIN Pad is inoperative, the electronic interface with any EFT Network is inoperative, or the magnetic stripe on a Debit Card is unreadable, and Merchant elects not to or is unable to store Debit Card Transactions.
16) **Adjustment.** A Debit Card Transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing only by means of a written request from Merchant to Servicer. The request for adjustment must reference a settled Debit Card Transaction that is partially or completely erroneous or a denied pre-authorize Transaction for which the pre-authorization request was approved. An adjustment must be completed within forty-five (45) days after the date of the original Debit Card Transaction.
17) **Termination/Suspension.** When requested by any EFT Network in its sole discretion, Merchant will immediately take action to: (i) eliminate any fraudulent or improper Transactions; (ii) suspend the processing of Debit Card Transactions; or (iii) entirely discontinue acceptance of Debit Card Transactions.
18) **TOS.** Except as supplemented herein, the TOS remains unaltered and in full force and effect.

# PARTICIPATION AGREEMENT

This Participation Agreement to the Terms of Service ("Participation Agreement"), effective as of the Participation Effective Date set forth below, is made between _____ ("New Merchant"), Elavon, Inc. ("Elavon") and U.S. Bank, N.A. ("Member").

WHEREAS, the State of Wisconsin, Elavon and Member are parties to a Terms of Service dated as of July 1, 2008, as amended, including the PIN-Based, Online Debit Card Addendum to the Terms of Service and the Bill Payment Addendum to the Terms of Service (collectively the "Agreement"), which establishes the terms and conditions upon which Member and Elavon will process payment transactions;

WHEREAS, New Merchant desires to become a Merchant under the Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, stipulations and agreements set forth herein and in the Agreement, and other valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby consent and agree as follows:

1. Capitalized terms used in this Participation Agreement, but not otherwise defined, shall have the meanings ascribed to them in the Agreement.

2. New Merchant hereby assumes and agrees to perform all of the terms, restrictions, obligations and conditions of a "Merchant" under the Agreement and, by execution of this Participation Agreement, is hereby designated a "Merchant" for purposes of, and agrees to be bound by, all terms of the Agreement. New Merchant hereby acknowledges that it has received from the State of Wisconsin, Elavon and/or Member true and correct copies of the Agreement.

3. Elavon and Member confirm that New Merchant is a "Merchant" under the Agreement and all of the rights and obligations of a Merchant under the Agreement shall inure to and bind New Merchant.

4. New Merchant hereby confirms that each of the representations and warranties contained in Section 9 of the Agreement are true and correct on the Effective Date with respect to itself. Further, New Merchant agrees that it will comply with all applicable Laws, the Payment Network Regulations, and the Payment Card Industry Data Security Standards, as modified.

5. New Merchant requests that Elavon and Member provide the following services, and agrees to pay fees associated with such services, as set forth in the response to Section 12.2 of the RFP or Appendix 3, as discussed in Section F of the Enterprise Banking Services Contract or otherwise provided for in the Agreement (check services requested):

☐ Credit Cards and Non-PIN Based Debit Cards

☐ PIN-Based, Online Debit Card Processing

☐ Bill Payment (PIN-less Debit Card Processing)

6. Unless otherwise agreed, New Merchant will be debited monthly for its fees as provided in Section B(7)(a)(i) of the Agreement.

7. This Participation Agreement will commence on the Effective Date and continue for the Term set forth in Section B(15)(a) of the Agreement. This Participation Agreement may be terminated as set forth in Section B(15)(b) of the Agreement.

8. Except for the addition of the New Merchant to the Agreement, the terms of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed as of the date first above written.

_____
"New Merchant"

By: _____

Name:_____
PRINT

Title: _____

ELAVON, INC.

By: _____

Name:_____
PRINT

Title: _____
("Participation Effective Date")

U.S. BANK, N.A.

By: _____

Name:_____
PRINT

Title: _____

# Merchant Pricing for the State of Wisconsin

## Key Demographics & Assumptions

| | | | |
|---|---|---|---|
| Merchant DBA | State of Wisconsin | Industry | Government / Education |
| Merchant Locations | 135 | Industry (MCC) | 9399 / 8220 |
| Bank Partner | US Bank | Client Executive | Jan Swanson |

## Annual Credit Card Sales Information

| | Volume | Transactions | Average Ticket |
|---|---|---|---|
| VISA & MasterCard | 61,151,484 | 1,080,797 | $56.58 |
| AMEX & Discover & JCB | | | |
| **TOTAL** | 61,151,484 | 1,080,797 | $56.58 |

## I. Schedule of Credit Card Pricing

**Processing Fee ($)**

| | |
|---|---|
| To $60 MM | $0.100 |
| $60MM to $400MM | $0.050 |
| +$400MM | $0.040 |

| | |
|---|---|
| AMEX, Discover, & JCB Auth | $0.100 |
| Non Nova Network Fee | $0.050 |

1) All Visa & MasterCard association authorization, interchange, assessment, and settlement fees are passed to merchant at cost.
2) Interchange fees will be assessed on net bankcard sales deposits and/or sales items. Assessments will be paid on all sales deposits. Assessments are not returned on returns or charge backs.
3) Processing fees will be debited or invoiced monthly depending on settlement method.
4) All Pin-Debit and Pin-less Debit authorization, switch, and interchange fees are passed to merchant at cost. Processing fees for Pin-Debit/Pin-less Debit are the same as above.

## II. Schedule of Fees & Equipment Charges

| | |
|---|---|
| Chargeback | $7.50 |
| Voice (VRU) Authorization | $0.45 |
| Voice (VRU) Authorization w/AVS | $0.45 |
| Operated Assisted Authorization | $0.55 |
| Voice with Bank Referral | $0.55 |
| Support Fee Per Month | $5.00 |

| | | | Cons/Comm Rates July 2009 | | | Off-line Debit Rates July 2009 | | | Cons/Comm Rates Oct 2009 | | | Off-line Debit Rates Oct 2009 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Visa Interchange Category** | **MPS SHORT DESCRIPTION** | **Chg Type** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** |
| CPS Retail | CPS RETAIL / RETAIL D | 1056/1590 | 1.54% | + | $0.10 | 1.03% | + | $0.15 | 1.54% | + | $0.10 | 1.03% | + | $0.15 |
| CPS Retail Tier 1 | RETAIL TR1 / RTL TR1 D | 1009/1501 | 1.43% | + | $0.10 | 0.62% | + | $0.13 | 1.43% | + | $0.10 | 0.62% | + | $0.13 |
| CPS Retail Tier 2 | RETAIL TR2 / RTL TR2 D | 1036/1502 | 1.47% | + | $0.10 | 0.81% | + | $0.13 | 1.47% | + | $0.10 | 0.81% | + | $0.13 |
| CPS Retail Tier 3 | RETAIL TR3 / RTL TR3 D | 1037/1503 | 1.51% | + | $0.10 | 0.92% | + | $0.15 | 1.51% | + | $0.10 | 0.92% | + | $0.15 |
| CPS Supermarket | VI SUPRMKT / SPMCHK D | 1053/1591 | 1.24% | + | $0.05 | 1.03% | + | 0.15** | 1.24% | + | $0.05 | 1.03% | + | 0.15** |
| CPS Supermarket Tier 1 | SUPRMKTTR1 / SPM TR1 D | 1010/1511 | 1.15% | + | $0.05 | 0.62% | + | $0.13 | 1.15% | + | $0.05 | 0.62% | + | $0.13 |
| CPS Supermarket Tier 2 | SUPRMKTTR2 / SPM TR2 D | 1038/1512 | 1.20% | + | $0.05 | 0.81% | + | $0.13 | 1.20% | + | $0.05 | 0.81% | + | $0.13 |
| CPS Supermarket Tier 3 | SUPRMKTTR3 / SPM TR3 D | 1039/1513 | 1.22% | + | $0.05 | 0.92% | + | $0.15 | 1.22% | + | $0.05 | 0.92% | + | $0.15 |
| CPS Rewards 1 | REWARDS 1 | 1093 | 1.65% | + | $0.10 | | | | 1.65% | + | $0.10 | | | |
| CPS Rewards 2 | REWARDS 2 | 1094 | 1.95% | + | $0.10 | | | | 1.95% | + | $0.10 | | | |
| CPS Rewards 2 T&E | REWDS2 T&E | 1095 | 1.95% | + | $0.10 | | | | 1.95% | + | $0.10 | | | |
| CPS Retail 2 Card Present | RTL2 CP / RTL2 CP D | 1050/1550 | 1.43% | + | $0.05 | 0.80% | + | $0.25 | 1.43% | + | $0.05 | 0.80% | + | $0.25 |
| CPS Retail 2 Card Not Present | RTL2 CNP / RTL2 CNP D | 1060/1560 | 1.43% | + | $0.05 | 0.80% | + | $0.25 | 1.43% | + | $0.05 | 0.80% | + | $0.25 |
| Utility*** | UTILITY / UTILITY D | 1092/1592 | 0.00% | + | $0.75 | 0.00% | + | $0.75 | 0.00% | + | $0.75 | 0.00% | + | $0.75 |
| CPS Hotel/Car Rental | CPS HTL-NP / CPS CAR HTL-NP D / CAR D | 1063-1066/ 1563-1566 | 1.54% | + | $0.10 | 1.36% | + | $0.15 | 1.54% | + | $0.10 | 1.36% | + | $0.15 |
| CPS Card Not Present | CPS CRD NP / CARD NP D | 1067/1567 | 1.80% | + | $0.10 | 1.60% | + | $0.15 | 1.80% | + | $0.10 | 1.60% | + | $0.15 |
| CPS Retail Key Entered | CPS KEYED / KEYED D | 1069/1569 | 1.80% | + | $0.10 | 1.60% | + | $0.15 | 1.80% | + | $0.10 | 1.60% | + | $0.15 |
| CPS Small Ticket | SMALL TKT / SML TKT D | 1084/1584 | 1.65% | + | $0.04 | 1.55% | + | $0.04 | 1.65% | + | $0.04 | 1.55% | + | $0.04 |
| CPS Retail Service Station | CPS SVCSTN / SVCSTN D | 1086/1586 | 1.15% | + | $0.25 | 0.70% | + | 0.17**** | 1.15% | + | $0.25 | 0.70% | + | 0.17**** |
| CPS Restaurant | RESTAURANT / RESTRNT D | 1085/1585 | 1.54% | + | $0.10 | 1.19% | + | $0.10 | 1.54% | + | $0.10 | 1.19% | + | $0.10 |
| EIRF | EIRF / EIRF D | 1059/1559 | 2.30% | + | $0.10 | 1.75% | + | $0.20 | 2.30% | + | $0.10 | 1.75% | + | $0.20 |
| CPS E-commerce Basic | ECOM BASIC / ECOM BC D | 1051/1551 | 1.80% | + | $0.10 | 1.60% | + | $0.15 | 1.80% | + | $0.10 | 1.60% | + | $0.15 |
| CPS E-commerce Preferred | ECOM PREF / ECOM PF D | 1052/1552 | 1.80% | + | $0.10 | 1.55% | + | $0.15 | 1.80% | + | $0.10 | 1.55% | + | $0.15 |
| CPS E-commerce Preferred - Hotel | ECOM PFHTL / ECM PF H D | 1082/1582 | 1.54% | + | $0.10 | 1.36% | + | $0.15 | 1.54% | + | $0.10 | 1.36% | + | $0.15 |
| CPS E-commerce Preferred - Auto Rental | ECOM PFCAR / ECM PF C D | 1083/1583 | 1.54% | + | $0.10 | 1.36% | + | $0.15 | 1.54% | + | $0.10 | 1.36% | + | $0.15 |
| CPS E-commerce Preferred - Pass Transport | ECOM PF PT / ECM PF P D | 1081/1581 | 1.70% | + | $0.10 | 1.60% | + | $0.15 | 1.70% | + | $0.10 | 1.60% | + | $0.15 |
| CPS Account Funding | CPS ACCTFD / ACCT FD D | 1055/1555 | 2.14% | + | $0.10 | 1.75% | + | $0.20 | 2.14% | + | $0.10 | 1.75% | + | $0.20 |
| Standard | CONS STND / VI STND D | 1683/1558 | 2.70% | + | $0.10 | 1.90% | + | $0.25 | 2.70% | + | $0.10 | 1.90% | + | $0.25 |
| CPS Debit Tax Payment | TAX PAYMT | 1588 | | | | 0.00% | + | $2.50 | | | | 0.00% | + | $2.50 |
| CPS Debit Tax Payment - Convenience Fee | TXPYMT FEE | 1589 | | | | 0.00% | + | $0.00 | | | | 0.00% | + | $0.00 |
| Debt Repayment | DEBT REPMT | 1587 | | | | 0.35% | + | $0.50 | | | | 0.35% | + | $0.50 |
| GSA G2G | GSA G2G | 1654 | 1.65% | + | $0.10 | | | | 1.65% | + | $0.10 | | | |
| GSA Large Ticket - existing | GSA LG TKT | 1014 | 1.20% | + | $39.00 | | | | 1.20% | + | $39.00 | | | |
| GSA Large Ticket - that are ≥ $8,750 | GSA LG TK2 | 1017 | Eliminated | | | | | | Eliminated | | | | | |
| Purchasing Large Ticket*** | PUR LG TKT | 1015 | 0.95% | + | $35.00 | | | | 0.95% | + | $35.00 | | | |
| CPS Automated Fuel | CPS AFD / CPS AFD D | 1068/1568 | 1.15% | + | $0.25 | 0.70% | + | 0.17**** | 1.15% | + | $0.25 | 0.70% | + | 0.17**** |
| CPS Passenger Transport | CPS AIR-PT / AIR PASS D | 1061/1561 | 1.70% | + | $0.10 | 1.60% | + | $0.15 | 1.70% | + | $0.10 | 1.60% | + | $0.15 |
| Purchasing Card Level III Data Rate | US COMM L3 | 1088 | 1.80% | + | $0.10 | | | | 1.80% | + | $0.10 | | | |
| Corporate Card Level II Data Rate | US CORP L2 | 1687 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| Business Card Level II Data Rate | US COMM L2 | 1087 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| Purchasing Card Level II Data Rate | USCOMML2 P | 1681 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| Commercial Card Retail - Corporate | COMMRETAIL | 1600 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Commercial Card Retail - Business | COM RET B | 1653 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Commercial Card Retail - Purchasing | COM RET P | 1650 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Commercial Card Business to Business - Corporate | COMM B2B | 1601 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Commercial Card Business to Business - Business | COM B2B B | 1652 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Commercial Card Business to Business - Purchasing | COM B2B P | 1651 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Purchasing Card - Card Not Present | COMM CNP P | 1604 | 2.55% | + | $0.10 | | | | 2.55% | + | $0.10 | | | |
| Business Card - Card Not Present | COMM CNP B | 1602 | 2.25% | + | $0.10 | | | | 2.25% | + | $0.10 | | | |
| Corporate Card - Card Not Present | COMM CNP C | 1603 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Utility Business | UTILTY BUS | 1692 | 0.00% | + | $1.50 | | | | 0.00% | + | $1.50 | | | |
| Purchasing Electronic with Data | PURCH ELEC | 1688 | 2.65% | + | $0.10 | | | | 2.65% | + | $0.10 | | | |
| Purchasing Card Electronic | COM ELEC P | 1686 | 2.65% | + | $0.10 | | | | 2.65% | + | $0.10 | | | |
| Business Card Electronic | COM ELEC B | 1685 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Corporate Card Electronic | COM ELEC C | 1684 | 2.25% | + | $0.10 | | | | 2.25% | + | $0.10 | | | |
| Commercial Card Standard | COMM STND | 1682 | 2.95% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Signature Preferred Card Not Present | VSP CNP | 1674 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Signature Preferred Retail | VSP RTL | 1675 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Signature Preferred B2B | VSP B2B | 1676 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| Signature Preferred Electronic | VSP ELEC | 1678 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Signature Preferred Standard | VSP STND | 1677 | 2.95% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| International Merchant Signature Preferred | INTLMRVSP | 1679 | 1.80% | + | $0.00 | | | | Eliminated | | | | | |
| Signature Preferred Interregional | VSPINTRIAP | 1670 | 1.80% | + | $0.00 | | | | Eliminated | | | | | |
| International Electronic | INTL ELECT | 1071 | 1.10% | + | $0.00 | | | | Eliminated | | | | | |
| International Standard | V INTLSTND | 1070 | 1.60% | + | $0.00 | | | | Eliminated | | | | | |
| International Commercial Card | INTL COMM | 1072 | 1.80% | + | $0.00 | | | | Eliminated | | | | | |
| International Commercial Card | V INTLCOMM | 1660 | 1.80% | + | $0.00 | | | | 1.80% | + | $0.00 | | | |
| International Electronic | V INTLELCT | 1661 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| International Issuer Chip | V INTLCHIP | 1662 | 1.20% | + | $0.00 | | | | 1.20% | + | $0.00 | | | |
| International Acquirer Chip | V INTLACQR | 1663 | 1.00% | + | $0.00 | | | | 1.00% | + | $0.00 | | | |
| International Standard | V INTLSTND | 1664 | 1.60% | + | $0.00 | | | | 1.60% | + | $0.00 | | | |
| International Airline | V INTL AIR | 1665 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| International Infinite Card | V INTLINFN | 1666 | 1.80% | + | $0.00 | | | | 1.80% | + | $0.00 | | | |
| International Signature Card | V INTLSIGN | 1667 | 1.80% | + | $0.00 | | | | 1.80% | + | $0.00 | | | |
| International Secure E-Commerce | V INTLSECR | 1668 | 1.44% | + | $0.00 | | | | 1.44% | + | $0.00 | | | |
| International Merchant E-Commerce | V INTLECOM | 1669 | 1.44% | + | $0.00 | | | | 1.44% | + | $0.00 | | | |
| Signature Card Electronic | SIGN EIRF | 1012 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Signature Card Standard | SIGN STND | 1011 | 2.70% | + | $0.10 | | | | 2.70% | + | $0.10 | | | |
| EIRF Debit Fuel Max | EIRF MAX D | 1657 | | | | 0.00% | + | $0.95 | | | | 0.00% | + | $0.95 |
| CPS AFD Debit Max | CPSAFDMAXD | 1659 | | | | 0.00% | + | $0.95 | | | | 0.00% | + | $0.95 |
| CPS Service Station Debit Max | SVCSTNMAXD | 1658 | | | | 0.00% | + | $0.95 | | | | 0.00% | + | $0.95 |
| Signature Preferred - Fuel | VSP FUEL | 1468 | 1.15% | + | $0.25 | | | | 1.15% | + | $0.25 | | | |
| Cash Advance | CASH ADV | 0070 | -0.18% | + | -$1.50 | | | | -0.18% | + | -$1.50 | | | |
| Consumer Credit Vouchers | US CR CONS | 1077 | 1.76% | + | $0.00 | 1.31% | + | $0.00 | 1.76% | + | $0.00 | 1.31% | + | $0.00 |
| Commercial Card Credit Vouchers | US CR COMM | 1078 | 2.24% | + | $0.00 | | | | 2.24% | + | $0.00 | | | |
| Consumer MO/TO Credit Vouchers* | US CR MOTO | 1079 | 2.05% | + | $0.00 | 1.87% | + | $0.00 | 2.05% | + | $0.00 | 1.87% | + | $0.00 |
| Passenger Transport Credit Vouchers | US CR PASS | 1076 | 2.07% | + | $0.00 | | | | 2.07% | + | $0.00 | | | |
| International Service Assessment | ISA FEE | 213 | 0.40% | + | $0.00 | 0.40% | + | $0.00 | 0.40% | + | $0.00 | 0.40% | + | $0.00 |
| Cash Advance International Service Assessment | CA ISA FEE | 215 | 0.40% | + | $0.00 | 0.40% | + | $0.00 | 0.40% | + | $0.00 | 0.40% | + | $0.00 |
| Account Verification† | 0 $ VERIFI | 3042 | 0.00% | + | $0.0250 | 0.00% | + | $0.0250 | 0.00% | + | $0.0250 | 0.00% | + | $0.0250 |
| Mis-Use of Auth† | MISUSE AU | 3043 | | | | | | | 0.00% | + | $0.0450 | 0.00% | + | $0.0450 |
| Zero Floor Limit† | ZERO FL LT | 3044 | 0.00% | + | $0.1000 | 0.00% | + | $0.1000 | 0.00% | + | $0.1000 | 0.00% | + | $0.1000 |
| NAPF† | ACQ PROCES | 3040 | 0.00% | + | $0.0195 | 0.00% | + | $0.0195 | 0.00% | + | $0.0195 | 0.00% | + | $0.0195 |
| NAPF Exempt† | APF EXEPMT | 3045 | 0.00% | + | $0.0000 | 0.00% | + | $0.0000 | 0.00% | + | $0.0000 | 0.00% | + | $0.0000 |
| Risk ID Service† | RISK ID SC | 3046 | 0.00% | + | $0.0010 | 0.00% | + | $0.0010 | 0.00% | + | $0.0010 | 0.00% | + | $0.0010 |
| Echeck Acquirer Processing Fee | ECHK APF | 3047 | | | | | | | 0.00% | + | $0.0000 | 0.00% | + | $0.0000 |
| Clearing Access | BII ACCESS | 202 | 0.00% | + | $0.0025 | 0.00% | + | $0.0025 | 0.00% | + | $0.0025 | 0.00% | + | $0.0025 |
| Int'l Acquiring Fee (IAF) | IAF | 210 | | | | | | | 0.45% | + | $0.0000 | 0.45% | + | $0.0000 |
| IAF High Risk | IAF HGHRSK | 216 | | | | | | | 0.90% | + | $0.0000 | 0.90% | + | $0.0000 |
| Assessments % | ASSESSMENT | 200 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 |
| Assessments PI | | | Eliminated | | | Eliminated | | | Eliminated | | | Eliminated | | |
| Assessments | | | Moved | | | Moved | | | Moved | | | Moved | | |

*excludes Direct Marketing Sic Codes 596X

** $0.35 Cap

***program requires registration

**** $0.95 Cap begins July 18, 2008 (through Oct 2009)

† Fee Billed on Assessments

| | | | Cons/Comm Rates July 2009 | | | Off-line Debit Rates July 2009 | | | Cons/Comm Rates Oct 2009 | | | Off-line Debit Rates Oct 2009 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Visa Interchange (US Territory Merchants Only)** | **MPS SHORT DESCRIPTION** | **Chg Type** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** |
| Puerto Rico Domestic Gas Station | PR GAS CR/PR GAS DB | 2501/2500 | | | | | | | 1.00% | + | $0.00 | 0.90% | + | $0.00 |
| Puerto Rico Domestic Gas Station Platinum | PR GAS PLT | 2502 | | | | | | | 1.15% | + | $0.00 | 1.15% | + | $0.00 |
| Puerto Rico Domestic Gas Station Comm | PR GASCOMM | 2503 | | | | | | | 1.15% | + | $0.00 | | | |
| Puerto Rico Domestic Gas Station Sign | PR GASSIGN | 2504 | | | | | | | 1.18% | + | $0.00 | | | |
| Puerto Rico Domestic Supermarket | PR SPMK CR/PR SPMK DB | 2506/2505 | | | | | | | 1.05% | + | $0.00 | 1.00% | + | $0.00 |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Puerto Rico Domestic Supermarket Platinum | PR SPMKPLT | 2507 | | | | | | | | 1.18% | + | $0.00 | 1.18% | + | $0.00 |
| Puerto Rico Domestic Supermarket Comm | PRSPMKCOMM | 2508 | | | | | | | | 1.18% | + | $0.00 | | | |
| Puerto Rico Domestic Supermarket Sign | PRSPMKSIGN | 2509 | | | | | | | | 1.25% | + | $0.00 | | | |
| Puerto Rico Domestic Emerge Mrkt | PR EMRG CR/PR EMRG DB | 2511/2510 | | | | | | | | 1.10% | + | $0.00 | 1.05% | + | $0.00 |
| Puerto Rico Domestic Emerge Mrkt Platinum | PR EMRGPLT | 2512 | | | | | | | | 1.25% | + | $0.00 | 1.25% | + | $0.00 |
| Puerto Rico Domestic Emerge Mrkt Comm | PREMRGCOMM | 2513 | | | | | | | | 1.25% | + | $0.00 | | | |
| Puerto Rico Domestic Emerge Mrkt Sign | PREMRGSIGN | 2514 | | | | | | | | 1.28% | + | $0.00 | | | |
| Puerto Rico Domestic Utilities | PR UTLY CR/PR UTLY DB | 2516/2515 | | | | | | | | 1.10% | + | $0.00 | 1.05% | + | $0.00 |
| Puerto Rico Domestic Utilities Platinum | PR UTLYPLT | 2517 | | | | | | | | 1.25% | + | $0.00 | 1.25% | + | $0.00 |
| Puerto Rico Domestic Utilities Comm | PRUTLYCOMM | 2518 | | | | | | | | 1.25% | + | $0.00 | | | |
| Puerto Rico Domestic Utilities Sign | PRUTLYSIGN | 2519 | | | | | | | | 1.28% | + | $0.00 | | | |
| Puerto Rico Domestic Warehouse | PR WRHS CR/PR WRHS DB | 2521/2520 | | | | | | | | 1.10% | + | $0.00 | 1.05% | + | $0.00 |
| Puerto Rico Domestic Warehouse Platinum | PR WRHSPLT | 2522 | | | | | | | | 1.25% | + | $0.00 | 1.25% | + | $0.00 |
| Puerto Rico Domestic Warehouse Comm | PRWRHSCOMM | 2523 | | | | | | | | 1.25% | + | $0.00 | | | |
| Puerto Rico Domestic Warehouse Sign | PRWRHSSIGN | 2524 | | | | | | | | 1.28% | + | $0.00 | | | |
| Puerto Rico Domestic Retail 1 | PR RTL1 CR/PR RTL1 DB | 2526/2525 | | | | | | | | 1.35% | + | $0.00 | 1.30% | + | $0.00 |
| Puerto Rico Domestic Retail 1 Platinum | PR RTL1PLT | 2527 | | | | | | | | 1.85% | + | $0.00 | 1.85% | + | $0.00 |
| Puerto Rico Domestic Retail 1 Comm | PRRTL1COMM | 2528 | | | | | | | | 1.85% | + | $0.00 | | | |
| Puerto Rico Domestic Retail 1 Sign | PRRTL1SIGN | 2529 | | | | | | | | 2.00% | + | $0.00 | | | |
| Puerto Rico Domestic Retail 2 | PR RTL2 CR/PR RTL2 DB | 2531/2530 | | | | | | | | 1.30% | + | $0.00 | 1.25% | + | $0.00 |
| Puerto Rico Domestic Retail 2 Platinum | PR RTL2PLT | 2532 | | | | | | | | 1.80% | + | $0.00 | 1.80% | + | $0.00 |
| Puerto Rico Domestic Retail 2 Comm | PRRTL2COMM | 2533 | | | | | | | | 1.80% | + | $0.00 | | | |
| Puerto Rico Domestic Retail 2 Sign | PRRTL2SIGN | 2534 | | | | | | | | 1.90% | + | $0.00 | | | |
| Puerto Rico Domestic Standard | PR STND CR/PR STND DB | 2536/2535 | | | | | | | | 1.65% | + | $0.00 | 1.65% | + | $0.00 |
| Puerto Rico Domestic Standard Platinum | PR STNDPLT | 2537 | | | | | | | | 1.85% | + | $0.00 | 1.85% | + | $0.00 |
| Puerto Rico Domestic Standard Commercial | PRSTNDCOMM | 2538 | | | | | | | | 1.85% | + | $0.00 | | | |
| Puerto Rico Domestic Standard Signature | PRSTNDSIGN | 2539 | | | | | | | | 2.00% | + | $0.00 | | | |
| Virgin Islands Domestic Signature & Infinite | VISIGN/INF | 2540 | | | | | | | | 1.80% | + | $0.00 | | | |
| Virgin Islands Domestic Commercial | VI COMM | 2541 | | | | | | | | 1.80% | + | $0.00 | | | |
| Virgin Islands Domestic Electronic Cons | VI ELECT | 2542 | | | | | | | | 1.10% | + | $0.00 | 1.10% | + | $0.00 |
| Virgin Islands Domestic Issuer Chip Cons | VI ISS CHP | 2543 | | | | | | | | 1.20% | + | $0.00 | 1.20% | + | $0.00 |
| Virgin Islands Domestic Airlines Cons | VI AIRLINE | 2544 | | | | | | | | 1.10% | + | $0.00 | 1.10% | + | $0.00 |
| Virgin Islands Domestic Secure Cons | VI SECURE | 2545 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Virgin Islands Domestic Elec Commerce Cons | VI ECOMM | 2546 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Virgin Islands Domestic Standard Cons | VI STND | 2547 | | | | | | | | 1.60% | + | $0.00 | 1.60% | + | $0.00 |
| Guam Domestic Electronic Cons | GU ELECT | 2548 | | | | | | | | 1.00% | + | $0.00 | 1.00% | + | $0.00 |
| Guam Domestic Electronic Commercl | GUELECTCOM | 2549 | | | | | | | | 1.85% | + | $0.00 | | | |
| Guam Domestic Recurring Cons | GU RECURE | 2550 | | | | | | | | 1.00% | + | $0.00 | 1.00% | + | $0.00 |
| Guam Domestic Recurring Commercial | GU RCRCOMM | 2551 | | | | | | | | 1.00% | + | $0.00 | | | |
| Guam Domestic Sm Ticket Cons | GU SM TKT | 2552 | | | | | | | | 1.00% | + | $0.00 | 1.00% | + | $0.00 |
| Guam Domestic Sm Ticket Commercial | GUSMTKTCOM | 2553 | | | | | | | | 1.85% | + | $0.00 | | | |
| Guam Domestic Issuer Chip | GU ISS CHP | 2554 | | | | | | | | 1.95% | + | $0.00 | 1.95% | + | $0.00 |
| Guam Domestic Issuer Chip Cons | GU CHP CON | 2555 | | | | | | | | 1.10% | + | $0.00 | 1.10% | + | $0.00 |
| Guam Domestic Secure Electronic | GU SECURE | 2556 | | | | | | | | 1.65% | + | $0.00 | 1.65% | + | $0.00 |
| Guam Domestic Merch Ecommerce | GU ECOMM | 2557 | | | | | | | | 1.65% | + | $0.00 | 1.65% | + | $0.00 |
| Guam Domestic Standard Cons | GU STD CON | 2558 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Guam Domestic Stnd Pltnm & Sign | GU STD P&S | 2559 | | | | | | | | 1.85% | + | $0.00 | 1.85% | + | $0.00 |
| Guam Domestic Stnd Commercial | GU STDCOMM | 2560 | | | | | | | | 1.85% | + | $0.00 | | | |
| America Samoa Domestic Standard Cons | AS STD CON | 2561 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| America Samoa Domestic Stnd Commercial | AS STDCOMM | 2562 | | | | | | | | 1.85% | + | $0.00 | | | |
| Marshall Islands Domestic Standard Cons | MH STD CON | 2563 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Marshall Islands Domestic Stnd Commercial | MH STDCOMM | 2564 | | | | | | | | 1.85% | + | $0.00 | | | |
| Northern Mariana Islands Domestic Standard Cons | MP STD CON | 2565 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Northern Mariana Islands Domestic Stnd Commercial | MP STDCOMM | 2566 | | | | | | | | 1.85% | + | $0.00 | | | |
| Palau Domestic Standard Cons | PW STD CON | 2567 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| Palau Domestic Stnd Commercial | PW STDCOMM | 2568 | | | | | | | | 1.85% | + | $0.00 | | | |
| US Minor Outlying Islands Domestic Standard Cons | UM STD CON | 2569 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| US Minor Outlying Islands Domestic Stnd Commercial | UM STDCOMM | 2570 | | | | | | | | 1.85% | + | $0.00 | | | |
| LAC Commercial | VLAC COMM | 2571 | | | | | | | | 1.80% | + | $0.00 | | | |
| LAC Infinite & Signature | VLAC SIGN | 2572 | | | | | | | | 1.80% | + | $0.00 | | | |
| LAC Electronic Cons | VLAC ELECT | 2573 | | | | | | | | 1.10% | + | $0.00 | 1.10% | + | $0.00 |
| LAC Issuer Chip | VLAC CHIP | 2574 | | | | | | | | 1.20% | + | $0.00 | 1.20% | + | $0.00 |
| LAC Airline | VLAC AIRLN | 2575 | | | | | | | | 1.10% | + | $0.00 | 1.10% | + | $0.00 |
| LAC Secure Ecommerce | VLACSECURE | 2576 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| LAC Merch Ecommerce | VLACMECOMM | 2577 | | | | | | | | 1.44% | + | $0.00 | 1.44% | + | $0.00 |
| LAC Standard Cons | VLAC STND | 2578 | | | | | | | | 1.60% | + | $0.00 | 1.60% | + | $0.00 |
| AP Airline Commercial | V APAIRCOM | 2579 | | | | | | | | 1.60% | + | $0.00 | | | |
| AP Airline Comm Stnd | V APAIRSTD | 2580 | | | | | | | | 1.80% | + | $0.00 | | | |
| AP Airline Consumer | V APAIRCON | 2581 | | | | | | | | 1.16% | + | $0.00 | 1.16% | + | $0.00 |
| AP Issuer Chip Plat | V APCHPPLT | 2582 | | | | | | | | 1.95% | + | $0.00 | 1.95% | + | $0.00 |
| AP Issuer Chp Sign&Infinite | VAPCHPSIGN | 2583 | | | | | | | | 2.12% | + | $0.00 | | | |
| AP Iss Chip Gold | VAPCHPGOLD | 2584 | | | | | | | | 1.52% | + | $0.00 | 1.52% | + | $0.00 |
| AP Iss Chip Consumer | V APCHPCON | 2585 | | | | | | | | 1.32% | + | $0.00 | 1.32% | + | $0.00 |
| AP Electronic Gold | V APELECT G | 2586 | | | | | | | | 1.42% | + | $0.00 | 1.42% | + | $0.00 |
| AP Electronic Consumer | VAPELCTCON | 2587 | | | | | | | | 1.22% | + | $0.00 | 1.22% | + | $0.00 |
| AP Secure Ecomm Platinum | VAP ECOM P | 2588 | | | | | | | | 1.85% | + | $0.00 | 1.85% | + | $0.00 |
| AP Secure Ecomm Sign&Infnt | VAPECOMSIG | 2589 | | | | | | | | 2.02% | + | $0.00 | | | |
| AP Secure Ecomm Gold | VAP ECOM G | 2590 | | | | | | | | 1.55% | + | $0.00 | 1.55% | + | $0.00 |
| AP Secure Ecomm Consumer | VAPECOMCON | 2591 | | | | | | | | 1.35% | + | $0.00 | 1.35% | + | $0.00 |
| AP Mrch Ecomm Platinum | VAPMECOM P | 2592 | | | | | | | | 1.72% | + | $0.00 | 1.72% | + | $0.00 |
| AP Mrch Ecom Sign&Infnt | VAPMCOMSIG | 2593 | | | | | | | | 1.89% | + | $0.00 | | | |
| AP Mrch Ecom Gold | VAP MCOM G | 2594 | | | | | | | | 1.42% | + | $0.00 | 1.42% | + | $0.00 |
| AP Mrch Ecom Consumer | VAPMCOMCON | 2595 | | | | | | | | 1.22% | + | $0.00 | 1.22% | + | $0.00 |
| AP Recurring Pymt | V AP RECUR | 2596 | | | | | | | | 1.16% | + | $0.00 | 1.16% | + | $0.00 |
| AP Standard Commercial | V APSTDCOM | 2597 | | | | | | | | 1.85% | + | $0.00 | | | |
| AP Standard Platinum | V APSTDPLT | 2598 | | | | | | | | 1.85% | + | $0.00 | 1.85% | + | $0.00 |
| AP Standard Sign&Infinite | VAPSTDSIGN | 2599 | | | | | | | | 2.02% | + | $0.00 | | | |
| AP Standard Gold | VAPSTDGOLD | 2600 | | | | | | | | 1.55% | + | $0.00 | 1.55% | + | $0.00 |
| AP Standard Consumer | VAPSTDCONS | 2601 | | | | | | | | 1.35% | + | $0.00 | 1.35% | + | $0.00 |
| International Commercial Card | V INTLCOMM | 1660 | 1.80% | + | $0.00 | | | | | 1.80% | + | $0.00 | | | |
| International Electronic | V INTLELCT | 1661 | 1.10% | + | $0.00 | | | | | 1.10% | + | $0.00 | | | |
| International Issuer Chip | V INTLCHIP | 1662 | 1.20% | + | $0.00 | | | | | 1.20% | + | $0.00 | | | |
| International Acquirer Chip | V INTLACQR | 1663 | 1.00% | + | $0.00 | | | | | 1.00% | + | $0.00 | | | |
| International Standard | V INTLSTND | 1664 | 1.60% | + | $0.00 | | | | | 1.60% | + | $0.00 | | | |
| International Airline | V INTL AIR | 1665 | 1.10% | + | $0.00 | | | | | 1.10% | + | $0.00 | | | |
| International Infinite Card | V INTLINFN | 1666 | 1.80% | + | $0.00 | | | | | 1.80% | + | $0.00 | | | |
| International Signature Card | V INTLSIGN | 1667 | 1.80% | + | $0.00 | | | | | 1.80% | + | $0.00 | | | |
| International Secure E-Commerce | V INTLSECR | 1668 | 1.44% | + | $0.00 | | | | | 1.44% | + | $0.00 | | | |
| International Merchant E-Commerce | V INTLECOM | 1669 | 1.44% | + | $0.00 | | | | | 1.44% | + | $0.00 | | | |

| | | | Cons/Comm Rates July 2009 | | | Off-line Debit Rates July 2009 | | | Cons/Comm Rates Oct 2009 | | | Off-line Debit Rates Oct 2009 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **MasterCard Interchange Category** | **MPS SHORT DESCRIPTION** | **Chg Type** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** | **% Rate** | **+** | **Per Item** |
| Merit III | MERIT III / MERIT 3 D | 1023/1523 | 1.58% | + | $0.10 | 1.05% | + | $0.15 | 1.58% | + | $0.10 | 1.05% | + | $0.15 |
| Merit III Tier 1 | MER3 T1 C / MER3 T1 D | 1018/1518 | 1.43% | + | $0.10 | 0.70% | + | $0.15 | 1.43% | + | $0.10 | 0.70% | + | $0.15 |
| Merit III Tier 2 | MER3 T2 C / MER3 T2 D | 1615/1515 | 1.48% | + | $0.10 | 0.83% | + | $0.15 | 1.48% | + | $0.10 | 0.83% | + | $0.15 |
| Merit III Tier 3 | MER3 T3 C / MER3 T3 D | 1605/1505 | 1.55% | + | $0.10 | 0.95% | + | $0.15 | 1.55% | + | $0.10 | 0.95% | + | $0.15 |
| SuperMarket*** | MC SUPRMKT / MC SUPRM D | 1024/1524 | 1.48% | + | $0.05 | 1.05% | + | $0.15* | 1.48% | + | $0.05 | 1.05% | + | $0.15* |
| SuperMarket Tier 1 | SMKT T1 C / SMKT T1 D | 1019/1519 | 1.27% | + | $0.00 | 0.70% | + | $0.15 | 1.27% | + | $0.00 | 0.70% | + | $0.15 |
| SuperMarket Tier 2 | SMKT T2 C / SMKT T2 D | 1616/1516 | 1.32% | + | $0.00 | 0.83% | + | $0.15 | 1.32% | + | $0.00 | 0.83% | + | $0.15 |
| SuperMarket Tier 3 | SMKT T3 C / SMKT T3 D | 1606/1506 | 1.42% | + | $0.05 | 0.95% | + | $0.15 | 1.42% | + | $0.05 | 0.95% | + | $0.15 |
| Warehouse Club*** | WHSE CLUB / WHSE CLU D | 1026/1526 | 1.10% | + | $0.00 | 1.05% | + | $0.15* | 1.10% | + | $0.00 | 1.05% | + | $0.15* |
| Warehouse Club Tier 1 | WRHS T1 C / WRHS T1 D | 1020/1520 | 0.90% | + | $0.00 | 0.70% | + | $0.15 | 0.90% | + | $0.00 | 0.70% | + | $0.15 |
| Warehouse Club Tier 2 | WRHS T2 D | 1517 | | | | 0.83% | + | $0.15 | | | | 0.83% | + | $0.15 |
| Warehouse Club Tier 3 | WRHS T3 D | 1507 | | | | 0.95% | + | $0.15 | | | | 0.95% | + | $0.15 |
| Key Entered | KEY ENTERD / KEY ENTE D | 1027/1527 | 1.89% | + | $0.10 | 1.64% | + | $0.16 | 1.89% | + | $0.10 | 1.64% | + | $0.16 |
| Merit I | MERIT I / MERIT 1 D | 1021/1521 | 1.89% | + | $0.10 | 1.64% | + | $0.16 | 1.89% | + | $0.10 | 1.64% | + | $0.16 |
| Merit I - Insurance | MERIT1INSU | 1630 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| Merit I - Real Estate | MERIT1REAL / MER1 IREAL | 1634/1631 | 1.10% | + | $0.00 | 1.10% | + | $0.00 | 1.10% | + | $0.00 | 1.10% | + | $0.00 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Utility*** | MC UTILITY / MC UTIL DB | 1636/1536 | 0.00% | + | $0.65 | 0.00% | + | $0.45 | 0.00% | + | $0.65 | 0.00% | + | $0.45 |
| Petroleum** | PET AFDSVC | 1695 | 1.90% | + | $0.00 | | | | 1.90% | + | $0.00 | | | |
| Standard | STANDARD / STANDARD D | 1000/1500 | 2.95% | + | $0.10 | 1.90% | + | $0.25 | 2.95% | + | $0.10 | 1.90% | + | $0.25 |
| MC Passenger Transport | AIR-PT / AIR-PT D | 1022/1522 | 1.75% | + | $0.10 | 1.60% | + | $0.15 | 1.75% | + | $0.10 | 1.60% | + | $0.15 |
| Convenience Purchases | CONV PURCH | 1080 | 1.90% | + | $0.00 | | | | 1.90% | + | $0.00 | | | |
| MC Travel Industries Premier Service*** | PREMIER-L / PREMIER-V<br>PREMIERL D / PREMIERV D | 1033/1035/<br>1533/1535 | 1.58% | + | $0.10 | 1.36% | + | $0.15 | 1.58% | + | $0.10 | 1.36% | + | $0.15 |
| Service Industries*** | SVC RECURR | 1029 | 1.15% | + | $0.05 | 1.15% | + | $0.05 | 1.15% | + | $0.05 | 1.15% | + | $0.05 |
| Public Sector CNP & CP | PUBLIC CNP / PUBLIC CP | 1032/1089 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| US Merchant UCAF | MCUSMRUCAF / MCUSMRUCF | 1006/1530 | 1.58% | + | $0.10 | 1.05% | + | $0.15 | 1.58% | + | $0.10 | 1.05% | + | $0.15 |
| US Full UCAF | MCUSFULUCF / MCUSFULUCD | 1007/1531 | 1.68% | + | $0.10 | 1.15% | + | $0.15 | 1.68% | + | $0.10 | 1.15% | + | $0.15 |
| Small Ticket | MC SM TK D | 1593 | | | | 1.55% | + | $0.04 | | | | 1.55% | + | $0.04 |
| Small Ticket - Tier 1 Debit | SM TKT TR1 | 1339 | | | | | | | | | | 1.30% | + | $0.02 |
| Petroleum- CAT/AFD** | PET AFD D | 1595 | | | | 0.70% | + | $0.17 | | | | 0.70% | + | $0.17 |
| Petroleum - Service Stations** | PET SVC D | 1596 | | | | 0.70% | + | $0.17 | | | | 0.70% | + | $0.17 |
| Restaurant | MC REST D | 1594 | | | | 1.19% | + | $0.10 | | | | 1.19% | + | $0.10 |
| Emerging Market | EMRG MKT D | 1597 | | | | 0.80% | + | $0.25 | | | | 0.80% | + | $0.25 |
| Enhanced Merit III | ENH MER 3 | 1623 | 1.73% | + | $0.10 | | | | 1.73% | + | $0.10 | | | |
| Enhanced Merit III Tier 1 | ENH MER3T1 | 1608 | 1.43% | + | $0.10 | | | | 1.43% | + | $0.10 | | | |
| Enhanced Merit III Tier 2 | ENH MER3T2 | 1609 | 1.48% | + | $0.10 | | | | 1.48% | + | $0.10 | | | |
| Enhanced Merit III Tier 3 | ENH MER3T3 | 1610 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| Enhanced Supermarket*** | ENH SMKT | 1624 | 1.48% | + | $0.05 | | | | 1.48% | + | $0.05 | | | |
| Enhanced Supermarket Tier 1 | ENH SMKTT1 | 1612 | 1.27% | + | $0.00 | | | | 1.27% | + | $0.00 | | | |
| Enhanced Supermarket Tier 2 | ENH SMKTT2 | 1613 | 1.32% | + | $0.00 | | | | 1.32% | + | $0.00 | | | |
| Enhanced Supermarket Tier 3 | ENH SMKTT3 | 1614 | 1.42% | + | $0.05 | | | | 1.42% | + | $0.05 | | | |
| Enhanced Warehouse Club*** | ENH WHSE | 1626 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| Enhanced Warehouse Club Tier 1 | ENH WHSET1 | 1620 | 0.90% | + | $0.00 | | | | 0.90% | + | $0.00 | | | |
| Enhanced Key Entered | ENH KEYED | 1627 | 2.04% | + | $0.10 | | | | 2.04% | + | $0.10 | | | |
| Enhanced Merit I | ENH MERITI | 1621 | 2.04% | + | $0.10 | | | | 2.04% | + | $0.10 | | | |
| Enhanced Merit I - Insurance | ENHMR1INSU | 1697 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| Enhanced Merit I - Real Estate | ENHMR1REAL | 1691 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| Enhanced Standard | ENH STND | 1698 | 2.95% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Enhanced Convenience Purchase | ENH CONVPR | 1680 | 1.90% | + | $0.00 | | | | 1.90% | + | $0.00 | | | |
| Enhanced Service Industries*** | ENH SIIP | 1629 | 1.15% | + | $0.05 | | | | 1.15% | + | $0.05 | | | |
| Enhanced Public Sector CNP & CP | ENHPUBSCNP / ENHPUBSECP | 1632/1689 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| Enhanced Merchant UCAF | ENH MRUCAF | 1607 | 1.73% | + | $0.10 | | | | 1.73% | + | $0.10 | | | |
| Enhanced Full UCAF | ENHFULUCAF | 1611 | 1.83% | + | $0.10 | | | | 1.83% | + | $0.10 | | | |
| Enhanced Travel Premier*** | ENH TIPS / ENH TIPS | 1633/1635 | 1.90% | + | $0.10 | | | | 1.90% | + | $0.10 | | | |
| Enhanced Utility*** | ENHUTILITY | 1638 | 0.00% | + | $0.65 | | | | 0.00% | + | $0.65 | | | |
| Enhanced Passenger Transport | ENH PT | 1622 | 1.90% | + | $0.10 | | | | 1.90% | + | $0.10 | | | |
| Enhanced Petroleum** | ENH PETRO | 1696 | 1.90% | + | $0.00 | | | | 1.90% | + | $0.00 | | | |
| Corporate Face to Face - Corporate | FACE-FACE | 1040 | 2.15% | + | $0.10 | | | | 2.15% | + | $0.10 | | | |
| Corporate Face to Face - Business Cards | FACE-FACEB | 1639 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Corporate Face to Face - Fleet Cards | FACE-FACEF | 1641 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| Corporate Face to Face - Purchasing Cards | FACE-FACEP | 1640 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Corporate Face to Face Petroleum | F 2 F PET | 1644 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| Corporate Data Rate III | C DATA III | 1046 | 1.80% | + | $0.10 | | | | 1.80% | + | $0.10 | | | |
| Corporate Data Rate II - Corporate | C DATA II | 1047 | 2.15% | + | $0.10 | | | | 2.15% | + | $0.10 | | | |
| Corp Data Rate II - Business | CDATA II B | 1649 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Corp Data Rate II - Fleet | CDATA II F | 1648 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| Corp Data Rate II - Purchasing | CDATA II P | 1647 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Corp Data Rate II Petroleum | CDATAIIPET | 1693 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| MC Utilities - Business | UTLTY BUS | 1337 | | | | | | | 0.00% | + | $1.50 | | | |
| Corporate Data Rate I | C DATA I | 1048 | 2.65% | + | $0.10 | | | | 2.65% | + | $0.10 | | | |
| Corporate T&E III - Corporate | CORP T&E3C | 1005 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Corporate T&E II - Corporate | CORP T&E2C | 1004 | 2.25% | + | $0.10 | | | | 2.25% | + | $0.10 | | | |
| Corporate T&E I - Corporate | CORP T&E1C | 1002 | 2.40% | + | $0.00 | | | | 2.40% | + | $0.00 | | | |
| Corporate T&E III - Business | CORP T&E3B | 1305 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Corporate T&E II - Business | CORP T&E2B | 1304 | 2.35% | + | $0.10 | | | | 2.35% | + | $0.10 | | | |
| Corporate T&E I - Business | CORP T&E1B | 1302 | 2.50% | + | $0.00 | | | | 2.50% | + | $0.00 | | | |
| Corporate T&E III - Purchasing | CORP T&E3P | 1309 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| Corporate T&E II - Purchasing | CORP T&E2P | 1307 | 2.55% | + | $0.10 | | | | 2.55% | + | $0.10 | | | |
| Corporate T&E I - Purchasing | CORP T&E1P | 1303 | 2.70% | + | $0.00 | | | | 2.70% | + | $0.00 | | | |
| Corporate T&E III - Fleet | CORP T&E3F | 1314 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| Corporate T&E II - Fleet | CORP T&E2F | 1308 | 2.55% | + | $0.10 | | | | 2.55% | + | $0.10 | | | |
| Corporate T&E I - Fleet | CORP T&E1F | 1317 | 2.70% | + | $0.00 | | | | 2.70% | + | $0.00 | | | |
| Corporate Standard | CORP STND | 1001 | 2.95% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Corporate Large Ticket 1 | CORP LG TK | 1042 | 1.25% | + | $40.00 | | | | 1.25% | + | $40.00 | | | |
| Corporate Large Ticket 2 | CORPLGTK2 | 1642 | 1.25% | + | $40.00 | | | | 1.25% | + | $40.00 | | | |
| Corporate Large Ticket 3 | CORPLGTK3 | 1643 | 1.25% | + | $40.00 | | | | 1.25% | + | $40.00 | | | |
| Corporate Large Ticket 1 MPG | C LGTK1MPG | 1671 | 1.20% | + | $40.00 | | | | 1.20% | + | $40.00 | | | |
| Corporate Large Ticket 2 MPG | C LGTK2MPG | 1672 | 0.90% | + | $40.00 | | | | 0.90% | + | $40.00 | | | |
| Corporate Large Ticket 3 MPG | C LGTK3MPG | 1673 | 0.70% | + | $40.00 | | | | 0.70% | + | $40.00 | | | |
| World & World Elite Business Corp Face to Face | MWBCORPFTF | 1440 | 2.25% | + | $0.10 | | | | 2.25% | + | $0.10 | | | |
| World & World Elite Bus Corp F2F Petroleum | MWBF2FPET | 1645 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| World & World Elite Business Utility | MWB UTLTY | 1338 | | | | | | | 0.00% | + | $1.50 | | | |
| World & World Elite Business Large Ticket 1 | MWBCMLGTK1 | 1442 | 1.30% | + | $40.00 | | | | 1.30% | + | $40.00 | | | |
| World & World Elite Business Large Ticket 2 | MWBCMLGTK2 | 1470 | 1.30% | + | $40.00 | | | | 1.30% | + | $40.00 | | | |
| World & World Elite Business Large Ticket 3 | MWBCMLGTK3 | 1484 | 1.30% | + | $40.00 | | | | 1.30% | + | $40.00 | | | |
| World & World Elite Business Large Ticket 1 MPG | MWBCLT1MPG | 1485 | 1.25% | + | $40.00 | | | | 1.25% | + | $40.00 | | | |
| World & World Elite Business Large Ticket 2 MPG | MWBCLT2MPG | 1486 | 0.95% | + | $40.00 | | | | 0.95% | + | $40.00 | | | |
| World & World Elite Business Large Ticket 3 MPG | MWBCLT3MPG | 1487 | 0.75% | + | $40.00 | | | | 0.75% | + | $40.00 | | | |
| World & World Elite Business Data Rate III | MWBCOMDAT3 | 1446 | 1.85% | + | $0.10 | | | | 1.85% | + | $0.10 | | | |
| World & World Elite Business Data Rate II | MWBCOMDAT2 | 1447 | 2.25% | + | $0.10 | | | | 2.25% | + | $0.10 | | | |
| World & World Elite Bus Data Rate II Petroleum | MWBCOM2PET | 1694 | 2.10% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| World & World Elite Business Data Rate I | MWBCOMDAT1 | 1448 | 2.70% | + | $0.10 | | | | 2.70% | + | $0.10 | | | |
| World & World Elite Business T&E III | MWBCOMT&E3 | 1465 | 2.35% | + | $0.10 | | | | 2.35% | + | $0.10 | | | |
| World & World Elite Business T&E II | MWBCOMT&E2 | 1464 | 2.40% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| World & World Elite Business T&E I | MWBCOMT&E1 | 1462 | 2.55% | + | $0.00 | | | | 2.55% | + | $0.00 | | | |
| World & World Elite Business Standard | MWBCOMSTND | 1499 | 3.00% | + | $0.10 | | | | 3.00% | + | $0.10 | | | |
| International Electronic | INTL ELEC | 1031 | 1.16% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| International Standard | M INTLSTND | 1030 | 1.69% | + | $0.10 | | | | 1.60% | + | $0.00 | | | |
| Int'l Full UCAF | MCFULLUCAF | 1034 | 1.60% | + | $0.10 | | | | 1.54% | + | $0.00 | | | |
| Int'l Merchant UCAF | MC MR UCAF | 1049 | 1.50% | + | $0.10 | | | | 1.44% | + | $0.00 | | | |
| Int'l Corporate | CORP INTL | 1041 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| Int'l Corporate Purchasing | INTL PURCH | 1043 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| Int'l Corp. Purch. Data Rt II | C INTL II | 1045 | 1.70% | + | $0.00 | | | | 1.70% | + | $0.00 | | | |
| Int'l Corporate Large Ticket | C INTL LG | 1044 | 0.90% | + | $30.00 | | | | 0.90% | + | $30.00 | | | |
| Diners Electronic | DINERS ELE | 1098 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| Diners Standard | DINERS STN | 1099 | 2.50% | + | $0.00 | | | | 2.50% | + | $0.00 | | | |
| World Merit III | MCW MERIT3 | 1423 | 1.73% | + | $0.10 | | | | 1.73% | + | $0.10 | | | |
| World Merit III Tier 1 | MCW MERIT3 | 1418 | 1.53% | + | $0.10 | | | | 1.53% | + | $0.10 | | | |
| World Merit III Tier 2 | MCW MER3T2 | 1415 | 1.58% | + | $0.10 | | | | 1.58% | + | $0.10 | | | |
| World Merit III Tier 3 | MCW MER3T3 | 1422 | 1.65% | + | $0.10 | | | | 1.65% | + | $0.10 | | | |
| World SuperMarket*** | MCW SUPRMK | 1424 | 1.58% | + | $0.05 | | | | 1.58% | + | $0.05 | | | |
| World SuperMarket Tier 1 | MCW SMKT T | 1419 | 1.37% | + | $0.00 | | | | 1.37% | + | $0.00 | | | |
| World SuperMarket Tier 2 | MCW SMKT T | 1416 | 1.42% | + | $0.00 | | | | 1.42% | + | $0.00 | | | |
| World SuperMarket Tier 3 | MCW SMKT T | 1425 | 1.52% | + | $0.05 | | | | 1.52% | + | $0.05 | | | |
| World & World Elite Warehouse Club*** | MCW WHSECB | 1426 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| World Warehouse Club Tier 1 | MCW WRHST1 | 1420 | 0.90% | + | $0.00 | | | | 0.90% | + | $0.00 | | | |
| World Key Entered | MCW KEYED | 1427 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| World Merit I | MCW MERITI | 1421 | 2.05% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| World Merit I - Insurance | MCWMR1INSU | 1417 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| World Merit I - Real Estate | MCWMR1REAL | 1481 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| World Standard | MCW STND | 1400 | 2.95% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| World Utility | MCWUTILITY | 1436 | 0.00% | + | $0.65 | | | | 0.00% | + | $0.65 | | | |
| World Card T&E | MCW T&E | 1428 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| World Restaurant | MCW RESTRN | 1494 | 1.73% | + | $0.10 | | | | 1.73% | + | $0.10 | | | |
| World Merchant UCAF | MCWUSMRUCF | 1430 | 1.73% | + | $0.10 | | | | 1.73% | + | $0.10 | | | |
| World Full UCAF | MCWUSFULUC | 1431 | 1.83% | + | $0.10 | | | | 1.83% | + | $0.10 | | | |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| World Petroleum** | MCW PETRO | 1495 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| World & World Elite Convenience Purchases | MCWCONPURC | 1480 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| World & World Elite Service Industries*** | MCW SVCREC | 1429 | 1.15% | + | $0.05 | | | | 1.15% | + | $0.05 | | | |
| World & World Elite Public Sector CNP & CP | MCW PUBCNP / MCW PUB CP | 1432/1489 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| World Elite Utility | MWEUTILITY | 1439 | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 | | | |
| World Elite Merit III | MWE MERIT3 | 1445 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| World Elite Merit III Tier 3 | MWE MER3T3 | 1444 | 1.65% | + | $0.10 | | | | 2.15% | + | $0.10 | | | |
| World Elite SuperMarket*** | MWE SUPRMK | 1450 | 1.90% | + | $0.05 | | | | 1.90% | + | $0.05 | | | |
| World Elite Key Entered | MWE KEYED | 1435 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| World Elite Merit I | MWE MERITI | 1434 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| World Elite Merit I - Insurance | MWEMR1INSU | 1437 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| World Elite Merit I - Real Estate | MWEMR1REAL | 1438 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| World Elite Standard | MWE STND | 1433 | 3.25% | + | $0.10 | | | | 3.25% | + | $0.10 | | | |
| World Elite T&E | MWE T&E | 1451 | 2.75% | + | $0.10 | | | | 2.75% | + | $0.10 | | | |
| World Elite Restaurant | MWE RESTRN | 1449 | 1.73% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| World Elite Merchant UCAF | MWEUSMRUCF | 1441 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| World Elite Full UCAF | MWEUSFULUC | 1443 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| World Elite Airline | MWEAIRLINE | 1454 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| World Elite Petroleum** | MWE PETRO | 1496 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| World Elite T&E Large Ticket | MWE LRGTKT | 1488 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| High Value Key-Entered | HV KEYED | 1459 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| High Value T&E Large Ticket | HVT&ELGTKT | 1482 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| High Value Merit III Tier 1 | HVMERIT3T1 | 1461 | 1.53% | + | $0.10 | | | | 2.05% | + | $0.10 | | | |
| High Value Merit III Tier 2 | HVMERIT3T2 | 1467 | 1.58% | + | $0.10 | | | | 2.10% | + | $0.10 | | | |
| High Value Merit III Tier 3 | HVMERIT3T3 | 1469 | 1.65% | + | $0.10 | | | | 2.15% | + | $0.10 | | | |
| High Value Merit III Base | HV MERIT3 | 1460 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| High Value Merit 1 | HV MERIT1 | 1458 | 2.50% | + | $0.10 | | | | 2.50% | + | $0.10 | | | |
| High Value Merit 1 Real Estate | HVMR1 REAL | 1334 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| High Value Merit 1 Insurance | HVMR1 INSU | 1315 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| High Value Petroleum Base | HV PETRO | 1479 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| High Value Petroleum Max | HVPETROMAX | 1379 | 0.00% | + | $0.95 | | | | 0.00% | + | $0.95 | | | |
| High Value Public Sector CP | HVPUBSECCP | 1472 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| High Value Public Sector CNP | HVPUBSECNP | 1473 | 1.55% | + | $0.10 | | | | 1.55% | + | $0.10 | | | |
| High Value Restaurant | HV REST | 1474 | 1.73% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| High Value Supermarket Tier 1 | HVSUPRMKT1 | 1319 | 1.37% | + | $0.00 | | | | 1.37% | + | $0.00 | | | |
| High Value Supermarket Tier 2 | HVSUPRMKT2 | 1316 | 1.42% | + | $0.00 | | | | 1.42% | + | $0.00 | | | |
| High Value Supermarket Tier 3 | HVSUPRMKT3 | 1325 | 1.52% | + | $0.05 | | | | 1.52% | + | $0.05 | | | |
| High Value Standard | HV STND | 1457 | 3.25% | + | $0.10 | | | | 3.25% | + | $0.10 | | | |
| High Value Supermarket Base | HV SUPRMK | 1492 | 1.90% | + | $0.05 | | | | 1.90% | + | $0.05 | | | |
| High Value Service Industries | HV SVCINDS | 1471 | 1.15% | + | $0.05 | | | | 1.15% | + | $0.05 | | | |
| High Value T&E | HV T&E | 1493 | 2.75% | + | $0.10 | | | | 2.75% | + | $0.10 | | | |
| High Value Warehouse Base | HV WRHS | 1483 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| High Value Warehouse Tier 1 | HV WRHST1 | 1320 | 0.90% | + | $0.00 | | | | 0.90% | + | $0.00 | | | |
| High Value Airline | HV AIRLINE | 1477 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| High Value Convenience Purch | HV CONPURC | 1491 | 2.00% | + | $0.00 | | | | 2.00% | + | $0.00 | | | |
| High Value Full UCAF | HVFULLUCAF | 1476 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| High Value Merchant UCAF | HV MR UCAF | 1475 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| High Value Utilities | HV UTILITY | 1478 | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 | | | |
| Electronic Payment Account | ELECPMTACT | 1690 | 0.00% | + | $0.00 | | | | 0.00% | + | $0.00 | | | |
| Cash Advance | CASH ADV | 0070 | 0.00% | + | -$2.05 | | | | 0.00% | + | -$2.05 | | | |
| Consumer Debit Refund Group 1 | MC REF G1D | 1401 | | | | 1.72% | + | $0.00 | | | | 1.72% | + | $0.00 |
| Consumer Debit Refund Group 2 | MC REF G2D | 1402 | | | | 1.68% | + | $0.00 | | | | 1.68% | + | $0.00 |
| Consumer Debit Refund Group 3 | MC REF G3D | 1403 | | | | 1.40% | + | $0.00 | | | | 1.40% | + | $0.00 |
| Consumer Credit Refund Group 1 | MC REFCON1 | 1404 | 2.42% | + | $0.00 | | | | 2.42% | + | $0.00 | | | |
| Consumer Credit Refund Group 2 | MC REFCON2 | 1405 | 2.09% | + | $0.00 | | | | 2.09% | + | $0.00 | | | |
| Consumer Credit Refund Group 3 | MC REFCON3 | 1406 | 1.95% | + | $0.00 | | | | 1.95% | + | $0.00 | | | |
| Consumer Credit Refund Group 4 | MC REFCON4 | 1407 | 1.82% | + | $0.00 | | | | 1.82% | + | $0.00 | | | |
| Consumer Credit Refund Group 5 | MC REFCON5 | 1408 | 1.73% | + | $0.00 | | | | 1.73% | + | $0.00 | | | |
| Corporate Refund Group 1 | MC REFCRP1 | 1409 | 2.37% | + | $0.00 | | | | 2.37% | + | $0.00 | | | |
| Corporate Refund Group 2 | MC REFCRP2 | 1410 | 2.30% | + | $0.00 | | | | 2.30% | + | $0.00 | | | |
| Corporate Refund Group 3 | MC REFCRP3 | 1411 | 2.21% | + | $0.00 | | | | 2.21% | + | $0.00 | | | |
| Corporate Refund Group 4 | MC REFCRP4 | 1412 | 2.16% | + | $0.00 | | | | 2.16% | + | $0.00 | | | |
| Acquirer Program Support Fee | MC INT APS | 310 | 0.450% | + | $0.0000 | 0.450% | + | $0.0000 | 0.550% | + | $0.0000 | 0.550% | + | $0.0000 |
| Intl Cross Border Fee | MC INTL CB | 311 | 0.300% | + | $0.0000 | 0.300% | + | $0.0000 | 0.400% | + | $0.0000 | 0.400% | + | $0.0000 |
| Intl DCC Cross Border Fee | MC DCC CB | 316 | | | | | | | 0.800% | + | $0.0000 | 0.800% | + | $0.0000 |
| Access Fee† | ACCESS FEE | 3050 | 0.000% | + | $0.0000 | 0.000% | + | $0.0000 | 0.000% | + | $0.0000 | 0.000% | + | $0.0000 |
| Assessment % | ASSESSMENT | 300 | 0.095% | + | $0.0000 | 0.095% | + | $0.0000 | 0.095% | + | $0.0000 | 0.095% | + | $0.0000 |
| Assessment PI (NABU Fee) | NABU FEE | 304 | 0.000% | + | $0.0185 | 0.000% | + | $0.0185 | 0.000% | + | $0.0185 | 0.000% | + | $0.0185 |
| MC Assessments | | | Moved | | | Moved | | | Moved | | | Moved | | |

† Fee Billed on Assessments

* $0.35 Cap

**$0.95 Cap

***program requires registration

| Discover Interchange Category | MPS SHORT DESCRIPTION | Chg Type | Cons/Comm Rates July 2009 % Rate | + | Per Item | Off-line Debit Rates July 2009 % Rate | + | Per Item | Cons/Comm Rates Oct 2009 % Rate | + | Per Item | Off-line Debit Rates Oct 2009 % Rate | + | Per Item |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Retail AIP Rewards | DSCVRETAIL | 1125 | 1.71% | + | $0.10 | | | | 1.71% | + | $0.10 | | | |
| Key Entered AIP Rewards | DSCVKEYED | 1126 | 1.97% | + | $0.10 | | | | 1.97% | + | $0.10 | | | |
| Card Not Present/E-Commerce AIP Rewards | DSCV CNP | 1127 | 1.97% | + | $0.10 | | | | 1.97% | + | $0.10 | | | |
| Recurring Payments AIP Rewards | DSCVAUPAY | 1128 | 1.20% | + | $0.05 | | | | 1.20% | + | $0.05 | | | |
| Express Services AIP Rewards | DSCV EXSV | 1129 | 1.70% | + | $0.03 | | | | 1.70% | + | $0.03 | | | |
| Petroleum AIP Rewards | DSCV PETO | 1130 | 1.73% | + | $0.05 | | | | 1.73% | + | $0.05 | | | |
| Public Services AIP Rewards | DSCV PUB | 1131 | 1.50% | + | $0.10 | | | | 1.50% | + | $0.10 | | | |
| Emerging Markets AIP Rewards | DSCV EMKTS | 1132 | 1.45% | + | $0.05 | | | | 1.45% | + | $0.05 | | | |
| Supermarkets/Warehouse Clubs AIP Rewards | DSCV SMWHS | 1133 | 1.65% | + | $0.05 | | | | 1.65% | + | $0.05 | | | |
| Restaurants AIP Rewards | DSCV REST | 1134 | 1.90% | + | $0.10 | | | | 1.90% | + | $0.10 | | | |
| Hotel/Car Rentals AIP Rewards | DSCV HOCR | 1135 | 1.90% | + | $0.10 | | | | 1.90% | + | $0.10 | | | |
| Passenger Transport AIP Rewards | DSCV PASS | 1136 | 1.90% | + | $0.10 | | | | 1.90% | + | $0.10 | | | |
| Utilities AIP Rewards | DSCV UTLTY | 1145 | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 | | | |
| Real Estate AIP Rewards | REAL EST R | 1146 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| Insurance AIP Rewards | INSURANC R | 1147 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| Mid Submission Level AIP Rewards | DSCV MID | 1137 | 2.30% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Base Submission Level AIP Rewards | DSCV BASE | 1138 | 2.85% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Commercial Electronic Submission | DSCVCOMELC | 1139 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Commercial Utilities | UTLTY COMM | 1188 | 0.00% | + | $1.50 | | | | 0.00% | + | $1.50 | | | |
| Commercial Base Submission | DSCVCOMBAS | 1140 | 2.85% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Consumer Adjustment Voucher Program 1 Rewards | DSCVCOADJ1 | 1141 | 2.07% | + | $0.00 | | | | 2.07% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 2 Rewards | DSCVCOADJ2 | 1142 | 2.02% | + | $0.00 | | | | 2.02% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 3 Rewards | DSCVCOADJ3 | 1143 | 1.75% | + | $0.00 | | | | 1.75% | + | $0.00 | | | |
| Commercial Adjustment Voucher Program 1 | DSCVCMADJ1 | 1144 | 2.25% | + | $0.00 | | | | 2.25% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 1 Core | VOUCHER1 C | 1211 | 2.07% | + | $0.00 | | | | 2.07% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 2 Core | VOUCHER2 C | 1212 | 2.02% | + | $0.00 | | | | 2.02% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 3 Core | VOUCHER3 C | 1213 | 1.75% | + | $0.00 | | | | 1.75% | + | $0.00 | | | |
| Retail AIP Core | RETAIL C | 1189 | 1.56% | + | $0.10 | | | | 1.56% | + | $0.10 | | | |
| Key Entered AIP Core | K ENTER C | 1193 | 1.87% | + | $0.10 | | | | 1.87% | + | $0.10 | | | |
| Card Not Present/E-Commerce AIP Core | CNP/ECOM C | 1194 | 1.87% | + | $0.10 | | | | 1.87% | + | $0.10 | | | |
| Mid Submission Level AIP Core | MID SUB C | 1209 | 2.30% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Base Submission Level AIP Core | BASE C | 1210 | 2.85% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Utilities AIP Core | UTILITY C | 1206 | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 | | | |
| Real Estate AIP Core | REAL EST C | 1207 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| Express Services AIP Core | EXPRESS C | 1196 | 1.70% | + | $0.03 | | | | 1.70% | + | $0.03 | | | |
| Recurring Payments AIP Core | RECURING C | 1195 | 1.20% | + | $0.05 | | | | 1.20% | + | $0.05 | | | |
| Emerging Markets AIP Core | EMERGING C | 1199 | 1.45% | + | $0.05 | | | | 1.45% | + | $0.05 | | | |
| Public Services AIP Core | PUBLIC C | 1198 | 1.50% | + | $0.10 | | | | 1.50% | + | $0.10 | | | |
| Insurance AIP Core | INSURANC C | 1208 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| Petroleum AIP Core | PETROL C | 1197 | 1.55% | + | $0.05 | | | | 1.55% | + | $0.05 | | | |
| Supermarkets/Warehouse Clubs AIP Core | SPRMKT C | 1202 | 1.40% | + | $0.05 | | | | 1.40% | + | $0.05 | | | |
| Restaurants AIP Core | RSTRNT C | 1203 | 1.56% | + | $0.10 | | | | 1.56% | + | $0.10 | | | |
| Hotel/Car Rentals AIP Core | HOTL/CAR C | 1204 | 1.58% | + | $0.10 | | | | 1.58% | + | $0.10 | | | |
| Passenger Transport AIP Core | AIRLINE C | 1205 | 1.75% | + | $0.10 | | | | 1.75% | + | $0.10 | | | |
| Retail AIP Premium | DSCV RTL P | 1148 | 1.71% | + | $0.10 | | | | 1.71% | + | $0.10 | | | |
| Key Entered AIP Premium | DSCVKEYEDP | 1149 | 2.00% | + | $0.10 | | | | 2.00% | + | $0.10 | | | |
| Card Not Present/E-Commerce AIP Premium | DSCV CNP P | 1152 | 2.00% | + | $0.10 | | | | 2.00% | + | $0.10 | | | |
| Recurring Payments AIP Premium | DSCVAUPAYP | 1153 | 1.20% | + | $0.05 | | | | 1.20% | + | $0.05 | | | |
| Express Services AIP Premium | DSCV EXSVP | 1154 | 1.70% | + | $0.03 | | | | 1.70% | + | $0.03 | | | |
| Petroleum AIP Premium | DSCV PETOP | 1155 | 1.73% | + | $0.05 | | | | 1.73% | + | $0.05 | | | |
| Public Services AIP Premium | DSCV PUB P | 1156 | 1.50% | + | $0.10 | | | | 1.50% | + | $0.10 | | | |
| Emerging Markets AIP Premium | DSCV EMKTP | 1157 | 1.45% | + | $0.05 | | | | 1.45% | + | $0.05 | | | |
| Supermarkets/Warehouse Clubs AIP Premium | DSCV SMWHP | 1158 | 1.65% | + | $0.05 | | | | 1.65% | + | $0.05 | | | |
| Restaurants AIP Premium | DSCV RESTP | 1159 | 2.20% | + | $0.10 | | | | 2.20% | + | $0.10 | | | |
| Hotel/Car Rentals AIP Premium | DSCVHOCR P | 1160 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Passenger Transport AIP Premium | DSCV PASSP | 1161 | 2.30% | + | $0.10 | | | | 2.30% | + | $0.10 | | | |
| Utilities AIP Premium | DSCVUTLTYP | 1162 | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 | | | |
| Real Estate AIP Premium | REAL EST P | 1186 | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 | | | |
| Insurance AIP Premium | INSURANC P | 1187 | 1.43% | + | $0.05 | | | | 1.43% | + | $0.05 | | | |
| Mid Submission Level AIP Premium | DSCV MID P | 1163 | 2.30% | + | $0.10 | | | | 2.40% | + | $0.10 | | | |
| Base Submission Level AIP Premium | DSCV BASE | 1164 | 2.85% | + | $0.10 | | | | 2.95% | + | $0.10 | | | |
| Utilities AIP Debit | DSCVUTLTYD | 1182 | | | | 0.00% | + | $0.75 | | | | 0.00% | + | $0.75 |
| Supermarkets/Warehouse Clubs AIP Debit MAX | DSCVSMWHMD | 1183 | | | | 0.00% | + | $0.36 | | | | 0.00% | + | $0.36 |
| Retail AIP Debit | DSCVRETALD | 1165 | | | | 1.02% | + | $0.16 | | | | 1.02% | + | $0.16 |
| Key Entered AIP Debit | DSCVKEYEDD | 1166 | | | | 1.62% | + | $0.16 | | | | 1.62% | + | $0.16 |
| Card Not Present/E-Commerce AIP Debit | DSCV CNP D | 1167 | | | | 1.62% | + | $0.16 | | | | 1.62% | + | $0.16 |
| Recurring Payments AIP Debit | DSCVAUPAYD | 1168 | | | | 1.20% | + | $0.05 | | | | 1.20% | + | $0.05 |
| Express Services AIP Debit | DSCV EXSVD | 1169 | | | | 1.55% | + | $0.04 | | | | 1.55% | + | $0.04 |
| Petroleum AIP Debit | DSCV PETOD | 1170 | | | | 0.76% | + | $0.16 | | | | 0.76% | + | $0.16 |
| Public Services AIP Debit | DSCV PUB D | 1171 | | | | 0.90% | + | $0.20 | | | | 0.90% | + | $0.20 |
| Emerging Markets AIP Debit | DSCV EMKTD | 1172 | | | | 0.90% | + | $0.20 | | | | 0.90% | + | $0.20 |
| Supermarkets/Warehouse Clubs AIP Debit | DSCV SMWHD | 1173 | | | | 1.02% | + | $0.16 | | | | 1.02% | + | $0.16 |
| Restaurants AIP Debit | DSCV RESTD | 1174 | | | | 1.19% | + | $0.10 | | | | 1.19% | + | $0.10 |
| Hotel/Car Rentals AIP Debit | DSCV HOCRD | 1175 | | | | 1.35% | + | $0.16 | | | | 1.35% | + | $0.16 |
| Passenger Transport AIP Debit | DSCV PASSD | 1176 | | | | 1.59% | + | $0.16 | | | | 1.59% | + | $0.16 |
| Real Estate AIP Debit | REAL EST D | 1184 | | | | 1.10% | + | $0.00 | | | | 1.10% | + | $0.00 |
| Insurance AIP Debit | INSURANC D | 1185 | | | | 0.80% | + | $0.25 | | | | 0.80% | + | $0.25 |
| Mid Submission Level AIP Debit | DSCV MID D | 1177 | | | | 1.72% | + | $0.20 | | | | 1.72% | + | $0.20 |
| Base Submission Level AIP Debit | DSCV BASED | 1178 | | | | 1.89% | + | $0.25 | | | | 1.89% | + | $0.25 |
| Consumer Adjustment Voucher Program 1 Debit | DSCVCOAJ1D | 1179 | | | | 1.80% | + | $0.00 | | | | 1.80% | + | $0.00 |
| Consumer Adjustment Voucher Program 2 Debit | DSCVCOAJ2D | 1180 | | | | 1.69% | + | $0.00 | | | | 1.69% | + | $0.00 |
| Consumer Adjustment Voucher Program 3 Debit | DSCVCOAJ3D | 1181 | | | | 1.35% | + | $0.00 | | | | 1.35% | + | $0.00 |
| Consumer Adjustment Voucher Program 1 Premium | DSCVCADJ1P | 1190 | 2.07% | + | $0.00 | | | | 2.07% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 2 Premium | DSCVCADJ2P | 1191 | 2.02% | + | $0.00 | | | | 2.02% | + | $0.00 | | | |
| Consumer Adjustment Voucher Program 3 Premium | DSCVCADJ3P | 1192 | 1.75% | + | $0.00 | | | | 1.75% | + | $0.00 | | | |
| Cash Advance | CASH ADV | 70 | | | | | | | 0.16% | + | $1.65 | | | |
| International Cash Advance | INT CA ADV | 73 | | | | | | | 0.16% | + | $3.00 | | | |
| International Electronic | ELECT INTL | 1214 | | | | | | | 1.16% | + | $0.00 | | | |
| international Base Submission Level | BASE INTL | 1215 | | | | | | | 1.70% | + | $0.10 | | | |
| Assessment PI (Data Transmission Fee) | ASSESSMENT | 401 | 0.0000% | + | $0.0075 | 0.0000% | + | $0.0075 | 0.0000% | + | $0.0075 | 0.0000% | + | $0.0075 |
| Assessment % | DATA TRANS | 400 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 | 0.0925% | + | $0.0000 |
| Data Usage Fee† | DATA USAGE | 3060 | 0.0000% | + | $0.0050 | 0.0000% | + | $0.0050 | 0.0000% | + | $0.0050 | 0.0000% | + | $0.0050 |
| Intl Processing Fee | D INTLPROC | 402 | | | | | | | 0.3000% | + | $0.0000 | 0.3000% | + | $0.0000 |
| Intl Csh Adv Processing Fee | D CA INTL | 403 | | | | | | | 0.3000% | + | $0.0000 | 0.3000% | + | $0.0000 |
| Intl Service Fee | D INTLSERV | 404 | | | | | | | 0.4500% | + | $0.0000 | 0.4500% | + | $0.0000 |
| Assessments | | | Moved | | | Moved | | | Moved | | | Moved | | |

† Fee Billed on Assessments

| Amex Interchange Category | MPS SHORT DESCRIPTION | Chg Type | Cons/Comm Rates July 2009 % Rate | + | Per Item | Off-line Debit Rates July 2009 % Rate | + | Per Item | Cons/Comm Rates Oct 2009 % Rate | + | Per Item | Off-line Debit Rates Oct 2009 % Rate | + | Per Item |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Amex Lodging | LODGING | 1250 | 3.50% | + | $0.00 | | | | 3.50% | + | $0.00 | | | |
| Amex Mail Order/Telephone | MOTO/ECOM | 1251 | 3.50% | + | $0.00 | | | | 3.50% | + | $0.00 | | | |
| Amex Office Based Healthcare | HEALTHCARE | 1252 | 2.55% | + | $0.00 | | | | 2.55% | + | $0.00 | | | |
| Amex Resturant | RESTURANT | 1253 | 3.50% | + | $0.00 | | | | 3.50% | + | $0.00 | | | |
| Amex Retail | RETAIL | 1254 | 2.89% | + | $0.10 | | | | 2.89% | + | $0.10 | | | |
| Amex Service | SERVICE | 1255 | 2.89% | + | $0.15 | | | | 2.89% | + | $0.15 | | | |
| Amex Supermarket | SUPERMRKT | 1256 | 2.30% | + | $0.00 | | | | 2.30% | + | $0.00 | | | |
| Amex Travel Agency | TRAVEL | 1257 | Eliminated | | | | | | Eliminated | | | | | |
| Amex Transportation | TRANSPORT | 1258 | 3.50% | + | $0.00 | | | | 3.50% | + | $0.00 | | | |
| Amex Tuition | TUITION | 1259 | 2.40% | + | $0.00 | | | | 2.40% | + | $0.00 | | | |
| Amex Keyed/CNP | KEYED/CNP | 1260 | 3.19% | + | $0.10 | | | | 3.19% | + | $0.10 | | | |
| Amex Fast Food Resturants | FAST FOOD | 1261 | 3.50% | + | $0.00 | | | | 3.50% | + | $0.00 | | | |
| Amex CNP/Key Entered Resturant | CNP RSTRNT | 1262 | 3.80% | + | $0.00 | | | | 3.80% | + | $0.00 | | | |
| Amex Petroleum Station | | | | | | | | | | | | | | |

APPENDIX 5

**ENTERPRISE BANKING SERVICES CONTRACT**
**APPENDIX 5**
**PARTICIPATION AGREEMENT FOR WISCONSIN LOCAL GOVERNMENTS**

This instrument, (the " Participation Agreement"), is between **U.S. Bank National Association**, ("the Contractor") and the **[LOCAL GOVERNMENT OF _____] ("Participant)"**

For good and valuable consideration, receipt of which is hereby acknowledged, both parties agree as follows:

1. The terms and conditions of the Enterprise Banking Services Contract ("Master Agreement") shall be incorporated herein by this reference as if fully set forth herein.

2. All terms used herein shall have the same meaning as in the Master Agreement, unless specified to the contrary.

3. For purposes of this Participation Agreement, the terms "you" and "your" under the Master Agreement shall mean the Participant.

4. Participant represents that Participant has received all the necessary approvals to enter into this Participation Agreement and the undersigned represents that he or she is legally authorized to execute this Participation Agreement on behalf of the Participant.

5. Participant hereby agrees to pay its allocated share of the fees as set forth in the Fee Schedule in the Master Agreement, as determined by the Contractor.

6. The Participation Agreement shall commence on the effective date set forth below and continue until June 30, 2014.

7. All terms and conditions of the Master Agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Participation Agreement to be executed effective as of _____.

| **Local Government of:** | **U.S. Bank** |
|---|---|
| Signature:<br><br>(Type Name): | Signature:<br><br>(Type Name): |
| Title: | Title: |
| Agency/Local Government Name: | |
| Date: | Date: |

| TMA Code | Service Name | Price |
|---|---|---|
| 010 600 | Account Inquiry | 0.000 |
| 010 000 | Account Maintenance | 5.000 |
| 250 641 | ACH Batch Adjustment Request | 3.000 |
| 251 050 | ACH Block Mthly Maint Per Acct | 5.000 |
| 260 100 | ACH Cashcon Item | 0.015 |
| 259 999 | ACH File Confirmation Email | 0.500 |
| 259 999 | ACH File Confirmation Fax | 2.000 |
| 251 050 | ACH Filter Mthly Maint | 15.000 |
| 251 000 | ACH Filter/Block Setup | 25.000 |
| 250 640 | ACH Item Adjustment Request | 3.000 |
| 250 000 | ACH Monthly Maintenance | 0.000 |
| 251 070 | ACH Notification of Change | 0.250 |
| 250 120 | ACH Originated Addenda Item | 0.010 |
| 250 102 | ACH Originated Not On-Us Item | 0.015 |
| 250 102 | ACH Originated On-Us Item | 0.015 |
| 259 999 | ACH Outgoing Transmission | 8.000 |
| 250 701 | ACH Prenote Per Location | 1.000 |
| 250 501 | ACH Process Run | 8.000 |
| 250 220 | ACH Received Addenda Item | 0.010 |
| 250 202 | ACH Received Item | 0.030 |
| 250 720 | ACH Received Monthly Item Report | 10.000 |
| 250 310 | ACH Redeposited Item | 0.050 |
| 250 310 | ACH Redeposited Item | 0.050 |
| 250 302 | ACH Return Per Item | 0.250 |
| 250 400 | ACH Return/NOC Electronic | 0.000 |
| 250 400 | ACH Return/Noc Faxed | 0.150 |
| 250 670 | ACH Return/NOC Transmitt Items | 0.030 |
| 250 701 | ACH Settlement Report Mo Maint | 0.000 |
| 250 130 | ACH Transmission Per Location | 0.050 |
| 250 202 | ACH Trap Item | 0.030 |
| 300 210 | Act Addenda Item | 0.030 |
| 300 210 | Act Monthly Maintenance | 30.000 |
| 260 501 | Add/Change Location | 5.000 |
| 151 100 | ARP Check Sort Per Item | 0.100 |
| 200 311 | ARP Journal Fiche | 0.250 |
| 200 210 | ARP Manual Input | 0.800 |
| 200 030 | ARP Range Maint | 5.000 |
| 150 320 | ARP Return Items | 2.000 |
| 200 010 | ARP State Maint Charge | 0.000 |
| 200 110 | ARP State Per Item Chg | 0.000 |
| 200 301 | ARP Transmission Output | 5.000 |
| 200 301 | ARP Transmission Per Item | 0.000 |
| 350 600 | Batch Wire Mo Maint | 0.000 |
| 350 640 | Batch Wires | 1.500 |
| 100 046 | Box Coin Ordered-Milw | 5.000 |
| 260 000 | Cash Con Monthly Maintenance | 4.500 |
| 100 501 | Cash Dep Adjustment-Madison | 7.000 |
| 100 501 | Cash Dep Adjustment-Milw | 7.000 |
| 100 114 | Cash Dep Per $100-Madison | 0.000 |

| TMA Code | Service Name | Price |
|---|---|---|
| 100 114 | Cash Dep Per $100-Milwaukee | 0.000 |
| 100 114 | Cash Deposit Piece-Madison | 0.008 |
| 100 115 | Cash Deposit Strap-Madison | 0.750 |
| 100 01Z | Cash Deposited Per $100 | 0.100 |
| 109 999 | Cash Deposited Piece-Milw | 0.008 |
| 100 115 | Cash Deposited Strap-Milw | 0.750 |
| 150 320 | Check Filter Items Returned | 25.000 |
| 150 240 | Check Filter Monthly Maint | 0.000 |
| 159 999 | Check Filter Setup | 0.000 |
| 151 353 | Check Image Duplicate CD-ROM | 5.000 |
| 151 100 | Check Sort Maint | 40.000 |
| 150 810 | Check/Deposit Ticket Order | 0.000 |
| 350 104 | CMT Domestic Non-repetitive | 2.250 |
| 350 100 | CMT Domestic Repetitive | 2.250 |
| 350 700 | CMT Intl FX Non-Repetitive | 27.000 |
| 350 700 | CMT Intl Usd Non-Repetitive | 27.000 |
| 350 000 | CMT Monthly Maintenance | 0.000 |
| 359 999 | CMT Secondary Authoriztn | 0.000 |
| 359 999 | CMT Wire Reporting Mo Maint | 1.000 |
| 100 110 | Coin Deposited Per Roll | 0.100 |
| 100 044 | Coin Rolls Ordered Per Roll | 0.140 |
| 151 342 | Copy of Check / Deposit Ticket | 5.000 |
| 100 14A | Curr Order Per Strp-Madison | 0.650 |
| 100 14A | Curr Ordered Per Strap-Milw | 0.650 |
| 100 800 | Curr Straps Per Box-Madison | 4.000 |
| 100 800 | Curr Straps Per Box-Milw | 4.000 |
| 100 04A | Currency Ordered Per Strap | 0.700 |
| 100 800 | Currency Straps Per Box | 4.250 |
| 150 410 | Customer Initiated Stops | 0.000 |
| 100 401 | Dep Items Ret Special Instr | 0.000 |
| 260 410 | Deposit Fax Report | 1.000 |
| 260 410 | Deposit Fax Report | 1.000 |
| 269 999 | Deposit Report Fields | 0.100 |
| 260 400 | Deposit Report Fields Fax | 0.100 |
| 260 400 | Deposit Report PC/Terminal | 1.000 |
| 100 222 | Deposited Item - Local | 0.032 |
| 100 220 | Deposited Item - On-US | 0.030 |
| 100 225 | Deposited Item - Regional | 0.042 |
| 100 226 | Deposited Item - Transit | 0.058 |
| 100 400 | Deposited Items Returned | 0.650 |
| 010 101 | Electronic Credits | 0.030 |
| 010 100 | Electronic Debits | 0.030 |
| 100 104 | Envelope Deposit - Milw | 1.000 |
| 100 104 | Envelope Deposit-Madison | 1.000 |
| 159 999 | Fax Fee | 5.000 |
| 260 400 | Fax Report Pages | 1.000 |
| 000 230 | FDIC Quarterly Charge | pass-through |
| 350 20Z | Federal Tax Wire 1090 Message | 25.000 |
| 159 999 | File Confirmation Per Email | 0.500 |

| TMA Code | Service Name | Price |
|---|---|---|
| 150 030 | Full / POS Pay Maint | 10.000 |
| 150 120 | Full / POS Pay Per Item | 0.015 |
| 151 353 | Image CD ROM | 5.000 |
| 151 200 | Image CD-ROM 1St Class Deliver | 0.000 |
| 151 351 | Image Per Item | 0.015 |
| 260 502 | Inactive Locations | 6.000 |
| 350 300 | Incoming Domestic Wire | 2.000 |
| 350 712 | Incoming International Wire | 10.000 |
| 100 144 | Individual Coin Rolls-Madison | 0.130 |
| 350 512 | Internal Standing Wire | 3.000 |
| 350 22Z | Internal Wire Credit | 1.750 |
| 000 371 | Invoice Fee | 0.000 |
| 059 999 | Lockbox Acct Changes-Milw | 10.000 |
| 050 414 | Lockbox Branch Deliv-St Wi | 0.000 |
| 050 114 | Lockbox Complex Sort-St Wi | 0.100 |
| 050 13A | Lockbox Cred Cards Items-St Wi | 0.240 |
| 050 126 | Lockbox Data Keystroke-St Wi | 0.006 |
| 050 11D | Lockbox Date Stamp-St Wi | 0.030 |
| 050 117 | Lockbox Match/Staple-St Wi | 0.020 |
| 050 321 | Lockbox MICR Report-St Wi | 0.080 |
| 050 000 | Lockbox Monthly Maint-St Wi | 25.000 |
| 050 131 | Lockbox Payees 8 to 15-St Wi | 0.000 |
| 050 324 | Lockbox Payor Plus Rpt-St Wi | 0.000 |
| 050 100 | Lockbox Per Transaction-St Wi | 0.280 |
| 050 610 | Lockbox Photo Request | 5.000 |
| 050 11P | Lockbox Spec Instruction-St WI | 10.000 |
| 050 401 | Lockbox Transmission Itm-St Wi | 0.000 |
| 050 401 | Lockbox Transmission-St Wi | 150.000 |
| 050 410 | Lockbox US Mail-St Wi | 0.600 |
| 050 116 | Lockbox Written Notation-St Wi | 0.000 |
| 100 112 | Loose Coin Deposited-Madison | 10.000 |
| 100 048 | Loose Currency Ordered/$100 | 0.130 |
| 100 012 | Loose Mixed Coin Dep Per Bag | 10.000 |
| 109 999 | Mailed Receipts | 0.500 |
| 109 999 | Mailed Receipts | 0.500 |
| 100 830 | Medium Dep Bags/Box-Milw | 20.000 |
| 019 999 | Misc Pass-Thru | 0.000 |
| 300 0ZZ | Monthly Maint Per Account | 0.000 |
| 100 141 | Non Std Cash Orders-Madison | 6.000 |
| 409 999 | Online Book Transfer Debit Fee | 0.200 |
| 050 400 | Online Image Monthly Maint | 0.000 |
| 999 999 | Onsite Electronic Deposit - EDM Monthly Maintenance | 10.000 |
| 100 214 | Onsite Electronic Deposit - Image Capture and IRD | 0.080 |
| 100 214 | Onsite Electronic Deposit - Image Capture, Conversion to ACH, ACH Origination | 0.060 |
| 151 352 | Onsite Electronic Deposit - Image Retrieval | 0.500 |
| 999 999 | Onsite Electronic Deposit - Monthly Image Quality Gold | 19.500 |
| 999 999 | Onsite Electronic Deposit - Monthly PC Maintenance | 16.000 |
| 999 999 | Onsite Electronic Deposit - Monthly Per Scanner Station Fee | 16.000 |
| 150 341 | Overdraft (Paid) Items | 0.000 |

| TMA Code | Service Name | Price |
|---|---|---|
| 010 101 | Paper Credits | 0.250 |
| 010 100 | Paper Debits | 0.035 |
| 200 020 | Partial ARP Maint | 5.000 |
| 200 120 | Partial ARP Per Item | 0.010 |
| 250 102 | PC ACH Direct Item | 0.100 |
| 251 100 | PC ACH Direct Monthly Maint | 0.000 |
| 259 999 | PC ACH Direct Process Run | 2.000 |
| 159 999 | Positive Pay - Exception Items | 0.000 |
| 100 212 | Pre-Enc Dep Item - Local | 0.012 |
| 100 210 | Pre-Enc Dep Item - On-US | 0.010 |
| 100 213 | Pre-Enc Dep Item - Regional | 0.020 |
| 100 214 | Pre-Enc Dep Item - Transit | 0.045 |
| 100 21Z | Pre-Encode Cad/Usd Item | 4.000 |
| 100 402 | Redeposited Returned Item | 0.650 |
| 100 230 | Rejected Pre-Encoded Dep Item | 0.280 |
| 010 600 | Related Acct Transfer By Phone | 5.000 |
| 050 21P | Retail LBX Candling-St Wi | 0.009 |
| 050 224 | Retail LBX Data Key -St Wi | 0.005 |
| 050 300 | Retail LBX Deposit-St Wi | 0.250 |
| 050 530 | Retail LBX Exception-St Wi | 0.220 |
| 050 21I | Retail LBX Manual Mail-St Wi | 0.050 |
| 050 010 | Retail LBX Mo Maint-St Wi | 50.000 |
| 050 520 | Retail LBX Ocr Rejects-St Wi | 0.005 |
| 050 200 | Retail LBX Per Item Dor-St Wi | 0.088 |
| 050 200 | Retail LBX Per Item Dot-St Wi | 0.062 |
| 050 200 | Retail LBX Per Item Tax-St WI | 0.088 |
| 050 200 | Retail LBX Per Item-St Wi | 0.062 |
| 050 21P | Retail LBX Spec Handling-St Wi | 0.220 |
| 050 401 | Retail LBX Transmission-St Wi | 150.000 |
| 050 21P | Retail LBX Validations-St Wi | 0.220 |
| 050 21A | Retail Lockbox Photocopy | 0.050 |
| 050 21A | Retail Lockbox Photocopy | 0.050 |
| 100 401 | Return Item Image Copies | 0.250 |
| 100 401 | Return Item Maker Info Keyed | 0.150 |
| 100 411 | Returned Item Fax Notification | 2.000 |
| 050 237 | Rlbx Acct Changes | 10.000 |
| 050 21Q | Rlbx CD-ROM/Dvd Items-St Wi | 0.004 |
| 050 238 | Rlbx Credit Card | 0.240 |
| 050 21Q | Rlbx Image CD ROM Charge-St Wi | 5.000 |
| 050 424 | Rlbx Image Web Items | 0.005 |
| 050 424 | Rlbx Image Web Monthly | 60.000 |
| 050 424 | Rlbx Image Web Monthly | 0.005 |
| 050 424 | Rlbx Image Web Monthly | 60.000 |
| 050 202 | Rlbx Item Multiple-st Wi | 0.000 |
| 050 20Z | Rlbx Item-st Wi | 0.000 |
| 050 211 | Rlbx Low Speed Opening | 0.015 |
| 050 23C | Rlbx Photo Request | 5.000 |
| 200 20B | SinglePoint Issue/Cancel Input | 0.250 |
| 200 20B | SinglePoint Issue/Cancel Input | 0.250 |

| TMA Code | Service Name | Price |
|---|---|---|
| 250 720 | SinglePoint Monthly Trap Report | 20.000 |
| 400 810 | Sp Account Add/ModifylDelete | 5.000 |
| 250 102 | Sp ACH Fed Item | 0.100 |
| 250 000 | Sp ACH Monthly Maintenance | 0.000 |
| 251 070 | Sp ACH NOC Item | 0.250 |
| 250 102 | Sp ACH Not On-US Item | 0.100 |
| 250 102 | Sp ACH On-US Item | 0.100 |
| 250 000 | Sp ACH Process Run | 2.000 |
| 250 302 | Sp ACH Rtn Item | 0.250 |
| 409 999 | Sp Book Transfer Mo Maintenance | 0.000 |
| 400 005 | Sp Current Day Detail - Acct | 5.000 |
| 400 225 | Sp Current Day Per Item | 0.000 |
| 151 350 | Sp Image Monthly Acct Maint | 5.000 |
| 400 120 | Sp Inbound DX Mo Maintenance | 0.000 |
| 400 120 | Sp Inbound DX Per Item | 0.000 |
| 200 201 | Sp Issue Maint Mo Maintenance | 0.000 |
| 401 020 | Sp Monthly Token Change | 3.000 |
| 150 310 | Sp Positive Pay Exceptions | 0.100 |
| 150 030 | Sp Positive Pay Monthly Maint | 0.000 |
| 400 002 | Sp Previous Day Detail - Acct | 5.000 |
| 400 222 | Sp Previous Day Per Item | 0.000 |
| 400 002 | Sp Previous Summary - Acct | 5.000 |
| 150 410 | Sp Stop Payments Mo Maintenance | 0.000 |
| 150 413 | Sp Stop Payments-Per Revoke | 1.500 |
| 150 410 | Sp Stop Payments-Per Stop | 1.500 |
| 151 355 | Sp Web Images Retrieved | 0.500 |
| 350 000 | Sp Wires Monthly Maintenance | 0.000 |
| 010 320 | Special statements | 5.000 |
| 010 320 | Statement Special Handling | 0.000 |
| 100 141 | Std Cash Orders-Milw | 5.000 |
| 150 420 | Stop Payments - Manual | 10.000 |
| 260 310 | Telephone Input First Field | 0.800 |
| 260 310 | Touch-Tone Input First Field | 0.700 |
| 510 199 | Trust Company Charge | 0.000 |
| 151 301 | Two Month Storage | 0.003 |
| 100 22Z | Un-Encode Cad/Usd Item | 4.000 |
| 251 000 | UPIC Monthly Maintenance | 5.000 |
| 251 000 | UPIC Monthly Maintenance | 5.000 |
| 250 701 | Voice Dep Inq/Corr W/O Trace | 5.000 |
| 250 701 | Voice Deposit Inq/Corr W/Trace | 5.000 |
| 350 202 | Voice Domestic Non-Repetitive | 12.000 |
| 350 200 | Voice Fedwire Repetitive | 10.000 |
| 350 200 | Voice Repetitive Fedwire Vru | 3.000 |
| 150 410 | Watch List Stop Payments | 0.000 |
| 350 410 | Wire Advice  Mail | 2.500 |
| 350 401 | Wire Advice Fax | 3.000 |
| 350 000 | Wire Monthly Maintenance | 1.000 |
| 010 020 | ZBA Lead | 0.000 |
| 010 021 | ZBA Subsidiary | 0.000 |

| TMA Code | Service Name | Price |
|---|---|---|
| | Credit/Debit Card Per Item Processing Fee (credit and signature debit transactions) | 0.050 |
| | Debit Card Per Item Processing Fee (pinless debit transactions) | 0.050 |
| | Remote Deposit | 0.070 |
| | Accounts Receivable Conversion | 0.020 |
| | Electronic Check Representment | 0.100 |
| | Inmate Trust Fund Services per appendix A-6 (fee per month) | 1,000.000 |
| | State Controller's Office Pledged Securities (11.6.4) | |
| | Physical Securities | 30.000 |
| | Book Entry | 20.000 |
| | Safekeeping | 20.000 |
| | Wire transfer | 10.000 |
| | Checking | 5.000 |

12 Finance Personnel DAS DHR

**COUNTY OF MILWAUKEE**
**INTER-OFFICE COMMUNICATION**

**DATE:** December 27, 2010 FILE NO. 11-73

**TO:** Supervisor Michael Mayo, Chairman, County Board of Supervisors

**FROM:** Jack Takerian, Director of Transportation and Public Works

**SUBJECT:** **AE&ES Division of DTPW – Midyear Position Create Request**

POLICY

The Director of the Department of Transportation and Public Works (DTPW) is requesting that the County Board approve a resolution to approve the midyear creation of four (4) new positions in the 2011 budget of the Division of Architecture, Engineering and Environmental Services Division (AE&ES) within DTPW.

BACKGROUND

In April of 2010 DTPW submitted an informational report titled Staffing Plans, Cost Comparison Of Using Permanent County Staff Professionals versus Temporary Professional Staff and Revenue Loss To AE&ES Division Of DTPW. The report suggested that given a consistent capital and major maintenance budget from year to year and therefore a consistent volume of work related to project delivery that DTPW could operate more cost effectively and increase its revenue by utilizing permanent employees rather than consultants and/or temporary professional staff for planning, design and construction management.

Subsequently, after a discussion with County Executive Lee Holloway, it was suggested that AE&ES Division look for opportunities to increase the revenue returning to Milwaukee County from the capital projects by adding permanent professional positions. After consideration of the work load related to the adopted 2011 budget, the 5-year outlook for capital and major maintenance public works projects and the renewed commitment by Milwaukee County government on infrastructure maintenance, DTPW proposes four (4) new permanent professional/technical positions that would be charged out 100% to capital or major maintenance project work not funded by the AE&ES Division operating budget. These are:

**Managing Engineer-Field Operations-Airport**, Title Code: 00035840, Grade: 32A, Salary: $80,215, primary responsibilities: administer major maintenance and T&M projects exclusively at GMIA, Total Cost of the Position including benefits: $123,072, Revenue Generated: $223,779

**Managing Engineer-Mechanical**, Title Code: 000358??, Grade: 32A, Salary: $80,215, primary responsibilities: administer HVAC, refrigeration, fire protection and plumbing

projects county-wide, Total Cost of the Position including benefits: $123,072, Revenue Generated: $223,779

**Engineer**, Title Code: 00035750, Grade: 32A, Salary: $80,215, primary responsibilities: plan and design civil and site development projects county-wide, Total Cost of the Position including benefits: $123,072, Revenue Generated: $223,779

**Engineering Technician**, Title Code: unknown, Grade: 24A, Salary: $49,393, primary responsibilities: administer county-wide building inventory and assessment program, Total Cost of the Position including benefits: $87,876, Revenue Generated: $137,826

RECOMMENDATION

The Director of the Department of Transportation and Public Works (DTPW) recommends the County Board approve a resolution to approve the midyear creation of four (4) new positions in the 2011 budget of the Division of Architecture, Engineering and Environmental Services Division (AE&ES) within DTPW. If approved by the County Board, the Director of DTPW will work with the Division of Human Resources to prepare the necessary documentation for each requested position to be submitted for review and approval by the County Board.

Prepared by: Gregory G. High

Approved by:

Jack Takerian, Director
Transportation & Public Works

Gregory G. High
Director, AE&ES Div., DTPW

Attachments: 1. Informational Report, dated April, 2010
2. Proposed Position Descriptions

cc: Lee Holloway, County Executive
Supervisor Patricia Jursik, Chairperson, Personnel Committee
Supervisor John Thomas, Vice-Chairperson, Finance & Audit Committee
Terry Cooley, Chief of Staff, County Board
Renee Booker, Director, DAS
Pam Bryant, Administration & Fiscal Affairs Division/DAS
Sean Moore, Human Resources Coordinator, DTPW
Candace Richards, Interim Director, DHR

**COUNTY OF MILWAUKEE**
**INTEROFFICE COMMUNICATION**

**DATE:** April 26, 2010

**TO:** Supervisor Michael Mayo, Sr., Chairperson, Transportation, Public Works Committee

**FROM:** Jack H. Takerian, Interim Director, Transportation and Public Works

**SUBJECT:** **Staffing Plans, Cost Comparison Of Using Permanent County Staff Professionals Versus Temporary Professional Staff and Revenue Loss To AE&ES Division Of DTPW – Informational Report**

The Transportation and Pubic Works Committee requested a written report for the May 2010 cycle detailing staffing plans, cost comparison of temporary staff versus county employees and any lost revenue incurred by using temporary staff.

## BACKGROUND

Per the adopted 2010 operating budget for the AE&ES Division of DTPW, the Division during the course of the year must recover in revenues a dollar amount equal to 74% of the expenditures. This revenue is earned in two ways:

1. Division staff charging to capital improvement or major maintenance public works projects (73%)
2. Revenue from local, state and federal sources such as grants and reimbursement programs (1%)

Current permanent staffing levels are sustainable with the current volume of capital and major maintenance projects and are required for adequate Quality Assurance and Quality Control. AE&ES Division has been successful in making up revenue deficits through use of temporary professional staff when there is sufficient volume of capital project or grant subsidized work. Temporary professional staffing has been used on a limited basis in the AE&ES Division for over 10 years.

Based on the attached comparison, the Division prefers the use of temporary staffing to the use of consultants where appropriate because of our success in recruiting temporary professional staff that are qualified, flexible, work well within the Division. The Division must make sure that there is a sufficient qualified professional staff person available for project oversight.

Some examples of non-revenue generating services include, energy conservation initiatives, internal and outside agency requests for review of documents, quality assurance and quality control of many internal and contractual procedures involving expenditures of funds as well as internal county requests for studies, investigations and complaint handling

## CURRENT STATUS

There are no outstanding revenue generating issues at this time. Expenditures will be closely monitored as a potential offset for any shortfall in revenue. The revenue generated should increase with the addition of Temporary Professional staff to work on the increased volume of capital projects that were issued in September 2009 and 2010.

Prepared by: Gregory G. High

Approved by:

Jack H. Takerian, Interim Director
Transportation & Public Works

Gregory G. High, 4/27/10
Director, AE&ES Division, DTPW

Attachments:

1. Comparison of Staffing Levels in AE&ES Division (2000 to 2010)
2. 2010 AE&ES Division Staff Comparisons

cc: County Executive, Scott Walker
Tom Nardelli, Chief Staff, County Executive's Office
Cynthia Archer, Director Department of Administrative Services
Martin Weddle, Research Analyst, County Board
Pamela Bryant, Capital Finance Manager, Fiscal Affairs Division/DAS
Sarah Jankowski, Fiscal Mgt Analyst, Fiscal Affairs Division/DAS

| | 2000 | 2001 | 2002 a | 2003 | 2004 b | 2005 c | 2006 d | 2007 e | 2008 f | 2009 g | 2009 h September Appropriation | 2010 i Combined Financing |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| & ES Staff Level | 57.0 | 63.8 | 70.4 | 66.5 | 70.4 | 51.0 | 48.9 | 40.9 | 39.2 | 37.6 | 37.6 | 36.4 |
| opted County Bonding levels(excluding airport) | $46,750,165 | $40,891,525 | $40,783,083 | $25,623,397 | $26,603,065 | $24,750,830 | $31,187,654 | $33,228,014 | $30,805,683 | $32,468,511 | $45,130,060 | $81,792,448 |
| opted County Bonding levels(airport only) | $19,600,000 | $16,457,000 | $24,264,230 | $4,329,150 | $3,765,750 | $12,763,637 | $35,673,482 | $16,476,150 | $4,334,635 | $11,190,800 | $18,894,250 | $29,043,101 |
| al Adopted County Bonding levels | $66,350,165 | $57,348,525 | $65,047,313 | $29,952,547 | $30,368,815 | $37,514,467 | $66,861,136 | $49,704,164 | $35,140,318 | $43,659,311 | $64,024,310 | $110,835,549 |

a) All PFC funding
b) $3,280,750 PFC funded
c) $5,405,712 PFC Funded
c) $5,130,172 PFC Funded
d) $2,088,298 PFC Funded
e) $2,898,250 PFC Funded
f) $$2,373,885 PFC Funded
g) $5,850,550 PFC Funded
h) $2,860,750 PFC Funded
I) $7,462,917 PFC Funded

## 2010 AE&ES Division Staff Comparisons

**Permanent Managing Architect ***

- Assume employee is available 1,716 hours per year after accounting for vacation, holiday, sick allowance and personal time
- Assume Overhead Rate (OH) = 3.1 multiplier. This accounts for overhead costs of providing work environment, mileage, liability insurance and employee benefits provided by Milwaukee County including Health insurance, Life insurance and Legacy Costs
- Employee charges 100% to adopted capital budget project work

Fully Loaded Hourly Charge Out Rate = $119.54/hour
Annual Charge Out Rate = $119.54/hour x 1,716 = $205,124/ year

| | |
|---|---|
| Annual "on the job" cost for this employee = $38.56/hour x 1716 hours/year = | $66,169/year |
| Annual vacation, holiday, sick allowance and personal time cost for this employee = | $14,036/year |
| Annual benefits and legacy cost for this employee = | $33,307/year |
| Total cost for this employee = | $113,512/year |

| | |
|---|---|
| Revenue earned from capital project = | $205,124 |
| Total cost for this employee = | ($113,512) |
| Net revenue returned to County = | $91,612 / year |

* Current permanent staffing levels are sustainable with the current volume of capital and major maintenance projects and are required for adequate Quality Assurance and Quality Control (QA/QC). Permanent staff has a vested interest in performing these QA/QC tasks in the best interest of the Milwaukee County. Permanent staff also provides a repository for knowledge regarding County Assets and Infrastructure that can be maintained and transferred for future use.

**Temporary Managing Architect**

- Assume employee is available 1,716 hours per year after accounting for time off for vacation, holiday, sick and personal time
- Assume a hourly salary of $36.00/hr and a Temp Agency Over Head & Profit (OH&P) rate of $11.52/hour
- Assume a County Overhead Rate (OH) = 2.0 multiplier. This accounts for AE&ES overhead costs of providing work environment, work tools, internal training and payroll processing
- Employee charges 100% to adopted capital budget project work
- Hourly rate set by DTPW at close to the permanent employee rate assuming employee with similar experience and expertise

Fully Loaded Hourly Charge Out Rate = $95.04/hour
Annual Charge Out Rate = $95.04/hour x 1,716 = $163,088/ year

| | |
|---|---|
| Annual "on the job" cost for this employee = $36.00/hour x 1716 hours/year = | $61,776/year |
| Annual vacation, holiday, sick allowance and personal time cost for this employee = | $ 0/year |
| Annual benefits cost for this employee = | $19,768/year |
| Total cost for this employee = | $81,544/year |

| | |
|---|---|
| Revenue earned from capital project = | $163,088 |
| Total cost for this employee = | ($ 81,544) |
| Net revenue returned to County = | $81,544/ year |

**Consultant Managing Architect**

- Assume employee is available 1,716 hours per year after accounting for time off for vacation, holiday, sick and personal time
- Assume the county would want the same employee during the course of the project
- Assume Overhead Rate (OH) = 2.9 multiplier (this is an average of all architectural firms currently under contract using the Annual Consulting contracts. This accounts for overhead costs of providing work environment, work tools, training, mileage, payroll processing, liability insurance and employee benefits provided by the Consultant Company including Overhead and Profit (OH&P)
- Employee charges 100% to adopted capital budget project work
- Hourly rate set by Consultant in their proposal assuming employee with similar experience and expertise

Fully Loaded Hourly Charge Out Rate = $116.00/hour
Annual Charge Out Rate = $116.00/hour x 1,716 = $199,056/ year

| | |
|---|---|
| Annual "on the job" cost for this employee = $40.00/hour x 1716 hours/year = | $68,640/year |
| Annual vacation, holiday, sick allowance and personal time and annual benefits + OH&P cost for this employee = | $130,416/year |
| Total cost for this employee = | $199,056/year |

| | |
|---|---|
| Revenue earned from capital project = | $0 * |
| Total cost for this employee = | ($199,056) |
| Net revenue returned to County = | ($0)/ year |

* Consultant charges do not include any County resources for which the County can be reimbursed. Therefore the consultant charges to the capital project do not earn any revenue for the County.

**MILWAUKEE COUNTY**
**DEPARTMENT OF ADMINISTRATIVE SERVICES**
**HUMAN RESOURCES**

# POSITION DESCRIPTION

**OFFICIAL TITLE OF POSITION:** Managing Engineer – Field Operations - Airport

**NAME OF PRESENT INCUMBENT: New Position in 2011i**

**DEPARTMENT:** Department of Transportation & Public Works

**DIVISION:** Architecture, Engineering & Environmental Services

**REPORTS TO (Name & Title): Ed Baisch**, Airport Engineer

**TITLE CODE: 35840** **POSITION NUMBER:** **PAY RANGE:** 32A

**TYPE OF POSITION : (Check One)** **FT** (X) **PT** **Hourly** **Seasonal**

**PURPOSE OF POSITION:** Delivery of construction projects for expansion and maintenance of General Mitchell International Airport and Lawrence J. Timmerman Airport.

**TITLE(S) OF POSITION(S) SUPERVISED: (must include disciplining and evaluating):**

None

**DUTIES: Describe in detail the work you do, listing most time consuming duties first, along with approximate percentages which should total 100%. Indicate "E" if duty is essential.**

| Description of Duties | % age of Time Spent on Duty | E=Essential Duty |
|---|---|---|
| 1. Design of minor airport improvement projects at Lawrence J.Timmerman Airport and General Mitchell International Airport including conducting predesign conferences with airport users, preparing construction plans using computer-aided drafting, writing specifications, special provisions and contract documents, coordinating bidding process and conducting pre-bid meeting. | 10% | E |
| 2. Manage airport construction projects including conducting preconstruction conferences, coordinating work with Airport Operations, and tenants, directing construction surveys, supervise construction inspectors, supervise quality control plans, prepare periodic cost estimates, prepare/negotiate change orders, conduct final inspections and prepare record drawings. | 40% | E |
| 3. Coordinate design and construction projects with consultants including setting up and serving on consultant selection committee, review consultant plans and reports, attend project meetings, supply information from Airport files, and prepare payment certificates to consultants. | 25% | E |

| | | | |
|---|---|---|---|
| 4. | Assist Airport Engineer in long range planning including preparing preliminary plans and estimates, exhibits for budget hearings, collect information and update Airport facilities plans, and prepare long range maintenance plans. | 5% | E |
| 5. | Cordinate with other DPW sections on Airport work including directing survey crews on Airport projects, and reviewing plans and specifications prepared by other sections. | 5% | E |
| 6. | Assist Airport Department on maintenance of facilities at GMIA and LJT Airports including preparing long range maintenance schedules, preparing estimates, preparing plans specifications for bidding, advising and assisting maintenance department on repair projects. | 5% | E |
| 7. | Requests from Airport Administration on interpretation of FAA requirements, for special non-aviation related Projects on airport property | 5% | E |
| 8. | To assume responsibility for directing the Airport Engineering staff when the Airport Engineer is absent | 5% | E |

**KNOWLEDGES, SKILLS & ABILITIES: Indicate a corresponding knowledge, skill and/or ability required for each of the above indicated duties**

1. Thorough knowledge of all FAA design criteria. Proficient in the use of AutoCAD equipment. Ability to convey directions through speech and writing.

2. Thorough knowledge of FAA standards for airport construction, construction procedures, quality control tests, and construction costs. Familiarity with airport safety and security regulations, and with two-way radio communication procedures.

3. Ability to interpret engineering reports, and to communicate opinions and directions both written and verbally.

4. Familiarity with all Airport facilities, Airport files, and Airport construction history. Skill in the use of electronic survey equipment, AutoCAD equipment, and computer equipment.

5. Familiarity with work performed by other County sections. Familiarity with Expedition and Microsoft Project software.

6. Knowledge of all Airport facilities. Familiarity with Airport facility files.

7. Ability to coordinate complex construction projects utilizing contract management skills

**MINIMUM QUALIFICATIONS:**

**Education:** Bachelor of Science degree in Civil, Environmental, or Structural Engineering

**Experience:** Level 1 - BS in Civil, Structural or Environmental Engineering.
Level 2 - 2 yrs. in Civil, Structural, Municipal or Environmental Engineering
Level 3 - 5 yrs. in Civil, Structural, Municipal or Environmental Engineering
Level 4 - 7 yrs. in Civil, Structural, Municipal or Environmental Engineering

**Licensure/Certification/Registration:** Wisconsin Drivers License (All Levels)
Level 1 - None
Level 2 - Engineer in Training Certification
Level 3 & 4 - Professional Engineering License in State of Wisconsin

**Physical Requirements/Demands:** Communication skills in report writing and oral presentation or equal. Ability to use computer to perform AutoCAD activities and other data analysis.

**Work Environment:** Varies from an office environment to airfield environment.

**Incumbent's Signature:** _____ **Date:** _____

**Supervisor's Signature:** _____ **Date:** _____

**Department Head's Signature:** _____ **Date:** _____

**PD03**

**MILWAUKEE COUNTY**
**DEPARTMENT OF ADMINISTRATIVE SERVICES**
**HUMAN RESOURCES**

# POSITION DESCRIPTION

**OFFICIAL TITLE OF POSITION:** Managing Engineer - Mechanical

**NAME OF PRESENT INCUMBENT:** New position 2011

**DEPARTMENT:** Department of Transportation & Public Works

**DIVISION:** Architecture, Engineering & Environmental Services

**REPORTS TO (Name & Title):** Principal Architect

**TITLE CODE: 000358??** **POSITION NUMBER:** **PAY RANGE:** 32A

**TYPE OF POSITION : (Check One)** **FT** (X) **PT** **Hourly** **Seasonal**

**PURPOSE OF POSITION:** Design and/or manage projects for new construction, expansion, improvement and maintenance of HVAC, refrigeration and plumbing systems at county facilities.

**TITLE(S) OF POSITION(S) SUPERVISED: (must include disciplining and evaluating):**

None

**DUTIES: Describe in detail the work you do, listing most time consuming duties first, along with approximate percentages which should total 100%. Indicate "E" if duty is essential.**

| Description of Duties | % age of Time Spent on Duty | E=Essential Duty |
|---|---|---|
| 1. Assist Principal Architect on maintenance and improvement of facilities county wide including preparing long range maintenance, schedules, preparing estimates, preparing plans specifications for bidding, advising and assisting maintenance departments on repair projects. | 25% | E |
| 2. Design of HVAC, Plumbing and Refrigeration improvement Projects including conducting predesign conferences with Facility users, preparing construction plans using computer-aided drafting, writing specifications, special provisions and contract documents, coordinating bidding process and conducting pre-bid meeting. | 20% | E |
| 3. Manage construction projects including conducting preconstruction conferences, coordinating work with various owner departments, and tenants, directing construction surveys, supervise construction inspectors, supervise quality control plans, prepare periodic cost estimates, prepare/negotiate change orders, conduct final inspections and prepare record drawings. | 20% | E |

| | | | |
|---|---|---|---|
| 4. | Coordinate design and construction projects with consultants including setting up and serving on consultant selection committee, review consultant plans and reports, attend project meetings, supply information from County files, and prepare payment certificates to consultants. | 20% | E |
| 5. | Assist Principal Architect in long range planning including preparing preliminary plans and estimates, exhibits for budget hearings, collect information and update facilities plans, and prepare long range maintenance plans. | 10% | E |
| 6. | Coordinate with other AE&ES Division sections on work including reviewing plans and specifications prepared by other sections. | 5% | E |

**KNOWLEDGES, SKILLS & ABILITIES: Indicate a corresponding knowledge, skill and/or ability required for each of the above indicated duties**

1. Thorough knowledge of HVAC, plumbing and refrigeration design criteria.

2. Thorough knowledge of the National Codes and related industry standards for design, construction, construction procedures, quality control tests, and construction costs.

3. Ability to interpret engineering reports, and to communicate opinions and directions both written and verbally.

4. Professional experience with large building complex type facilities.

5. Proficient in the use of AutoCAD and Microsoft Project software.

**MINIMUM QUALIFICATIONS:**

**Education:** Bachelor of Science degree in Mechanical Engineering

**Experience:** Level 1 - BS in Mechanical Engineering.
Level 2 - 2 yrs. in Mechanical Engineering
Level 3 - 5 yrs. in Mechanical Engineering
Level 4 - 7 yrs. in Mechanical Engineering

**Licensure/Certification/Registration:** Wisconsin Drivers License (All Levels)
Level 1 - None
Level 2 - Engineer in Training Certification
Level 3 & 4 - Professional Engineering License in State of Wisconsin

**Physical Requirements/Demands:** Communication skills in report writing and oral presentation or equal. Ability to use computer to perform AutoCAD activities and other data analysis.

**Work Environment:** Varies from an office environment to construction site environment.

**Incumbent's Signature:** _____ **Date:** _____

**Supervisor's Signature:** _____ **Date:** _____

**Department Head's Signature:** _____ **Date:** _____

**PD03**

Milwaukee County
Department of Human Resources

# INTERIM POSITION DESCRIPTION

(Distribute four copies to: 2-(originals) to Dept. of Human Resources; 1-(copy) for Department; 1-(copy) to Employe.)

630-1 R4

CODE NO._____
TITLE OF POSITION:
POS. NO._____

PAY RANGE NO._____ ORG. UNIT NO._____

DATE APPROVED AND EFFECTIVE DATE:

DEPARTMENT OF HUMAN RESOURCE USE ONLY
DO NOT WRITE ABOVE THIS LINE

1. OFFICIAL TITLE OF POSITION
Engineer

2. WORKING TITLE
Civil Engineer

5. NAME OF PRESENT INCUMBENT

3. PAY RANGE NO.
PRESENT 32A
PROPOSED _____
HOURLY RATE (if no pay range) _____

4. TYPE OF POSITION
FULL-TIME ☒
PART-TIME ☐
SEASONAL ☐

6. NORMAL WORKING HOURS
FROM 8:00 A.M. TO 5:00 P.M.

7. IS ASSIGNMENT TO ANY SHIFT REQUIRED? No

8. DEPARTMENT
Public Works

9. DIVISION Architecture, Engineering and Environmental Services

10. SUBDIVISION
Site Development

11. DUTIES SECTION. The purpose of this position is to: Provide civil, municipal, environmental and structural engineering planning and design services for various Public Works projects.

11a. DUTIES SECTION. Consequences of position removal are:

Work must be done by: Other personnel in higher classification, private consultant, or work is not done.

11b. DUTIES SECTION. Describe below in detail, the work **YOU** do. List regular duties first and then special or occasional duties. Show time by hours or percentages.

| TIME (% of 8 Hr. Day and Freq) | DUTIES YOU PERFORM (If you require additional space, attach a separate sheet of paper, following the same format.) | REQUIRED KNOWLEDGE, SKILL, ABILITY TO PERFORM | *(E); (NE); (P); (M) |
|---|---|---|---|

SEE ATTACHED.

*Choose the appropriate choice(s): (E)-Essential; (NE)-Non-Essential; (P)-Physical; (M)-Mental

12. Names and titles of employes you supervise. If more than five, list number and title. If you supervise no employes, write "none".



13. Name and title of your immediate supervisor Karl D. Stave, Resident Contract Manager - Site Development

14. Machines or equipment used regularly in your work. Indicate % of time spent in operating each:

| | | | |
|---|---|---|---|
| Computers - CADD, Civil Engineer Software, spreadsheets, scheduling and word processing. | 70% | Calculators | % |
| | % | | % |

15. If position involves shorthand, % of time spent in taking shorthand NA %

16. Nature and extent of the check or review of your work.
Finished product - plans and specs for contract award and construction. Final report review. Construction projects complete and correct.

17. Describe your contacts with other departments, outside organizations, and the general public. All County department, MMSD, SEWRPC, Wisconsin DNR, US Army Corp of Engineers, Public Utilities, Planning and Design Consultants, municipal engineering and planning department, Milwaukee County Board of Supervisors.

I certify that the above answers are my own and are accurate and complete.

**CERTIFICATION:** EMPLOYE'S SIGNATURE DATE:

## STATEMENT OF SUPERVISOR

18. Comment on statements of employe. Indicate any exceptions or additions.
None

19. What do you consider the most important duties of this position?
Providing design services, preparing complete bidding documents within engineer's cost estimate.

19a. Description of position worksite.
Courthouse Annex Offices

20. Names and titles of employes in department performing similar duties. If more than four, indicate number of persons under various titles.
Site Development Section - Jill Organ, Julie Bastin and Jeff Adam

21. Qualifications which you think should be required in filling a future vacancy in this position. Keep the position itself in mind rather than the qualifications of the individual who now occupies it.

| | REQUIRED | DESIRABLE |
|---|---|---|
| Education (Check One) | College | |
| Education, special or professional | College in B.S. Civil, Environmental or Structural Engineering | M.S. in Civil, Environmental, or Structural Engineering. |
| Licenses, certificates, or registration | Wisconsin Drivers License (All Levels)<br>Level 1 - None<br>Level 2 - Engineer in Training Certification<br>Level 3 & 4 - Professional Engineering License in State of Wisconsin | |
| Experience, kind and number of years | Level 1 - BS in Civil, Structural or Environmental Engineering.<br>Level 2 - 2 yrs. in Civil, Structural, Municipal or Environmental Engineering<br>Level 3 - 5 yrs. in Civil, Structural, Municipal or Environmental Engineering<br>Level 4 - 7 yrs. in Civil, Structural, Municipal or Environmental Engineering | 10 years of same. |
| Special knowledges, abilities, and skills | Ability to use computer equipment to perform CADD activities and other data analysis. | Ability to use word processing, spread sheet and specialized design software. |
| Physical requirements, or other factors | Communication skills in report writing and oral presentation or equal. | Ability to perform presentation for public boards, committees. |

SUPERVISOR'S SIGNATURE: TITLE: Resident Contracting Manager - Site Development DATE:

## STATEMENT OF DEPARTMENT HEAD

22. Comment on the above statements of employe and supervisor. Indicate any inaccuracies or statements with which you disagree. Do you agree with the qualifications suggested by the supervisor?

DEPARTMENT HEAD'S SIGNATURE: TITLE:

DATE:

630-2 R3

| | | | |
|---|---|---|---|
| 55% | Prepare, supervise, and check the development of complete plans, drawings, specifications and cost estimates for the construction, alteration of maintenance of County facilities including roads, bridges, underground utilities, airports, transit, parking facilities and/or non-put source pollution abatement projects. | Knowledge of the theories, principles and practices of civil engineering; knowledge of design principles, procedures, planning and maintenance methods; ability to supervise, direct and develop engineering personnel; operating skills for various computer software programs including computer aided design. | E, M |
| 5% | Inspect or supervise construction on projects presenting difficult or complex problems with the responsibility for layout, material testing, and all activities and communications to insure that the project is completed in accordance with plans and specifications. | Knowledge of construction principles, methods, practices, equipment, material and organization; familiarity with construction engineering methods, practices and techniques in the field of underground utilities; ability to maintain effective relationship with contractors; ability to supervise; skills in written and verbal communication; ability to access remote difficult to access sites. | E, M<br>P |
| 5% | Perform energy and environmental audits including noise level measurements, water and or storm water quality sampling, inspection of building materials, and other pertinent data collections. | Knowledge of environmental regulations and building materials; skills in written and verbal communication; ability to access remote difficult to access sites. | E, M<br>P |
| 5% | Participate in the bridge inspection program including structural inspection surveys, preparation of reports, and determination of safe load ratings and required repairs/replacement. | Knowledge of the theories, principles and practices of structural engineering; skills in written and verbal communication; ability to access remote difficult to access sites. | E, M<br>P |
| 10% | To undertake special studies, investigations and comprehensive reports in the field of civil, structural and environmental engineering. | Ability to analyze proposed programs in terms of engineering costs and difficulty; ability to develop and prepare comprehensive planning and engineering reports. | E, M<br>P |
| 5% | To organize and participate in project liaison activities with consultants, contractors, public officials, the general public, cooperating agencies and other public jurisdictions. | Ability to maintain effective relationships with engineers, contractors, public officials and other agencies; ability to communicate effectively and courteously with the public; skilled in verbal and written communication. | E, M |
| 5% | To monitor applications of pertinent local, state and federal environmental regulations regarding storm water management. | Ability to analyze proposed programs in terms of impacts on County and implementation into project development; ability to communicate effectively and courteously with other agencies. | E,M |
| 10% | Perform such other duties as may be assigned. | May involve any of the above. | E,M |

Milwaukee County
Department of Human Resources

# INTERIM POSITION DESCRIPTION

(Distribute four copies to: 2-(originals) to Dept. of Human Resources; 1-(copy) for Department; 1-(copy) to Employe.)

M630-1 R1

CODE NO._____
TITLE OF POSITION:
POS. NO._____

PAY RANGE NO._____ ORG. UNIT NO._____

DATE APPROVED AND EFFECTIVE DATE:

DEPARTMENT OF HUMAN RESOURCE USE ONLY
DO NOT WRITE ABOVE THIS LINE

1. OFFICIAL TITLE OF POSITION
Engineering Technician

2. WORKING TITLE
Engineering Technician

5. NAME OF PRESENT INCUMBENT

3. PAY RANGE NO.
PRESENT 21A-25A
PROPOSED _____
HOURLY RATE (if no pay range) _____

4. TYPE OF POSITION
FULL-TIME ☒
PART-TIME ☐
SEASONAL ☐

6. NORMAL WORKING HOURS
FROM 8:00 A.M TO 5:00 P.M.

7. IS ASSIGNMENT TO ANY SHIFT REQUIRED? First

8. DEPARTMENT
Public Works

9. DIVISION Architecture, Engineering and Environmental Services

10. SUBDIVISION
Site Development

11. DUTIES SECTION. The purpose of this position is to:
Assist Engineering Staff in various types of data collection, manipulation and presentation for use in creating reports, plats of survey and engineering design drawings. Also manage drawing and correspondence filing and perform file research.

11a. DUTIES SECTION. Consequences of position removal are:
Delays in obtaining data; requires design engineers to perform technician work; increased overtime compensation; force use of consultant at increased project fees; lack of organization and security of engineering drawing and correspondence files.

11b. DUTIES SECTION. Describe below in detail, the work **YOU** do. List regular duties first and then special or occasional duties. Show time by hours or percentages.

| TIME (% of 8 Hr. Day and Freq) | DUTIES YOU PERFORM (If you require additional space, attach a separate sheet of paper, following the same format.) | REQUIRED KNOWLEDGE, SKILL, ABILITY TO PERFORM | *(E); (NE); (P); (M) |
|---|---|---|---|
| 80% | Under specific supervision: Prepare CADD drawings from field survey and engineering data for use in grading, utility, roadway and other construction projects and property descriptions.<br><br>Research of engineering and architectural files to provide plans and other information to County Departments, other governing bodies, consultants and general public. | ability to obtain knowledge of principles and practices of engineering; ability to detail & prepare public works construction drawings; ability to obtain working knowledge of surveying techniques & procedures; ability to obtain working knowledge of CADD applications, mechanical drafting ; ability to work effectively & harmoniously with others;<br><br>Ability to lift & carry survey equipment weighing up to 50 lbs. | EM<br><br>EP |
| 10% | File engineering and architectural plans and specifications. | Same as above. | |
| 10% | Serve on survey crew, when assigned, to collect field data for various projects. | Same as above. | |

*Choose the appropriate choice(s): (E)-Essential; (NE)-Non-Essential; (P)-Physical; (M)-Mental

12. Names and titles of employes you supervise. If more than five, list number and title. If you supervise no employes, write "none".
Occasionally supervise Engineering Interns and other Engineering Technicians

13. Name and title of your immediate supervisor Karl D. Stave, Resident Contracting Officer

14. Machines or equipment used regularly in your work. Indicate % of time spent in operating each:

| | | | |
|---|---|---|---|
| Computer | 65% | | % |
| | % | | % |

15. If position involves shorthand, % of time spent in taking shorthand N/A %

16. Nature and extent of the check or review of your work.
Engineer or/and resident contract manager check drawings. Work independently under general direction when doing research and filing of plans. Engineering Technician V checks work while on survey crew.

17. Describe your contacts with other departments, outside organizations, and the general public.
Receive requests for information from County Departments, municipal governments, utilities, consultants and general public.

I certify that the above answers are my own and are accurate and complete.

CERTIFICATION: EMPLOYE'S SIGNATURE Date:

## STATEMENT OF SUPERVISOR

18. Comment on statements of employe. Indicate any exceptions or additions.
Approved as submitted.

19. What do you consider the most important duties of this position?
Preparation of accurate base maps for engineering design; thorough investigative work with files.

19a. Description of position worksite.
Report to A & E office each day; work at CADD workstation; work extensively with drawing flat files, file index system and correspondence files; occasionally work with one of survey crews, reporting to CAMD each day, visit various construction sites.

20. Names and titles of employes in department performing similar duties. If more than four, indicate number of persons under various titles.
Site Development Section: Bill Clausing

21. Qualifications which you think should be required in filling a future vacancy in this position. Keep the position itself in mind rather than the qualifications of the individual who now occupies it.

| | REQUIRED | DESIRABLE |
|---|---|---|
| Education (Check One) | High School | Degree: College |
| Education, special or professional | Level 1 - Ability to be trained in AutoCad, word processing & spreadsheets<br>Level 2 - Completion of training in AutoCad, word processing & spreadsheets<br>Level 3 - Completion of advanced AutoCad training, introductory construction field inspection & construction management<br>Level 4 - Advanced training in construction inspection & project management | Technical School Degree |
| Licenses, certificates, or registration | Valid Wisconsin Driver's License | None |
| Experience, kind and number of years | Level 1 - Demonstrated competent performance in previous assignments/DPW<br>Level 2 - Min 5 yrs as Eng Tech 1, competent performance in prev assign/DPW<br>Level 3 - Min 6 yrs as Tech 1, &/or 2, competent perform in prev assign/DPW<br>Level 4 - Min 10 yrs as Tech 1, 2 &/or 3, competent perform in prev assign/DPW | Note: not as desirable, but as a substitute the following apply.<br>Level 2 - College or University course work on a yr for yr basis (max 2 yr)<br>Level 3 & 4 - College or University course work on a yr for yr basis (max 2 yr); An Associate degree in Eng Tech may sub for 2 yrs; at Level 4, a min of 5 yrs Milwaukee County experience preferred. |
| Special knowledges, abilities, and skills | Ability to make accurate and neat drawings in AutoCAD; general knowledge of basic surveying practices, and inspection | Working knowledge of general construction practices. |
| Physical requirements, or other factors | Communication skills | Good health |

SUPERVISOR'S SIGNATURE: TITLE: Resident Contracting Manager, Site Development Date:

## STATEMENT OF DEPARTMENT HEAD

22. Comment on the above statements of employe and supervisor. Indicate any inaccuracies or statements with which you disagree. Do you agree with the qualifications suggested by the supervisor?

DEPARTMENT HEAD'S SIGNATURE: TITLE:

DATE:

M630-2 R1
M:\WPDOC\AEADMIN\POSDESC\ENGRTECH.WPD

**COUNTY OF MILWAUKEE**
INTER-OFFICE COMMUNICATION

**DATE:** January 19, 2010

**TO:** Michael Mayo, Chairman, County Board of Supervisors

**FROM:** John Ruggini, Acting Fiscal and Budget Administrator

**SUBJECT: ARCHITECTURE AND ENGINEERING POSITION STUDY**

**Request**
The Department of Transportation and Public Works – Architecture, Engineering and Environmental Services Division (AE & ES) is requesting the mid-year creation of four positions: Managing Engineer – Field Operations – Airport (new title code), Managing Engineer – Mechanical (new title code), Engineer (title code 00035750), and Engineering Technician (title code 00035710). For each position, 1.0 FTE would be created, and funded through crosscharges to capital projects.

**Background**
AE&ES is requesting that the positions be created mainly due to the number of outstanding capital projects, especially related to the accelerated 2009-2012 capital financing program, and an increased focus on related infrastructure maintenance, to be funded by proceeds from the University of Wisconsin-Milwaukee (UWM) land sale at the County Grounds. AE&ES charges capital projects a rate (referred to as the overhead rate) for the work performed by these staff that includes direct salary, fringe benefits, sick leave, OPEB liability, and overhead, including administrative support staff and the cost of the work environment (rental crosscharges, technology crosscharges, etc.).

The number of funded professional engineering and design positions in the AE&ES division has declined steadily since 2005. The 2005 Adopted budget provided 51.0 FTE positions in AE&ES, while the 2011 Adopted Operating Budget provided 35.2 FTE (both figures include administrative support staff). As of January 4, AE&ES had only one vacant professional staff position. During this time bonding levels (including revenue-backed bonds for airport capital projects) has increased from $37.5 million to $174.8 million for the accelerated capital program that covers the years 2010 to 2012 (an average of $58.3 million per year). AE&ES staff has generally reported that existing full-time staff has been able to absorb the increasing workloads while supplementing their efforts with temporary staff and consultants, which are generally lest costly than permanent staff, due fringe benefits and OPEB liabilities, resulting in lower charges to capital projects.

The request by AE&ES to add additional positions is based primarily on the increased workload created by the accelerated capital financing plan, and on the significant increase in major maintenance projects included in the 2011 Adopted Capital Budget, which are financed with $5 million in revenues from the UWM land sale at the County Grounds. AE&ES staff also indicates that while temporary staff is appropriate and cost-effective in the short term, the division has several long-time permanent staff, with significant institutional knowledge, that could be lost due to retirement.

While the need for additional staff resources may be acute during the accelerated capital program and increased focus on major maintenance, it should be noted that these may be short-term issues. The current policy for the capital program is to return to the routine capital program in 2013 which will have a cap on general obligation debt issuance of approximately $30-$35 million. This makes it possible that positions related to the normal capital budget may not have sufficient funds available in 2013 and beyond. Further, the expenditure budgets for existing capital projects are set. As the overhead rate increases, due either to an increase in staff or increased staff costs, less expenditure authority is available for the actual

infrastructure improvements, unless additional revenue sources outside the existing capital program are identified. With regard to the positions related to major maintenance projects funded by the UWM land sale, those revenues are one-time sources whiled permanent staff require ongoing expenditures. Additionally, UWM has requested a delay in making the 2011 payment until 2013, thereby eliminating a funding source for these positions in the current year.

**Recommendation**
These factors relate to the individual positions, and recommended action, as follows:

1. **Managing Engineer – Field Operations – Airport**: The DTPW-Airport Division (airport) has requested the creation of this position to provide robust oversight of time and materials contractors that work on capital and operating projects. These duties are currently being performed by an employee of the DTPW-Transportation Services Division on loan until the spring construction season. The airport has a significant number of outstanding capital projects and has entered into an agreement with the signatory airlines for a 5-year capital plan. This position is less susceptible to the above factors because it can be fully funded by outside revenues. Given the significant increase in passenger traffic, the associated need for major maintenance projects at General Mitchell International Airport (GMIA), and the relative long-term stability of the airport capital program, it is recommended that this request be approved.

2. **Managing Engineer – Mechanical**: AE&ES is requesting this position mainly to deal with HVAC, fire protection and plumbing projects. AE&ES has primarily used temporary staff for these types of projects for the past 8 years, and staff report that there have always been sufficient projects and revenues to fund this work. This position could also work on performance contracting projects and jobs at GMIA, which would provide additional outside revenue sources if necessary. Given the relative stability of workload and the availability of work at GMIA, it is recommended that this request be approved.

3. **Engineer:** AE&ES currently has 5.0 FTE budgeted engineer positions, two of which are filled on a half-time basis. AE&ES indicates there is sufficient workload for one half-time employee to transition to full-time, which under the request would leave 0.5 FTE vacant. Given the long-term issues noted above, it is recommended that the request to create 1.0 FTE Engineer position be approved, and that one 0.5 FTE Engineer position be abolished upon vacancy.

4. **Engineering Technician**: AE&ES's request indicates this position would be primarily responsible for major maintenance projects, including the county-wide building inventory and assessment program. These projects are funded by one-time revenues from the UWM land sale in 2011, which as noted above may not be received until 2013 and beyond. In addition to the delay in receiving revenues that would fund this position, it is uncertain whether additional funds for major maintenance projects will be available in the future. The issue of the UWM payment schedule is to be considered by the County Board during the January 2011 cycle; therefore, it is recommended that no action be taken on this request until the payment schedule has been determined.

It should be noted that for any positions created, AE&ES will need to request an appropriation fund transfer at a later date to increase revenues and expenditure authority for these positions in its operating budget, and there will also need to be an appropriation fund transfer in affected capital projects to reallocate expenditure authority from professional services to internal service charges.

**Report Prepared By:** Josh Fudge, Fiscal and Management Analyst III

John Ruggini
Acting Fiscal and Budget Administrator

cc: County Executive Lee Holloway
Renee Booker, Director, Department of Administrative Services
Jack Takerian, Director, Department of Transportation and Public Works
Greg High, Director, Architecture & Engineering Division

By the Committee on, Reporting on:

File No. 11-*
(Journal, *)

(ITEM NO. ) A resolution authorizing the midyear creation of three (3) new positions in the Department of Transportation and Public Works, Division of Architecture, Engineering, Environmental and Services (AE&ES), by recommending the following

**A RESOLUTION**

WHEREAS, AE&ES has submitted a request for the January Cycle to create four new positions; and

WHEREAS, AE&ES management has reviewed its current and projected workload based on the adopted capital budget (including the accelerated capital program and increased emphasis on infrastructure maintenance); and

WHEREAS, one of the requested positions (Managing Engineer – Field Operations – Airport, title code NEW) would provide services to General Mitchell International Airport, which has operating and capital expenditures completely funded by outside revenue sources; and which has seen significant increases in passenger traffic, resulting in additional maintenance needs; and

WHEREAS, one of the requested positions (Managing Engineer – Mechanical, title code NEW) would provide oversight of HVAC, refrigeration, fire protection and plumbing services, which are projected to continue in importance through the performance energy contracting, and additional projects at General Mitchell International Airport; and

WHEREAS, additional analysis suggests that one of the requested positions (Engineer – title code 00035750) could be created on a fulltime basis (1.0 FTE), with an existing 0.5 FTE of the same position abolished upon vacancy for a net increase of 0.5 FTE in the Division; and

WHEREAS, the final requested position (Engineering Technician, title code 00035710) was to be primarily involved in capital infrastructure projects that were to be funded by the 2011 payment by the University of Wisconsin-Milwaukee (UWM) related to the County Grounds land purchase, which is requesting to delay the payment, and on which action will be taken by the County Board during the January 2011 cycle; and

WHEREAS, due to this development, it is recommended that no action be taken on this request until the County completes action on the UWM payment cycle; now, therefore

BE IT RESOLVED, that the County Board of Supervisors does hereby approve the midyear creation of three (3) new positions: 1.0 FTE position of Managing Engineer – Field Operations – Airport (title code NEW), 1.0 FTE position of Managing Engineer – Mechanical (title code NEW), and 1.0 FTE position of Engineer (title code 00035750); and the abolishment upon vacancy of one (1) existing halftime position (0.5 FTE) of Engineer (title code 00035750); in the Department of Transportation and Public Works, Division of Architecture, Engineering, and Environmental Services.

# MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/14/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Mid-Year Position Action Request by the Department of Transportation Services, Division of Architecture, Engineering, and Environmental Services.

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☒ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 185,768 | |
| | Revenue | 185,768 | |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | 0 | 0 |

## DESCRIPTION OF FISCAL EFFECT

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. It is recommended that three of the four positions being requested by the Director of the Department of Transportation and Public Works (DTPW) for mid-year creation in the 2011 budget of the Division of Architecture, Engineering and Environmental Services Division (AE&ES) within DTPW be approved, with the additional recommendation that one existing half-time position be abolished upon vacancy.

B. Net total Cost of the 3 positions recommended for creation plus the abolishment of the half-time position, including benefits, is $185,768. This amount is based on an April 1, 2011 start date at the mid-range of pay grade 32A. Anticipated Revenue Generated from charges to the capital projects is equal to the net salary and fringe benefit cost, as any overhead costs associated with these positions has already been accounted for in the 2011 Adopted AE&ES budget.

C. Budgetary impacts in the current year associated with the proposed action are dependent on the volume of work anticipated in the current year capital budgets. Budgetary impacts in subsequent years associated with the proposed action are dependent on the volume of work anticipated in the out year capital budgets.

D. It is anticipated that sufficient volume of projects will be available allowing adequate revenue to be generated to offset the expenditures for permanent employees.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By DAS-Fiscal, Josh Fudge

Authorized Signature

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

**COUNTY OF MILWAUKEE**
**DAS – Division of Human Resources**
INTER-OFFICE COMMUNICATION

DATE : January 19, 2011

TO : Committee on Personnel

FROM : Candace Richards, Interim Director of Human Resources

SUBJECT : **Creation Recommended by Finance Committee**

A review of the duties to be assigned to the new positions requested by the Department of Transportation and Public Works has resulted in the following recommendations:

| Org. Unit | Title Code | No. of Positions | Recommended Title | Pay Range | Min/Max of Pay Range |
|---|---|---|---|---|---|
| 5080 | TBD | 1 | Managing Engineer Field Operations (Airport) | 32A | $45,150 - $80,214 |
| 5080 | TBD | 1 | Managing Engineer Mechanical | 32A | $45,150 - $80,214 |
| 5080 | 35750 | 1 | Engineer | 32A | $45,150 - $80,214 |
| 5080 | 35710 | 1 | Engineering Technician | 24A | $34,501 - $60,886 |

**COUNTY OF MILWAUKEE**
**Inter-Office Communication**

**13**

Date: December 29, 2010

To: Chairman Michael Mayo, Sr., Transportation, Public Works & Transit Committee

From: Jack H. Takerian, Director, Department of Transportation and Public Works

Subject: **O'Donnell Park Parking Structure Improvements – Project Status Report #1 (Informational Only)**

## Background

The 2011 Adopted Capital includes O'Donnell Park Improvements with an appropriation of $6,557,830. During the 2011 budget deliberations the County Board requested a detailed plan for these improvements. In November of 2010 the Department of Transportation and Public Works (DTPW) on behalf of the Department of Parks submitted an informational report highlighting the details of the recommended scope of work for the O'Donnell Park Parking Structure improvements. This report was received by the Committees on Transportation, Public Works and Transit and on Finance and Audit and placed on file.

## Status on the Façade Restoration Component

Scope

The project includes the removal of the precast panels on the parking structure, with the exposed cast-in-place concrete parapet needing some repairs and some form of aesthetic treatment. Staining is the recommended treatment. The precast panels at the stairwells and pavilion structure will remain in place since they are attached to the structure differently. The current building is tied to the Downtown Transit Center building across E. Michigan Street and there are significant amounts of cast-in-place concrete that all need to work together visually. The budget provided for the south side of the structure to use an Exterior Insulation and Finishing System (EIFS) which is a type of building exterior wall cladding system that provides exterior walls with an insulated finished surface and waterproofing in an integrated composite material system. The existing railings will need to be revised to meet current code requirements and will be replaced. Additionally, repairs to the spalling and cracking of parapet walls are included.

Planning and Design Consultant Selection

On Thursday, December 2, 2010, the Request for Proposal (RFP) was advertised. Nine (9) consulting firms received the RFP. These are:

| | | |
|---|---|---|
| Carl Walker, Inc. | Wiss Janney Elstner Associates Inc. (WJE) | Bloom Companies LLC |
| Wellman Architects, Inc | INSPEC, Inc. | K Singh & Associates |
| Jan Schroeder | F. Louis Kerry | Kahler Slater, Inc. |

After consultation with County Corporation Counsel, we were advised a proposal from the consultant WJE on either component of the project would not be acceptable because of a conflict of interest. WJE notified us that they currently represent a litigant in a claim against Milwaukee County.

A pre-proposal meeting was held on 12/7/2010. Three (3) firms attended. These are:

| | | |
|---|---|---|
| Carl Walker, Inc. | Wiss Janney ElstnerAssociates Inc. | INSPEC, Inc. |

On Wednesday, December 15, 2010, three architectural/engineering companies submitted proposals in response to the Milwaukee County RFP to provide architectural and engineering services necessary to improve the parking structure façade at O'Donnell Park in Milwaukee, WI. The three companies were Carl Walker, Inc., Kahler Slater, Inc. and Wellman Architects, Inc. Three DTPW AE&ES professionals formed a selection team

to review and decide which firm was best suited to provide architectural and engineering design and consulting services necessary to improve the parking structure at O'Donnell Park Parking Structure. Team members were asked to review and score each submittal. The architectural/engineering company receiving the highest combined score was Carl Walker, Inc.(CWI). CWI was awarded this contract in the amount of $198,000 and given a notice to proceed on 12/28/2010. Documentation of the selection process is available on request. A project kick off meeting was held on 12/28/2010.

Project Schedule
Milestone dates in the proposed schedule include Demolition construction start on 2/23/2011 with completion on 4/20/2011 and Envelope Improvement construction start on 3/28/2011 with completion on 6/22/2011. See the attached schedule for further details.

DBE Participation
A goal of 25% DBE participation was established for this project. Carl Walker Inc. is meeting this goal using K. Singh & Associates, Inc. and M&E Architects and Surveyors, LLC.

**Status on the Internal Repair Component**

Scope
Several areas within the complex are in need of maintenance repairs. A list of repairs was developed recently and is included within this cost. These repairs include monitoring, injection and sealant of existing cracks, repair of storm drainage system, expansion joint repair, handrail repair, concrete spall repair, caulking and sealant and replacement of disturbed landscaping and pavement. Additionally, the project anticipates certain general maintenance costs for continued operation of the parking structure. A large part of this cost is re-sealing of the parking deck. This would typically be required within the next several years and should be considered for inclusion in the overall repairs while the structure is closed. The concrete wearing surface and the post-tensioned slab should be sealed to keep water from penetrating. This may be an elastomeric coating or membrane that resists wear from traffic. Testing of the concrete deck will be performed to better determine the extent of the deck to be sealed and appropriate material to be used. These added maintenance costs are also added to the overall cost of this project.

Planning and Design Consultant Selection
On Thursday, December 2, 2010, the Request for Proposal (RFP) was advertised. RFPs were sent to nine (9) consulting firms. These are:

| | | |
|---|---|---|
| Carl Walker, Inc. | Wiss Janney ElstnerAssociates Inc. (WJE) | Bloom Companies LLC |
| INSPEC, Inc. | K Singh & Associates | Graef USA |
| Mead & Hunt | SEH, Inc. | F. Louis Kerry |

After communications with a number of the consultants who received a RFP, it was determined that the scope of work for this component was documented sufficiently with prior reports and descriptions that a pre-proposal meeting was not warranted.

On Wednesday, December 15, 2010, one (1) architectural/engineering company responded to a Milwaukee County Request for Proposals to provide architectural and engineering services necessary to repair the internal areas of the parking structure at O'Donnell Park in Milwaukee, WI. The company was Graef USA. Three DTPW AE&ES professionals formed a selection team to review and decide which firm was best suited to provide architectural and engineering design and consulting services necessary to repair internal areas of the parking structure at O'Donnell Park Parking Structure. Team members were asked to review and score the

single submittal from Graef USA. The submittal was found to be responsible, responsive and in order. Graef USA was awarded this contract in the amount of $97,000 and given a notice to proceed on 12/28/2010. Documentation of the selection process is available on request. A project kickoff meeting was held in the first week in January, 2011.

Project Schedule

Milestone dates in the proposed schedule include Internal Repair construction start on 3/21/2011 with completion on 6/3/2011. See the attached schedule for further details.

DBE Participation

A goal of 10% DBE participation was established for this project. Graef USA is meeting this goal using K. Singh & Associates, Inc.

Approved by:

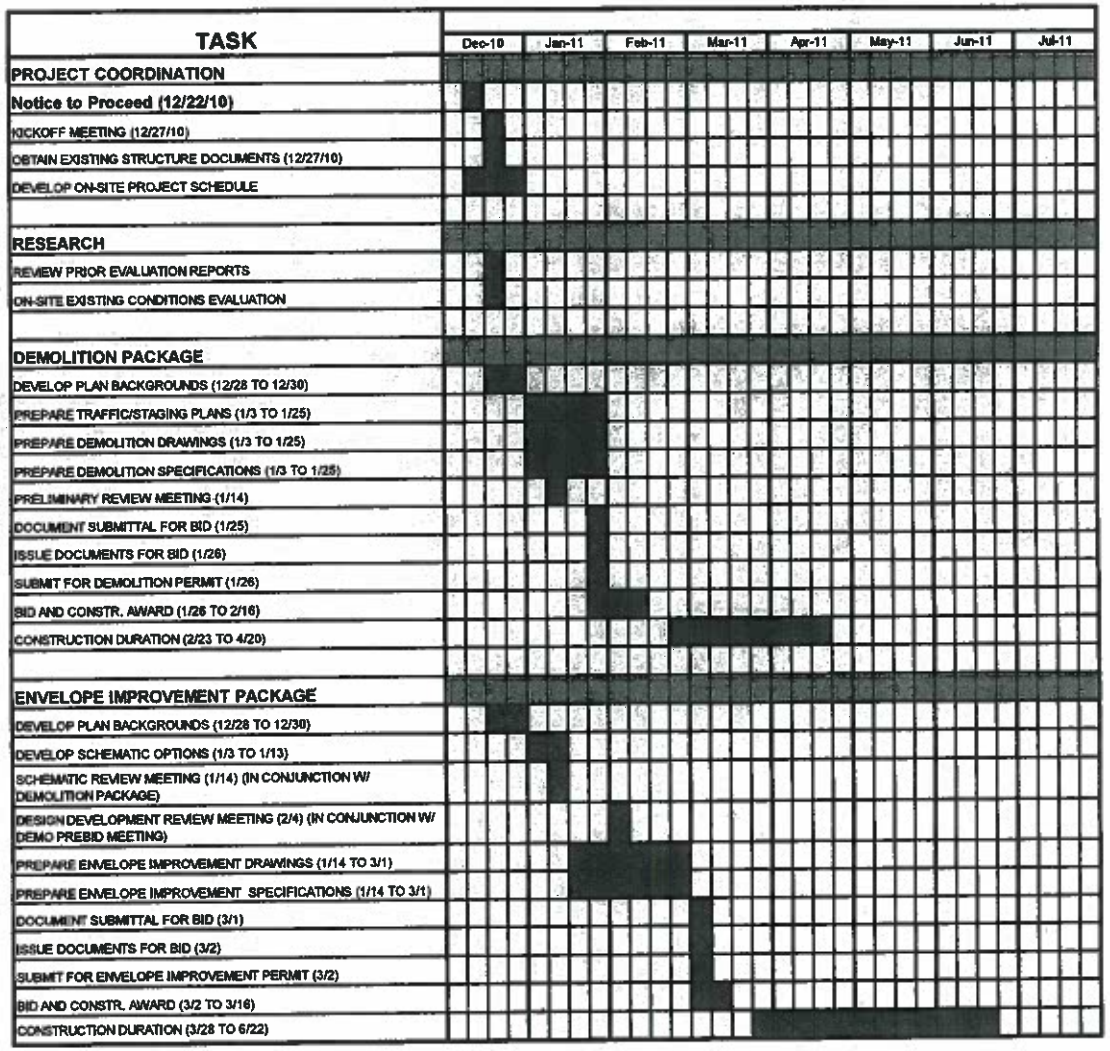
Jack H. Takerian, Director
Department of Transportation & Public Works

Gregory G. High, P.E.
Director, AE&ES Div., DTPW

Attachments: 1. Projected Façade Restoration Project Schedule
2. Projected Internal Repair Project Schedule

cc: Lee Holloway, County Executive
Supervisor John Weishan, Vice-Chair Transportation, Public Works & Transit Committee
Terry Cooley, Chief of Staff, County Board of Supervisors
Jerry Heer, Director, Department of Audit
Sue Black, Director, Department of Parks
Timothy Schoewe, Interim Corporation Counsel
John Schapekahm, Principal Assistant Corporation Counsel
Jason Gates, Director, Risk Management
Steve Cady, Fiscal & Budget Analyst, County Board
Brian Dranzik, Director, Administration Division, DTPW
Jodi Mapp, TPW/T Committee Clerk
Martin Weddle, Research Analyst, County Board
Pam Bryant, Capital Finance Manager, Administration & Fiscal Affairs Division, DAS

# MILWAUKEE COUNTY DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS
## O'DONNELL PARK PARKING STRUCTURE REPAIRS SCHEDULE TIMELINE




FACADE RESTORATION

O'Donnell Park
Parking Structure Repairs
GRAEF
*December 15, 2010*

GRAEF

| | Task | January | | | | | February | | | | March | | | | April | | | | May | | | | | June |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 3 | 10 | 17 | 24 | 31 | 7 | 14 | 21 | 28 | 7 | 14 | 21 | 28 | 4 | 11 | 18 | 25 | 2 | 9 | 16 | 23 | 30 | 6 |
| | PLANNING, DESIGN & CONSTRUCTION DOCUMENTS PHASE | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Project kickoff meeting | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Bi-weekly project status meetings | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | Review historical data and reports | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Prepare base sheets for field use and for construction documents | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | Site visit to view conditions and verify quantities | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | Investigate drainage leaks (See note below) | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | Determine areas for exploration | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | Meet with contractor to set up exploration | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | Site visits to view conditions exposed | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | Investigate major concrete spalled areas/cracks on structural members | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | Develop repair approach for deterioration/repairs | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | Prepare drawings to describe repairs | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | Prepare specifications | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | Prepare opinion of probable cost | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | Internal team Quality Assurance Review and coordination of const. docs. | | | | | | | | | | | | | | | | | | | | | | | |
| 16 | Submit five sets for County review | | | | | | | | | | | | | | | | | | | | | | | |
| 17 | Incorporate review comments and finalize documents | | | | | | | | | | | | | | | | | | | | | | | |
| 18 | | | | | | | | | | | | | | | | | | | | | | | | |
| 19 | Prepare annual parking structure maintenance plan | | | | | | | | | | | | | | | | | | | | | | | |
| 20 | Internal team Quality Assurance Review of maintenance plan | | | | | | | | | | | | | | | | | | | | | | | |
| 21 | Submit five sets for County review | | | | | | | | | | | | | | | | | | | | | | | |
| 22 | Incorporate review comments and finalize documents | | | | | | | | | | | | | | | | | | | | | | | |
| 23 | | | | | | | | | | | | | | | | | | | | | | | | |
| 24 | Determine locations for crack monitors | | | | | | | | | | | | | | | | | | | | | | | |
| 25 | Install crack monitors | | | | | | | | | | | | | | | | | | | | | | | |
| 26 | Create crack monitor document | | | | | | | | | | | | | | | | | | | | | | | |
| 27 | | | | | | | | | | | | | | | | | | | | | | | | |
| 28 | Take concrete samples for chloride testing | | | | | | | | | | | | | | | | | | | | | | | |
| 29 | Provide report giving test results and membrane recommendations | | | | | | | | | | | | | | | | | | | | | | | |
| | BIDDING & CONSTRUCTION PHASE | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Bidding | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Construction | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | Substantial completion | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Prepare record drawings | | | | | | | | | | | | | | | | | | | | | | | |

**Note: Although excavation to confirm Plaza leak locations is scheduled after the ground thaws, it will not delay the completion of the work and the reopening of the garage.**
***The proposed project schedule in the RFP can be met.***

REPAIRS

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

LEE HOLLOWAY, MILWAUKEE COUNTY EXECUTIVE
SUE BLACK, DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: January 19, 2011

To: Vice Chair Johnny L. Thomas, Finance and Audit Committee

From: Sue Black, Director, Department of Parks, Recreation and Culture

**Subject: Request for additional information on O'Donnell Park parking structure space usage – Informational Item**

**ISSUE**
Space utilization at the O'Donnell Park parking structure.

**BACKGROUND**
The Committee on Finance and Audit at its meeting on 12/9/10, considered File No. 10-19(a) regarding repairs of the O'Donnell Park parking structure. Thereafter, Supervisor Thomas requested information on the percent of space utilization at the structure during the day including monthly usage and usage during special events. The information requested by Supv. Thomas is as follows:

- O'Donnell Park parking structure has 1150 functioning parking spots
- 25 parking spots are reserved for the Betty Brinn's Children's Museum
- 25 parking spots are reserved for Coast – A Zilli Restaurant
- 750 monthly parking customers
- 65% to 70% full on a daily basis
    - 9:00 a.m. – 5:00 p.m., Monday through Friday
- 50% full on evenings and weekends in which special events take place, e.g. weddings, ethnic festivals, walks and runs, and exhibit openings at the Art Museum
- 100% full for major specials events, e.g. July 3rd, Summerfest, Lakefront Marathon and the Komen Race

**RECOMMENDATION**
No action requested. This item is informational unless further action is required.

Prepared by: Paul Kuglitsch, Contract Services Officer, DPRC

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parks@milwcnty.com

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countyparks.com

**Recommended by:**

James Keegan, Chief of Administration and External Affairs

**Approved by:**

Sue Black, Parks Director

cc: County Executive Lee Holloway
E. Marie Broussard, Deputy Chief of Staff, County Executive's Office
Terrence Cooley, Chief of Staff, County Board
Renee Booker, Director, DAS
John Ruggini, Assistant Fiscal & Budget Administrator, Admin & Fiscal Affairs/DAS
Sarah Jankowski, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Julie Esch, Research Analyst, County Board
Linda Durham, Parks, Energy & Environment Committee Clerk
John Jorgensen, Corporation Counsel
Inspector Schmidt, Office of the Sheriff

01-27-11 FINANCE AND AUDIT COMMITTEE APPROPRIATION TRANSFERS
A DEPARTMENTAL - RECEIPT OF REVENUE File No. 10-1
(Journal, December 17, 2009)

Action Required
Finance Committee
County Board (2/3 Vote)

WHEREAS, department requests for transfers within their own accounts have been received by the Department of Administrative Services, Fiscal Affairs, and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2010 appropriations of the respective listed departments:

| | | | From | To |
|---|---|---|---|---|
| 1) | 5080 – DTPW Architecture and Engineering Division | | | |
| | 6149 | – Professional Services Non-recurring | | $29,000 |
| | 2999 | – Revenue from Other Govt. Unit | $29,000 | |

An appropriation transfer of 29,000 is requested by the Director of the Department of Transportation and Public Works (DTPW) to recognize revenues received as a result of an agreement with the Emerald Landfill in Franklin, as the County is recognized as an affected community

In 2003, Waste Management of Wisconsin Inc. (Waste Management) began the approval process to expand the Emerald Landfill, located in the far southwest corner of Milwaukee County. As an officially designated "affected community", the operators of the landfill were required to negotiate with Milwaukee County to share landfill siting revenues (funded through tipping fees paid by waste haulers). An agreement on expansion of the landfill was reached between the operator and affected communities in October 2010. As a result of this agreement, Milwaukee County received $45,000 from Waste Management.

Of this amount, DTPW requests that $16,000 be realized in capital project WV017022 – Franklin Landfill FEMA Mitigation to provide additional expenditure authority for additional materials to complete a drainage channel. The majority of the funding for that project is provided by the Federal Emergency Management Agency (FEMA) program to mitigate potential flooding damage. The remaining $29,000 will be recognized in the Architecture and Engineering Division.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 2) | 6402- Community Services Administration | | | |
| | 3790 | – Other Health Revenues | $2,392,090 | |
| | 6373- Acute Adult Inpatient Unit | | | |
| | 8164 | – Purchase of Service 51.42 Board | | $350,000 |
| | 7770 | _ Drugs | | 150,000 |
| | 3713 | – Patient Revenues | | 347,090 |
| | 6383- Child and Adolescent Inpatient | | | |
| | 3713 | – Patient Revenues | | $600,000 |
| | 6503- Security | | | |
| | 6023 | – Security | | $400,000 |
| | 6552- Fiscal Administration | | | |
| | 6148 | – Prof. Services-Reoccurring Operations | | $45,000 |
| | 6533- Facilities Maintenance Main Building | | | |
| | 6330 | – Steam | | $300,000 |
| | 6532- Facilities Maintenance Administration | | | |
| | 7199 | – Other Building and Roadway Material | | $200,000 |

A 2010 fund transfer of $2,392,090 is requested by the Director, Department of Health and Human Services (DHHS) to receive additional 2009 Wisconsin Medicaid Cost Report (WIMCR) revenue and to realign revenues and expenditures within the Behavioral Health Division (BHD).

In December 2010, BHD received the 2009 WIMCR annual settlement. Traditionally, this annual settlement is treated as general health revenue; however, due the wide variance in annual award amounts, it is nearly impossible to accurately predict the award amount during the county budget cycle. Due to the size of the 2009 WIMCR settlement, a 2010 patient revenue surplus has been created.

BHD is requesting authority to use WIMCR revenue to establish additional expenditure authority for various costs that are anticipated to be over budget in 2010 and reduce revenue in the Acute and Child Inpatient Services Areas due to reduced State Medicaid reimbursements. BHD is specifically requesting the following:

--$350,000 for State Institute placement, which have been higher than budgeted in 2010.
--$300,000 to cover an anticipated expenditure deficit in utilities due to increased costs.
--$400,000 to address the anticipated expenditure deficit in security fees due to the increased use of security following the Immediate Jeopardy in January 2010 and throughout 2010.
--$45,000 for a professional services contract related to some initial work done in 2010 for the 2011 revenue maximization initiative.
--$200,000 in building maintenance for costs associated with building operations, Statement of Deficiency corrections and other operational needs.
--$150,000 in additional expenditure authority for Drugs due to increased usage.

--$947,090 in reduced revenues for the Adult and Child Inpatient Services Areas based on decreased patient revenues from the State of Wisconsin related to Medicaid deficits being experienced.

This transfer would allow the department to receive the additional revenue and realign expenditure and revenue authority.

There is no levy impact from this transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 3) | 7931- Elderly Services | | | |
| 8123 - | A5SC | Purchase of Services | | $10,000 |
| 8123 - | A5HG | Purchase of Services | | 7,030 |
| 8123 - | A5AI | Purchase of Services | | 5,000 |
| 8123 - | A5NA | Purchase of Services | | 5,000 |
| 8123 - | A5ML | Purchase of Services | | 2,000 |
| 4999 - | A5CL | Other Miscellaneous Revenue | $21,522 | |
| 2255 - | A5CL | Social Service- Purchase | 7,508 | |
| 7932- Elderly Nutrition | | | | |
| 8123 - | A5SM | Purchase of Services | | $9,000 |
| 2255 - | A5CL | Social Service- Purchase | $9,000 | |

A transfer of $38,030 is requested by the Director of the Department on Aging to receive additional revenue from the State and to realign revenues and expenditures within the department.

Pursuant to County Board File No. 10-33 (a)(a), approved on December 17, 2009, the County Executive is authorized to carry out the Department on Aging's 2010 State and County contract covering the administration of Social Services and Community Programs-Aging Programs. The resolution authorizes the County Executive to accept Federal and State revenues including any and all increases in allocations during the contract year.

Upon availability of funds, the department can increase contract allocations for existing programs that provide services for the frail elderly to remain independent in the community. These allocations would help providers meet rising costs and maintain service levels. This transfer reflects an increase in revenue of $38,030 related to the receipt of deferred revenue and the carryover of Basic Community Aids from 2009, which is completely offset by increased allocations for the following minority senior community centers and other senior meal site contracts: Asian American Community Center, Hmong American Friendship Association, Indian Council of the Elderly, Bethesda Community Senior Citizens Center, Project Focal Point, Goodwill Site Management, and Milwaukee Christian Center.

Expenditures related to these contracts include $36,030 to address facilities maintenance and improvement needs as well as to support various purchases that include new and replacement kitchen appliances, utility carts and utensils, chairs and dining tables, computers and related equipment, hot boxes for food, and a vehicle used for outreach services. The remaining $2,000 is allocated to the Coordination of Neighborhood Services contract for expenses incurred in 2010 related to the preparation of the First Annual 2011 Senior Ambassador Day Program. This program provides resource information through Senior Ambassadors who are community volunteers that travel to locations where older adults congregate to provide information to them and their caregivers about potential resources and contact information for those resources.

This transfer would allow the department to receive revenue and realign expenditures accordingly. There is no levy impact as a result of this transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 4) | 8440 IM Payments | | | |
| | 6816 | – MA Transportation Payments | | 1,200,000 |
| | 2255 | – Social Services Purchase | 1,200,000 | |

A transfer of $1.2 million is requested by the Interim-Director, Department of Health and Human Services to recognize increased revenue and associated expenditures related to the Medical Assistance (MA) Transportation Program in the Economic Support Division.

Because the State of Wisconsin assumed the operation of Income Maintenance and Child Care programs in Milwaukee County, the 2010 Adopted Budget eliminated payments for MA Transportation. Subsequently, the State requested that DHHS process payments from the transportation vendors and agreed to reimburse the County for related staff costs.

In September 2010, a fund transfer was approved for $1.9 million in expenditures and offsetting revenue for this program. This increased the $6 million budget to $7.9 million. However, the department is expecting another increase in expenditures of $1.2 million. This fund transfer recognizes additional revenue and establishes associated appropriations to meet the projected year-end budget of $9.1 million.

Approval of this transfer will result in a $0 tax levy impact.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

Action Required
Finance Committee
County Board (Majority Vote)

WHEREAS, your committee has received from the Department of Administrative Services, Fiscal Affairs, departmental requests for transfer to the 2010 capital improvement accounts and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2010 capital improvement appropriations:

| | | | From | To |
|---|---|---|---|---|
| 1) | WJ042013 – Shower Ventilation | | | |
| | 8509 | – Other Building Improvements (CAP) | | $310,000 |
| | WJ042015 – Shower Ventilation | | | |
| | 9780 | _ Interest Allocation | | $2,500 |
| | WJ052011 – Replace Water Pipe Plumbing | | | |
| | 6030 | _ Advertising | $ 500 | |
| | 6050 | _ Contract Pers Serv-Short | 1,000 | |
| | 6080 | _ Postage | 500 | |
| | 6146 | _ Prof Serv-Cap/Major MTCE | 58,872 | |
| | 7930 | _ Photo, Prtg, Repro & Bindg | 315 | |
| | WJ052012 – Replace Water Pipe Plumbing | | | |
| | 6146 | _ Prof Serv-Cap/Major MTCE | $ 12,500 | |
| | 8509 | _ Other Building Improvements (CAP) | 166,009 | |
| | 9780 | _ Interest Allocation | 2,000 | |
| | WJ014481 – Heat in North Kitchen | | | |
| | 6146 | _ Prof Serv-Cap/Major MTCE | $ 500 | |
| | 8509 | _ Other Building Improvements (CAP) | 10,462 | |
| | WJ055012 – Remodel North Kitchen into Dorm | | | |
| | 6030 | _ Advertising | $ 500 | |
| | 6050 | _ Contract Pers Serv-Short | 1,000 | |

| | | | From | To |
|---|---|---|---|---|
| 6080 | _ | Postage | 500 | |
| 6146 | _ | Prof Serv-Cap/Major MTCE | 30,735 | |
| 7930 | _ | Photo, Prtg, Repro & Bindg | 1,000 | |
| 9706 | _ | Prof Serv Div Services | 25,607 | |
| 9780 | _ | Interest Allocation | 500 | |

An appropriation transfer is requested by the Office of the Sheriff in the amount of $312,500 to reallocate surplus capital funds from Project WJ052 Replace Water Pipe and Plumbing Upgrade in North Building, Project WJ014 Heat in the North Kitchen and Project WJ055 Remodel North Kitchen into Dorm into WJ042 Shower Ventilation - South Building.

The 2009 Adopted Capital budget provided expenditure authority of $309,400 for Project WJ042 - Shower Ventilation at the County Correctional Facility South (CCFS). The CCFS has implemented various techniques to decrease the amount of moisture that is generated in the shower area at the CCFS including shower timers to prevent showers from running continuously (inmates leaving them on). In spite of this and other efforts, there are still problems with moisture in the dorms. This moisture can create mold which can pose a health risk to inmates and create sanitation problem within the facility. The 20 dorms that are located in the South facility were built in 1999 and the piping has not been replaced since that time.

The original estimate for this project did not include the cost of placing sealant on the walls to insulate from additional moisture. In addition, the project also now includes Energy Recovery Units which were not part of the original project scope. This equipment is necessary because the current air distribution system could not adequately provide replacement air quantities to accommodate the additional exhaust air anticipated. These changes have increased the cost of the project by $312,500 to a total cost of $621,900.

The 2009 Adopted Capital Improvement Budget provided expenditure authority of $919,400 for Project WJ05201 Replace Water Pipe and Plumbing in North Building and $102,000 for Project WJ055 Remodeling of the North Kitchen into an additional dormitory at the South Facility.

The Main Facility, previously named Adult Correctional Center (ACC) was built in 1949 and contains 8 dorms. Project WJ05201 Replace Water Pipe and Plumbing replaced the three urinals with toilets and added a wall hanging urinal. This project is now completed and was under budget. There are excess funds of $309,695 in project WJ05201 Replace Water Pipe and Plumbing in North Building.

In addition, Project WJ01448 Heat in the North Kitchen is now completed and has a surplus of $10,962.
Due to the decrease in inmate population and additional estimates showing allocated funds were insufficient, Project WJ055 Remodel North Kitchen into Dorm has been deferred. There is currently a balance of $83,632 in this project. Of that surplus, $59,842 has been earmarked to be transferred into the Shower Ventilation Project.

Therefor, this appropriation transfer reallocates $312,500 in expenditure authority to Project WJ04201 Shower Ventilation from Project WJ05201 Replace Water Pipe Plumbing ($241,695), Project WJ01448 Heat in North Kitchen ($10,962), and Project WJ05501 Remodel North Kitchen into Dorm ($59,842).

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | From | To |
|---|---|---|---|
| 2) | WO516012 Historical Society Roof Replacment | | |
| | 8509 – Other Building Improvement (CAP) | | $143,235 |
| | WG010022 CATC Roof Replacement | | |
| | 8502 – Major Maintenance Bldg | $143,235 | |

The Director of the Department of Transportation and Public Works requests an appropriation transfer to reallocate $143,235 from capital project WG010022 CATC Roof Replacement to a newly created project WO516012 Historical Society Roof Replacement.

While completing work on Phase 4 of the Historical Society Renovation project it was discovered that the roof had been leaking. After further investigation of the leak it was determined that a new roof was needed. The replacement of the roof needed to be completed as soon as possible in order to prevent damage of the newly renovated facility. The roof was replaced in December 2010 at a cost of $143,235. The roof replacement is the responsibility of the County to repair per the terms of the lease between Milwaukee County and the Historical Society.

The CATC Roof Replacement project was completed in 2009 and has a surplus of approximately $396,000.

No tax levy impact results from this fund transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | From | To |
|---|---|---|---|
| 3) | WV017022 – Franklin Landfill FEMA Mitigation | | |
| | 8527 – Land Improvements (CAP) | | $16,000 |
| | 2999 – Revenue from Other Govt. Unit | $16,000 | |

An appropriation transfer of $16,000 is requested by the Director of the Department of Transportation and Public Works (DTPW) to provide additional funding to capital project WV017022 – Franklin Landfill FEMA Mitigation.

In 2010, an appropriation transfer was created for this project. As result of severe flooding in June 2008 that damaged the soil-covered protective cap at the former landfill located at Crystal Ridge, the Federal Emergency Management Agency (FEMA) agreed to provide funding in the amount of $165,000 for a project to mitigate future flooding at the site.

The mitigation project includes installation of a rock lined drainage channel to direct rainwater away from the protective cap. DTPW staff indicates that, as work on the project proceeded, the contractor applied 200 more cubic feet of stone than was originally required for the project, at an additional cost of $16,000. It has been determined however that the additional stone is required to provide the drainage protection necessary.

Funding for the additional stone is available as a result of the County's October 2010 agreement with the operators of the Emerald Landfill in Franklin, approved as Resolution 03-249 during the September 2010 Board Cycle, which has provided an unanticipated $45,000 in revenue. This unanticipated revenue will be split with $16,000 being used for this project while the Environmental Services section of the Architecture and Engineering Division will recognize the remaining $29,000 in a separate fund transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | From | To |
|---|---|---|---|
| 4) | WO622012 – Analog Repeater Replacement | | |
| | 8509 – Other Building Improvement (CAP) | | $455,477 |
| | WO219014 - Narrowbanding | | |
| | 8509 – Other Building Improvement (CAP) | $455,477 | |

An appropriation transfer totaling $455,477 is requested by the Chief Information Officer within the Department of Administrative Services -- Information Management Services Division (IMSD) to increase expenditure authority and revenues to create capital improvement project WO622012 - Analog Repeater Replacement for the Public Safety 800 MHz radio system while simultaneously reducing expenditure authority and revenue for capital improvement project WO219014 - Narrowbanding for the Public Safety 800 MHz radio system.

Milwaukee County (County) operates an 800 MHz trunked radio system with nine tower sites that support approximately 70 agencies including the Milwaukee County Sheriff's Department, Milwaukee County Transit System and seventeen municipalities' first responder (police/fire/EMS) agencies.

Severe storms and flooding resulted in damage to equipment for the Channel 58 radio tower site located at 5215 Milwaukee River Parkway. In surveying the radio tower site on July 23, 2010, the channel that was damaged impacts transmissions at seven of the nine radio tower sites. Because each analog repeater broadcasts across four frequencies a total of 28 pieces of equipment (7 sites * 4 channels each) must be replaced for a total cost of $455,477. Analog Repeaters are telecommunications equipment used to boost and clarify analog signals on telephone lines.

A claim has been submitted by Milwaukee County to the Federal Emergency Management Agency (FEMA) to potentially offset costs for replacement of this analog radio equipment, which is currently pending approval. However, given the need to ensure uninterrupted communications for the multi-jurisdictional public safety radio system, the purchase of analog replacement equipment needs to be completed prior to a final decision by FEMA.

This appropriation transfer reallocates funding from an existing capital improvement project WO219014 - Narrowbanding to provide an available funding source for the unanticipated replacement of analog radio equipment through capital improvement project WO622012 Analog Repeater Replacement. In addition, this appropriation transfer will allow the carry over of the project into 2011 to allow for the improvements to proceed so that service is not interrupted.

IMSD is still in the process of preparing preliminary documentation to move forward with the Narrowbanding project and therefore this project has not begun. This appropriation transfer essentially borrows funds from the Narrowbanding project to complete the necessary analog equipment replacement.

If the Milwaukee County application for FEMA funding is approved to cover the expenses for the replacement analog equipment, the borrowed funds will be replenished. If the FEMA application is unsuccessful, IMSD will need to identify an alternate funding source to replenish the Narrowbanding project. With either scenario, a future appropriation transfer will be submitted for consideration.

This fund transfer has no tax levy impact.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

Action Required
Finance Committee
County Board (Majority Vote)

WHEREAS, department requests for transfers within their own accounts have been received by the Department of Administrative Services, Fiscal Affairs, and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2010 appropriations of the respective listed departments:

| | | | | From | To |
|---|---|---|---|---|---|
| 1) | 7995 Care Management Units | | | | |
| | 8127 | – | Training/Best Practice | | $24,340,237 |
| | 3726 - | A6CC | Care Mgmt Org. Capitation | | 200 |
| | 8126 - | A6CM | Care Mgmt Org. Services | $23,872,518 | |
| | 6148 | – | Prof. Serv.- Recurring Operation | 387,719 | |
| | 7991 CMO Administration | | | | |
| | 6149- | A6CM | Prof. Serv.- Nonrecurring Operation | $80,000 | |
| | 0755 | – | Resv for Imprest Fund | 200 | |

A transfer of $24,340,437 is requested by the Interim Director, Department of Family Care to realign revenues and expenditures.

On December 17, 2009, the County Board Adopted resolution File No. 09-449, authorizing the County Executive to execute a contract with the Wisconsin Department of Health Services to enable the Milwaukee County Department on Aging to serve as a Care Management Organization (CMO), under Family Care for the period January 1 through December 31, 2010 and to accept the funding provided there under. This authorization extends to the newly created Department of Family Care.

Training and Best Practices is a purchase of service contract that is used to provide quality control services to the department. In the 2010 Adopted Budget, the funds for this contract were budgeted in Care Management Org Services (8126). This transfer realigns the expenditures in the proper line item account, by reducing expenditures in Care Mgmt Org Services by $23,872,518 and increasing expenditures in Training/Best Practices by the same amount.

In addition, this transfer reflects a decrease of $200 in Care Management Organization Capitation revenue and an increase of $200 in the Reserve for Imprest Fund. The Imprest Fund was created in the department to be used for the purposes of distributing petty cash with an amount not to exceed $200.

This transfer would realign revenues and expenditures within the department. There is no tax levy impact as a result of this transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

Action Required
Finance Committee

WHEREAS, department requests for transfers within their own accounts have been received by the Department of Administrative Services, Fiscal Affairs, and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2010 appropriations of the respective listed departments:

| | | | From | To |
|---|---|---|---|---|
| 1) | 7995 Care Management Units | | | |
| 3726 - | A6CC | Care Mgmt Org Capitation | | $6,010,698 |
| 8126 - | A6PC | CMO Services (Personal Care) | $2,068,286 | |
| 8126 - | A6MM | CMO Services (Meals) | 1,679,568 | |
| 8497 - | A6A2 | Bad Debt Expense | 1,225,355 | |
| 8126 - | A6DM | CMO Services (Durable Medical Equipment) | 930,177 | |
| 8126 - | A6MI | CMO Services (Misc. In home Support) | 107,312 | |

The Interim Director of the Department of Family Care requests a fund transfer of $6,010,698 to realign revenues and expenditures within the department.

On December 17, 2009, the County Board Adopted resolution File No. 09-449, authorizing the County Executive to execute a contract with the Wisconsin Department of Health Services to enable the Milwaukee County Department on Aging to serve as Care Management Organization (CMO), under Family Care for the period January 1 through December 31, 2010 and to accept the funding provided thereafter. This authorization extends to the newly created Department of Family Care.

The Care Management Organization capitation rate is a blended rate consisting of a two-year inflationary trend, administration allowance, and 2008 expenses for three target groups: Developmentally Disabled (DD), Physically Disabled (PD), and the Frail Elderly (FE). The capitation rate is applied per member per month. As enrollment decreases, capitation revenues also decrease, resulting revenue reductions.

This transfer is to realign the capitation revenue for changes that have occurred as a result of decreased enrollments due to multiple Managed Care Organizations (MCO) in the same servicing county, a reduction in member acuity payments from the Department of Health Services (DHS), and changes in net capitation revenue received for member cost share deductions. To reflect this change, the CMO-Nursing home level of care revenue will be reduced $6,010,698.

To offset this revenue reduction, service provider expenditures have been reduced by $6,010,698 and consist of the following expenses: $1,225,355 in Bad Debt expense, $930,177 in Durable Medical Equipment, $107,132 in Miscellaneous in Home Support, $1,679,568 in Meals, and $2,068,286 in Personal Care.

This transfer would allow the department to realign revenues and expenditures accordingly. Approval of this transfer results in no tax levy impact.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

## 2010 BUDGETED CONTINGENCY APPROPRIATION SUMMARY

| | |
|---|---|
| 2010 Budgeted Contingency Appropriation Budget | $5,800,000 |
| | |
| Approved Transfers from Budget through December 16, 2010 | |
| 6050-Contract Pers. Serv. Short (Estabrook Dam Stabilization Study) | $ (200,000) |
| 9000-Parks (Farm & Fish Hatchery) | $ (54,500) |
| 9910-UW Extension (Settlement Agreement) | $ (47,000) |
| WP187012 – O'Donnell Park Parking Structure Repairs | $ (422,000) |
| 1945 - Froedtert Hospital Land Lease Payment | $ 2,175,000 |
| | |
| Unallocated Contingency Balance December 16, 2010 | $ 7,251,500 |
| | |
| Transfers Pending in Finance & Audit Committee through 01/27/10 | |
| | |
| Total Transfers Pending in Finance & Audit Committee | $ - |
| | |
| Net Balance | **$ 7,251,500** |

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01-27-11 FINANCE AND AUDIT COMMITTEE APPROPRIATION TRANSFERS
A DEPARTMENTAL - RECEIPT OF REVENUE File No. 11-1
(Journal, December 16, 2010)

Action Required
Finance Committee
County Board (2/3 Vote)

WHEREAS, department requests for transfers within their own accounts have been received by the Department of Administrative Services, Fiscal Affairs, and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2011 appropriations of the respective listed departments:

| | | | From | To |
|---|---|---|---|---|
| 1) | 4000 – Office of the Sheriff | | | |
| | 6999 | – Sundry Services | | $40,000 |
| | 8557 | – Computer Equipment >500 | | 25,000 |
| | 2699 | – Federal Revenue | $65,000 | |

The Office of the Sheriff requests approval of a fund transfer to receive grant money from the State Department of Justice Assistance in the amount of $65,000.

County Board File 10-367 granted the Office of the Sheriff authorization to apply for and accept homeland security grant funding. This transfer seeks to increase revenue by $65,000 and corresponding expenditure authority by $65,000 for no net tax levy impact. The following grants were received:

Urban Area Security Initiative (UASI): Tactical EMS Interoperability Training, $25,000. This funding is for Emergency Medical Services (EMS) personnel to prepare them and enhance skills to provide medical services support for tactical team missions in a tactical environment. Tactical law enforcement (SWAT) teams handle hostage incidents, barricades, high-risk warrant service and dignitary protection. Due to the nature of the missions and the special training of these teams, personnel continuously work in life-threatening conditions and appropriate medical support services are essential to mission accomplishment.

Urban Area Security Initiative (UASI): EMA Disaster Life Support Training, $15,000. This funding is for training the National Disaster Life Support curriculum. This course provides physicians, health care workers and emergency responders with comprehensive and integrated training to promote a uniform and efficient response to emergencies involving mass casualties from both natural and man made disasters.

Urban Area Security Initiative (UASI): Enhance Disaster Response Assistance Information System: $25,000. This funding will be utilized to ensure 211 infrastructure operates in the event of a wide spread

power outage. In order to maintain a reliable ability to respond to emergency situations; the phone and computer equipment must be able to continue running even if power is not available and to ensure continuity of service during a more prolonged power outage, a backup cooling system would operate from the generator and supply cool air to the computer server room.

There is no tax levy impact from this transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 2) | 4000 – Office of the Sheriff | | | |
| | 5201 | – Overtime | | $114,445 |
| | 5312 | – Social Security | | 8,755 |
| | 7935 | – Law Enforcement Supplies | | 4,999 |
| | 2299 | – State Revenue | $128,199 | |

The Office of the Sheriff requests approval of a fund transfer to receive grant money from the State Department of Transportation in the amount of $128,199.

The State Department of Transportation has given Milwaukee County $128,199 for an Alcohol Enforcement grant program for the Milwaukee County Sheriff's Office from October 1, 2010 until September 30, 2011. The grant also includes funding of $4,999 for equipment to perform field sobriety tests. The grant also funds 2,240 enforcement hours for the Office of the Sheriff based on an average overtime rate of $55 per hour. The grant requires a local match of $41,081, which will come from 2011 budgeted salary funds.

The Committee on Judiciary, Safety and General Services will vote on January 20, 2011 whether to approve the acceptance of these grant funds.

This transfer seeks to recognize the revenue of $128,199 and establish expenditure authority of $128,199.

There is no tax levy impact from this transfer.

TRANSFER SIGNED BY THE COUNTY EXECUTIVE _____.

| | | | From | To |
|---|---|---|---|---|
| 3) | 4000 – Office of the Sheriff | | | |
| | 5201 | – Overtime | | $ 9,289 |
| | 5312 | – Social Security | | 711 |
| | 7935 | – Law Enforcement Supplies | | 3,220 |
| | 6141 | _ Gen Admin Sub-Contract Agency | | 147,840 |
| | 2299 | – State Revenue | $161,060 | |

The Office of the Sheriff requests a fund transfer to accept grant revenue from the State Department of Transportation in the amount of $161,060 for alcohol enforcement.

This transfer seeks to recognize revenue of $161,060 and establish expenditure authority of $161,060 for an Alcohol Enforcement grant program for the Milwaukee County area. Milwaukee County will only serve as the grant administrator and has received funding of $10,000 for this purpose. The grant also includes funding of $3,220 for the following equipment: 4 boxes of business cards, 10 highly visible traffic enforcement signs and 60 magnets. The grant also funds 2,688 enforcement hours for agencies within the Milwaukee Metropolitan area. The participating agencies are West Allis, Bayside, Elm Grove, Greendale, City of Brookfield, Cudahy, Franklin, South Milwaukee, St. Francis, Town of Brookfield, Menomonee Falls, Wauwatosa, and Milwaukee. The grant program runs from October 1, 2010 until September 30, 2011.

The Committee on Judiciary, Safety and General Services will vote on January 20, 2011 to approve the acceptance of the grant funds.

There is no tax levy impact from this transfer.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

Action Required
Finance Committee
County Board (Majority Vote)

WHEREAS, your committee has received from the Department of Administrative Services, Fiscal Affairs, departmental requests for transfer to the 2011 capital improvement accounts and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2011 capital improvement appropriations:

| | | | From | To |
|---|---|---|---|---|
| 1) | WA044012 - In Line Baggage Screening | | | |
| | 8509 | – Other Building Improvement (CAP) | | $20,790,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $16,000,000 | |
| | 4914 | – Revenue Bond Proceeds | 4,790,000 | |
| | WA048012 – Concourse D Improvements | | | |
| | 8501 | – Building/Structures New- (CAP) | | $40,000 |
| | 4901 | – Passenger Facility Charge Revenue | $40,000 | |
| | WA064012 – Phase II Mitigation Program | | | |
| | 8509 | – Other Building Improvement (CAP) | | $5,040,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $4,032,000 | |
| | 2299 | – Other State Grants and Reimbursement | 504,000 | |
| | 4901 | – Passenger Facility Charge Revenue | 504,000 | |
| | WA094012 - Runway Safety Area | | | |
| | 8527 | – Land Improvements (CAP) | | $1,352,600 |
| | 4914 | – Revenue Bond Proceeds | $1,352,600 | |
| | WA096011 - Parking Structure Relighting | | | |
| | 8509 | – Other Building Improvement (CAP) | | $310,000 |
| | 4907 | – Bond Notes and Proceeds | $310,000 | |

| | | | From | To |
|---|---|---|---|---|
| WA108012 – Terminal HVAC Equipment Replacement | | | | |
| 8509 | – | Other Building Improvement (CAP) | | $60,000 |
| 4901 | – | Passenger Facility Charge Revenue | $60,000 | |
| WA122012- Airfield Pavement Rehab | | | | |
| 8527 | – | Land Improvements (CAP) | | $1,000,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $1,000,000 | |
| WA124012 – Ground Power Precon Air Units | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $ 150,000 |
| 9706 | – | Professional Division Services | | 59,400 |
| 8509 | – | Other Building Improvement (CAP) | | 1,050,000 |
| 4901 | – | Passenger Facility Charge Revenue | $ 134,333 | |
| 2699 | – | Other Fed Grants and Reimbursement | 1,000,721 | |
| 2299 | – | Other State Grants and Reimbursement | 124,346 | |
| WA130011 - Part 150 Noise Barrier Study | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $335,469 |
| 9706 | – | Professional Division Services | | 19,531 |
| 2699 | – | Other Fed Grants and Reimbursement | $284,080 | |
| 2299 | – | Other State Grants and Reimbursement | 35,510 | |
| 4901 | – | Passenger Facility Charge Revenue | 35,410 | |
| WA131011 - Part 150 Ramp electrification | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $220,000 |
| 9706 | – | Professional Division Services | | 49,500 |
| 2699 | – | Other Fed Grants and Reimbursement | $216,000 | |
| 2299 | – | Other State Grants and Reimbursement | 27,000 | |
| 4901 | – | Passenger Facility Charge Revenue | 26,500 | |
| WA135012 – 1L-19R and 7R-25L Repaving | | | | |
| 8527 | – | Land Improvements (CAP) | | $3,616,500 |
| 2699 | – | Other Fed Grants and Reimbursement | $ 452,063 | |
| 2299 | – | Other State Grants and Reimbursement | 2,712,375 | |
| 4901 | – | Passenger Facility Charge Revenue | 452,062 | |

| | | | From | To |
|---|---|---|---|---|
| WA151011 - Part 150 Noise Monitoring System | | | | |
| 8557 | – | Computer Equipment (NEW) | | $319,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $ 31,900 | |
| 2299 | – | Other State Grants and Reimbursement | 255,200 | |
| 4901 | – | Passenger Facility Charge Revenue | 31,900 | |
| WA153012 - D30, D47, E60 and E61 Jet Bridges | | | | |
| 8557 | – | Computer Equipment (NEW) | | $3,000,000 |
| 4907 | – | Bond Notes and Proceeds | $3,000,000 | |
| WA165011 - Taxiway B Reconstruction | | | | |
| 8527 | – | Land Improvements (CAP) | | $2,140,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $1,605,000 | |
| 2299 | – | Other State Grants and Reimbursement | 267,500 | |
| 4914 | – | Revenue Bond Proceeds | 267,500 | |

An appropriation transfer of $39,552,000 is requested by the Director of the Department of Transportation and Public Works to increase expenditure authority and revenue for various capital projects to allow work to move forward during the carryover process.

This fund transfer will provide the airport with expenditure authority in the first half of the year prior to the approval of the carryovers. This is being done so that work can continue on existing projects without having to wait until May. Subsequent, to the final approval of the carryovers, this fund transfer will be reversed through an administrative appropriation transfer. Below is a brief explanation for the transfer of funds by project:

- **Project WA044 In-Line Baggage Screening ($20,790,000)**: Contraction and Equipment contracts will be encumbered by April 2011.
- **Project WA048 D Concourse Improvements ($40,000)**: Contingency funds are needed to related to construction work that is underway this month and will continue thru 2011.
- **Project WA064 Phase II Mitigation Program ($5,040,000)**: Contracts for individual house insulation will begin in February 2011.
- **Project WA094 Runway Safety Area ($1,352,600):** Construction management agreement will be entered into before March 2011.
- **Project WA096 Parking Structure Relighting ($310,000):** Consultant agreement for parking structure design will be encumbered by February 2011.
- **Project WA108 Terminal HVAC Equipment Replacement ($60,000):** Contingency funds are needed for construction work that is underway in 2010 and will continue thru 2011
- **Project WA122 Airfield Pavement Rehabilitation ($1,000,000):** Construction contract needs to be encumbered by March 2011.
- **Project WA124 Ground Power Precon Air Units ($1,259,400):** Construction contract needs to be signed by March 2011.
- **Project WA130 Part 150 Noise Barrier Study ($355,000):** Consultant agreement for study needs to be encumbered by February 2011. Tentative agreements have been made with vendors to start this project.

- **Project WA131 Part 150 Ramp Electrification ($269,500):** Consultant agreement for design phase will be encumbered by April 2011.
- **Project WA135 1L-19R and 7R-25L Repaving ($3,616,500):** This project is currently being put out to bid and the construction contract will need to be encumbered by the end of January.
- **Project WA151 Part 150 Noise Monitoring System ($319,500):** Consultant agreement for design will be encumbered by March 2011.
- **Project WA153 D30, D47, E60, and E61 Jet Bridges ($3,000,000):** The jet bridge equipment will be procured in February 2011. The scope of the project is being modified to include gates D30 and D47.
- **Project WA165 Taxiway B Reconstruction ($2,140,000):** Construction contract needs to be encumbered by March 2011.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 2) | WA124012 Concourse E Preconditioned Air & Ground Power Units | | | |
| | 8509 | – Other Building Improvement – (CAP) | | $1,221,000 |
| | 2699 | – Other Fed Grants & Reim | $915,750 | |
| | 2299 | – Other State Grants & Reim | 152,625 | |
| | 4901 | – Passenger Facility Charge Rev | 152,625 | |

An appropriation transfer of $1,221,000 is requested by the Director of the Department of Transportation and Public Works (DTPW) to provide additional expenditure authority and financing to capital project WA124012 – Concourse E Preconditioned Air & Ground Units. Financing is provided from $915,750 in Federal revenue (Voluntary Air Low Emissions grant), $152,625 in State revenue, and $152,625 in Passenger Facility Charge (PFC) revenue.

The 2008 Adopted Capital Improvements Budget included an appropriation of $1,269,400 for the purchase and installation of ground power and preconditioned air units on the nine passenger loading bridges located in Concourse E at General Mitchell International Airport as recommended by the Federal Aviation Regulation Part 150 Noise Study Update. This project sought to address aircraft noise generated by parked aircraft that either idle their engines or use generator powered auxiliary ground power and preconditioned air units to maintain operation of onboard instruments and provide temperature control in the aircraft.

The project has been delayed while approval was pending with the Federal Aviation Administration (FAA) of the Part 150 Noise Plan Update and then further delayed by the requirement by the FAA to use VALE funding instead of the Federal Noise Discretionary Funding. The FAA determined that VALE funding should be used since the project will provide emission mitigation. Airport staff expects that bids for the project will be received in February and that verbal confirmation from the FAA regarding the awarding of the VALE grant will be received shortly thereafter.

The total cost of the project has increased beyond the 2008 Adopted Budget amount due to unforeseen items that were discovered after the design of the project and the amount of time that passed since the 2007 estimate

was performed. The unforeseen items that are required are upgrades to the drive columns to support the added equipment on four of the existing passenger loading bridges.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 3) | WP07015 Oak Leaf Trail – Ozaukee Interurban – Kohl Park Connector | | | |
| | 6146 | – Professional Services- Capital/Major Maintenance | | $ 1,500 |
| | 8527 | – Land Improvements (CAP) | | 856,500 |
| | 9706 | – Professional Division Services | | 12,153 |
| | 9780 | – Interest Allocation | | 8,458 |
| | 4907 | – Bond Notes and Proceeds | $878,611 | |
| | WT03701 MCTS Maintenance Garage Parking Lot Resurfacing | | | |
| | 6146 | – Professional Services- Capital/Major Maintenance | | $ 26,000 |
| | 9706 | – Professional Division Services | | 10,510 |
| | 8528 | – Major Main Land Imp (EXP) | | 218,000 |
| | 9780 | – Interest Allocation | | 1,000 |
| | 4907 | – Bond Notes and Proceeds | $255,510 | |
| | WP09012 McCarty Park Pool Improvements | | | |
| | 8527 | – Land Improvements (CAP) | | $494,200 |
| | 9706 | – Professional Division Services | | 44,582 |
| | 4907 | – Bond Notes and Proceeds | $538,782 | |
| | WP09013 Sheridan Park Pool Improvements | | | |
| | 8527 | – Land Improvements (CAP) | | $175,670 |
| | 9706 | Professional Division Services | | 24,259 |
| | 4907 | – Bond Notes and Proceeds | $199,929 | |
| | WP09014 Washington Park Pool Improvements | | | |
| | 8527 | – Land Improvements (CAP) | | $114,000 |
| | 9706 | Professional Division Services | | 15,178 |
| | 4907 | – Bond Notes and Proceeds | $129,178 | |

| | | From | To |
|---|---|---|---|
| WP17101 McCarty Park Pool Liners | | | |
| 8527 | – Other Building Improvement (CAP) | | $109,700 |
| 9706 | Professional Division Services | | 8,541 |
| 4907 | Bond Notes and Proceeds | $118,241 | |
| WP06302 Estabrook Dam Rehabilitation | | | |
| 8527 | – Land Improvements (CAP) | | $2,000,000 |
| 9705 | – Parks Division Services | | 50,000 |
| 9706 | – Professional Division Services | | 18,583 |
| 4907 | – Bond Notes and Proceeds | $2,068,583 | |
| WP08901 Bender Park Dredging | | | |
| 6146 | – Professional Services- Capital/Major Maintenance | | $ 1,400 |
| 8527 | – Land Improvements (CAP) | | 353,900 |
| 9706 | – Professional Division Services | | 12,915 |
| 9780 | – Interest Allocation | | 1,625 |
| 4907 | – Bond Notes and Proceeds | $369,840 | |
| WP15301 Riverside Park Improvements | | | |
| 6146 | – Professional Services- Capital/Major Maintenance | | $ 10,380 |
| 8527 | – Land Improvements (CAP) | | 445,060 |
| 9706 | – Professional Division Services | | 106,053 |
| 4907 | – Bond Notes and Proceeds | $561,493 | |
| WP51304 McKinley Marina Seawall Improvements | | | |
| 6146 | – Professional Services- Capital/Major Maintenance | | $ 5,042 |
| 9706 | – Professional Division Services | | 45,783 |
| 9716 | – Disadvantaged Bus. Serv. | | 5,625 |
| 8527 | – Land Improvements (CAP) | | 304,828 |
| 9780 | Interest Allocation | | 1,000 |
| 4907 | – Bond Notes and Proceeds | $362,278 | |
| WO50801 Marcus Center Pedestrian Bridge | | | |
| 6050 | – Contractual Pers Serv - Short | | $ 1,000 |
| 6080 | – Postage | | 500 |
| 6146 | – Professional Services- Capital/Major Maintenance | | 1,350 |
| 7930 | – Photo, Print, Repro, Bind | | 1,000 |

| | | | From | To |
|---|---|---|---|---|
| 8501 | – | Building/Structures – New (CAP) | | 342,841 |
| 9706 | – | Professional Division Services | | 16,964 |
| 4907 | – | Bond Notes and Proceeds | $363,655 | |
| WO060142 Lake Park (Ravine Drive North to Service Drive) | | | | |
| 6030 | – | Advertising | | $ 500 |
| 6080 | – | Postage | | 500 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,000 |
| 8530 | – | Roadway, Planning, and Construction (CAP) | | 141,200 |
| 9706 | – | Professional Division Services | | 16,000 |
| 9780 | – | Interest Allocation | | 1,000 |
| 4907 | – | Bond Notes and Proceeds | $160,200 | |
| WO06010 Lark Park Drive (North Newberry to Pavilion) | | | | |
| 6030 | – | Advertising | | $ 500 |
| 6080 | – | Postage | | 500 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,000 |
| 8530 | – | Roadway, Planning, and Construction (CAP) | | 238,000 |
| 9706 | – | Professional Division Services | | 16,892 |
| 9780 | – | Interest Allocation | | 2,000 |
| 4907 | – | Bond Notes and Proceeds | $258,892 | |
| WS03401 Washington Park Senior Center Roof Replacement | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $ 15,810 |
| 6080 | – | Postage | | 500 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,000 |
| 9706 | – | Professional Division Services | | 5,776 |
| 8509 | – | Other Building Improvement – (CAP) | | 472,000 |
| 9780 | – | Interest Allocation | | 2,000 |
| 4907 | – | Bond Notes and Proceeds | $497,086 | |
| WM00501 Museum Air Handling and Piping | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $147,591 |
| 9706 | – | Professional Division Services | | 8,350 |
| 9780 | – | Interest Allocation | | 21,000 |
| 8501 | – | Building/Structures – New (CAP) | | 327,887 |

| | | | From | To |
|---|---|---|---|---|
| 4907 | – | Bond Notes and Proceeds | $504,828 | |
| WM01101 Museum Door Replacement | | | | |
| 6030 | – | Advertising | | $ 500 |
| 6080 | – | Postage | | 500 |
| 9706 | – | Professional Division Services | | 2,375 |
| 6146 | – | Professional Services- Capital/Major Maintenance | | 9,217 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,000 |
| 8509 | – | Other Building Improvement – (CAP) | | 101,808 |
| 9780 | – | Interest Allocation | | 2,607 |
| 4907 | – | Bond Notes and Proceeds | $118,007 | |
| WM56301 Museum Security/Fire/Life Safety | | | | |
| 6050 | – | Contract Professional Services – (Short) | | $ 1,000 |
| 6030 | – | Advertising | | 500 |
| 6080 | – | Postage | | 500 |
| 6146 | – | Professional Services- Capital/Major Maintenance | | 8,584 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,000 |
| 8509 | – | Other Building Improvement – (CAP) | | 88,200 |
| 9706 | – | Professional Division Services | | 6,056 |
| 9780 | – | Interest Allocation | | 2,659 |
| 4907 | – | Bond Notes and Proceeds | $108,499 | |
| WP17208 Washington Park Boathouse Roof | | | | |
| 9706 | – | Professional Division Services | | $ 33,599 |
| 8501 | – | Building/Structures – New (CAP) | | 375,668 |
| 4907 | – | Bond Notes and Proceeds | $409,267 | |
| WP16707 Wilson Park Rec Center Restroom | | | | |
| 8509 | – | Other Building Improvement – (CAP) | | $82,000 |
| 9780 | – | Interest Allocation | | 1,000 |
| 9706 | – | Professional Division Services | | 8,645 |
| 4907 | – | Bond Notes and Proceeds | $91,645 | |
| WT04401 Fon Du Lac Maintenance Garage Roof | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $ 29,000 |
| 8509 | – | Other Building Improvement – (CAP) | | 252,000 |

| | | | From | To |
|---|---|---|---|---|
| 9780 | – | Interest Allocation | | 1,000 |
| 4907 | – | Bond Notes and Proceeds | $282,000 | |
| WC01301 Criminal Justice Facility Deputy Workstations | | | | |
| 6050 | – | Contract Professional Services – (Short) | | $ 895 |
| 6146 | – | Professional Services- Capital/Major Maintenance | | 93,359 |
| 8509 | – | Other Building Improvement – (CAP) | | 2,187,815 |
| 9706 | – | Professional Division Services | | 258,008 |
| 9780 | – | Interest Allocation | | 10,000 |
| 4907 | – | Bond Notes and Proceeds | $2,550,077 | |
| WJ04201 HOC Shower Ventilation | | | | |
| 6080 | – | Postage | | $ 492 |
| 6146 | – | Professional Services- Capital/Major Maintenance | | 6,540 |
| 8509 | – | Other Building Improvement – (CAP) | | 237,000 |
| 9706 | – | Professional Division Services | | 12,381 |
| 9780 | – | Interest Allocation | | 1,000 |
| 4907 | – | Bond Notes and Proceeds | $257,413 | |
| WC02301 Courthouse Complex Automation | | | | |
| 6146 | | Professional Services- Capital/Major Maintenance | | $ 78,392 |
| 8509 | | Other Building Improvement – (CAP) | | 212,110 |
| 9706 | | Professional Division Services | | 8,000 |
| 4907 | | Bond Notes and Proceeds | $298,502 | |
| WP13201 Mitchell Park Domes Generator | | | | |
| 6080 | – | Postage | | $ 500 |
| 6146 | – | Professional Services- Capital/Major Maintenance | | 2,582 |
| 8509 | – | Other Building Improvement – (CAP) | | 16,296 |
| 9706 | – | Professional Division Services | | 835 |
| 9780 | – | Interest Allocation | | 2,000 |
| 4907 | – | Bond Notes and Proceeds | $22,213 | |
| WP13202 Sound and Security System | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $ 3,780 |
| 8509 | – | Other Building Improvement – (CAP) | | 21,500 |
| 9706 | – | Professional Division Services | | 2,520 |

| | | | From | To |
|---|---|---|---|---|
| 9780 | – | Interest Allocation | | $1,000 |
| 4907 | – | Bond Notes and Proceeds | $28,800 | |
| WP13203 Mitchell Park Domes Reflection Pool | | | | |
| 8509 | – | Other Building Improvement – (CAP) | | $133,000 |
| 9780 | – | Interest Allocation | | 2,000 |
| 4907 | – | Bond Notes and Proceeds | $135,000 | |
| WO89501 Countywide Revolving Account | | | | |
| 6050 | – | Contract Professional Services – (Short) | | $ 3,000 |
| 6080 | – | Postage | | 500 |
| 7930 | – | Photo, Prtg, Repro & Bindg | | 1,500 |
| 9706 | – | Professional Division Services | | 25,000 |
| 4907 | – | Bond Notes and Proceeds | $30,000 | |

An appropriation transfer of $11,598,529 is requested by the Director of the Department of Transportation and Public Works to increase expenditure authority and revenue for various capital projects.

This fund transfer will provide DTPW with expenditure authority in the first half of the year prior to the approval of the carryovers. This is being done so that work can continue on existing projects without having to wait until May. Subsequent, to the final approval of the carryovers, this fund transfer will be reversed through an administrative appropriation transfer. Below is a brief explanation for the transfer of funds by project:

- **Project WP07015 Oak Leaf Trail – Ozaukee Interurban – Kohl Park Connector**: The bid opening for the process will occur in February. The project will be complete by July 31, 2011.
- **Project WT03701 MCTS Maintenance Garage Parking Lot Resurfacing**: The construction contract needs to be encumbered by March.
- **Project WP09012 McCarty Park Pool Improvements**: Pool liner replacement is scheduled to begin after the pools close for the season in the fall. Prior to the replacement, work needs to be done in the first half of the year so that the pool liner can be replaced subsequent to the pool's closing for the 2011 season. This work includes converting the supply channels to pool floor inlets and rehabilitation of the slide.
- **Project WP09013 Sheridan Park Pool Improvements:** Pool liner replacement is scheduled to begin after the pools close for the season in the fall. Prior to the replacement, work needs to be done in the first half of the year so that the pool liner can be replaced subsequent to the pool's closing for the 2011 season. This work includes leveling of the pool gutter rim and rehabilitation of the slide.
- **Project WP06302 Estabrook Dam Rehabilitation:** Work is scheduled to begin in 2011.
- **Project WP08901 Bender Park Dredging:** The dredging contract will be bid in early 2011 with construction scheduled for spring as soon as a marine contractor can get on the lake. Desire to have the dredging complete as early as possible in the boating/fishing season.
- **Project WP15301 Riverside Park Improvements:** The construction contract needs to be encumbered by March.
- **Project WP51304 McKinley Marina Seawall Improvements:** The construction contract needs to be encumbered by March. If construction does not occur in spring 2011, the grant will be pulled.

- **Project WO50801 Marcus Center Pedestrian Bridge:** The construction contract needs to be encumbered by March. The timing of the construction works best in late spring/early summer based on the scheduled events at the Marcus Center.
- **Project WO060142 Lake Park (Racine Drive North to Service Drive):** Funds are being used the complete improvements on Lake Park (Ravine Drive North to Service Drive). The construction contract needs to be encumbered by March.
- **Project WO06010 Lake Park Drive (North Newberry to Pavilion):** The construction contract needs to be encumbered by March. If delayed, portions of Lake Park would need to be shut down for construction.
- **Project WS03401 Washington Park Senior Center Roof Replacement:** Bid selection will be in early 2011. Funds will need to be available in early 2011 to encumber the contract.
- **Project WM00501 Museum Air Handling and Piping:** Phase 1, 2 & 3 substantially complete. Need to encumber funds for humidification of sixth floor air handling unit as soon as possible.
- **Project WM01101 Museum Door Replacement:** Drawing and specifications are 90% complete and are pending coordination with the security and electrical design. Subsequent final approval from Milwaukee Public Museum, funds will need to be encumbered as soon as possible.
- **Project WM56301 Museum Security/Fire/Life Safety:** Milwaukee Public Museum provided a list of access control & video systems components to be added to the current security system. Funds need to be encumbered as soon as possible.
- **Project WP17208 Washington Park Boathouse Roof:** The design work will be completed in about six to eight weeks and the construction contract will need to be encumbered afterwards.
- **Project WP16707 Wilson Park Rec Center Restroom:** The construction contract needs to be encumbered by March.
- **Project WT04401 Fon Du Lac Maintenance Garage Roof:** A construction contract needs to be encumbered soon so that work can begin once the weather improves.
- **Project WC01301 Criminal Justice Facility Deputy Workstations:** A December 2010 appropriation transfer was processed to begin construction on the workstations. Reestablishment of funds in 2011 is needed so that construction can begin.
- **Project WJ04201 HOC Shower Ventilation**: Project has been bid out twice. The construction contract is now ready to be awarded and it needs to be encumbered as soon as possible.
- **Project WC02301 Courthouse Complex Automation:** Funds are being used to put in place a new database for the new card access system for the Courthouse Complex. The database needs to be in place before the new card access system is installed.
- **Project WP13201 Mitchell Park Domes Generator:** The installing and commissioning of the generator is best done after the cold of winter and the heat of summer. Completing the work in the spring minimizes the risk of plant damage at the domes due to extreme temperature changes should the power need to be off for an extended period of time.
- **Project WP13202 Sound and Security System:** The sound and security equipment has been ordered. These funds are needed for installation.

**Project WP13203 Mitchell Park Domes Reflection Pool:** The domes entrance and reflecting pool modification project was bid in fall 2010. The bids were high and only the entrance portion of the project was awarded. The entrance portion of the project will be completed in spring 2011. The reflecting pools portion will be rebid. In order to minimized the time the domes entrance area is under construction, the rebid reflecting pool portion needs to be constructed in spring 2011 along with the entrance.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

| | | | From | To |
|---|---|---|---|---|
| 4) | WH002011 Inter-Jurisdictional Traffic Signals | | | |
| | 6146 | – Professional Services- Capital/Major Maintenance | | $40,000 |
| | 9706 | – Professional Division Services | | 80,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $120,000 | |
| | WH01002 Mill Road (43rd Street to Teutonia Avenue) | | | |
| | 9706 | – Professional Division Services | | $60,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $60,000 | |
| | WH01005 West College Avenue (South 51st Street to South 27th Street) | | | |
| | 9706 | – Professional Division Services | | $60,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $60,000 | |
| | WH01007 South 13th Street (West Rawson Avenue to West College Avenue) | | | |
| | 9706 | – Professional Division Services | | $ 360,000 |
| | 8529 | Utility Relocation – (CAP) | | 2,400,000 |
| | 8526 | Land (CAP) | | 240,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $3,000,000 | |
| | WH01017 South 76th Street (West Puetz Street To West Imperial Drive) | | | |
| | 9706 | – Professional Division Services | | $740,000 |
| | 8526 | Land (CAP) | | 180,000 |
| | 2699 | – Other Fed Grants and Reimbursement | $920,000 | |
| | WH02005 West Oklahoma (South 76th Street to South 108th Street) | | | |
| | 6146 | – Other Building Improvement (CAP) | | $129,500 |
| | 9706 | Professional Division Services | | 680,500 |
| | 9780 | Interest Allocation | | 3,000 |
| | 2699 | Other Fed Grants and Reimbursement | $420,000 | |
| | 4907 | – Bond Notes and Proceeds | 393,000 | |
| | WH02201 North 107th Street (Brown Deer Road to North County Line Road | | | |
| | 9706 | – Professional Division Services | | $60,000 |
| | 2299 | – Other State Grants and Reimbursement | $60,000 | |
| | WH03002 Oak Creek Parkway Bridge #741 | | | |
| | 6146 | – Professional Services- Capital/Major Maintenance | | $30,000 |
| | 8530 | – Roadway Planning & Construction | | 76,000 |

| | | From | To |
|---|---|---|---|
| 2699 – | Other Fed Grants and Reimbursement | $106,000 | |
| WH03003 Milwaukee River Parkway Bridge #674 | | | |
| 8530 – | Roadway Planning & Construction | | $72,000 |
| 2699 – | Other Fed Grants and Reimbursement | $72,000 | |
| WH03006 Whitnall Park Bridge over Root River | | | |
| 6146 – | Professional Services- Capital/Major Maintenance | | $70,000 |
| 9706 – | Professional Division Services | | 50,000 |
| 9780 – | Interest Allocation | | 1,000 |
| 2699 – | Other State Grants and Reimbursement | $121,000 | |
| WH03007 Milwaukee River Parkway Bridge #646 | | | |
| 9705 – | Land Improvements (CAP) | | $ 25,000 |
| 9706 – | Other Fed Grants and Reimbursement | | 102,000 |
| 2699 – | Other State Grants and Reimbursement | $127,000 | |
| WH03016 West Oklahoma Avenue over Honey Creek | | | |
| 6146 – | Professional Services- Capital/Major Maintenance | | $294,000 |
| 2699 – | Other Fed Grants and Reimbursement | $294,000 | |
| WH08003 Lake Park Bridge over Drainage Ravine | | | |
| 6146 – | Professional Services- Capital/Major Maintenance | | $133,000 |
| 9706 – | Professional Division Services | | 53,000 |
| 8530 – | Roadway Planning & Construction | | 920,000 |
| 2699 – | Other Fed Grants and Reimbursement | $1,106,000 | |
| WH08004 Kinnickinnic River Parkway Bridge #569 | | | |
| 6146 – | Professional Services- Capital/Major Maintenance | | $170,000 |
| 9705 – | Land Improvements (CAP) | | 4,000 |
| 9706 – | Professional Division Services | | 90,000 |
| 9780 – | Interest Allocation | | 7,000 |
| 6105 – | Consultant Fees/ Adm Management | | 30,000 |
| 8530 – | Roadway Planning & Construction | | 867,000 |
| 2699 – | Other Fed Grants and Reimbursement | $1,168,000 | |
| WH08014 South 76th Street (CTH U) Bridge #575 over the Root River | | | |
| 9706 – | Professional Division Services | | $50,000 |
| 2699 – | Other Fed Grants and Reimbursement | $50,000 | |

| | | | From | To |
|---|---|---|---|---|
| WH08201 East College Ave (South Howell Ave to South Pennsylvania Ave) | | | | |
| 8526 | – | Land (CAP) | | $159,000 |
| 9706 | – | Professional Division Services | | 20,000 |
| 9780 | – | Interest Allocation | | 1,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $180,000 | |
| WH08301 West Silver Spring (North 124th Street to North 69th Street) | | | | |
| 9706 | – | Professional Division Services | | $374,000 |
| 8530 | – | Roadway Planning & Construction | | 719,000 |
| 9780 | – | Interest Allocation | | 10,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $498,000 | |
| 2299 | – | Other State Grants and Reimbursement | 605,000 | |
| WH08303 West Silver Spring Drive Bridge over Little Menomonee River | | | | |
| 6146 | – | Professional Services- Capital/Major Maintenance | | $ 90,000 |
| 8530 | – | Roadway Planning & Construction | | 158,000 |
| 9706 | – | Professional Division Services | | 10,000 |
| 2699 | – | Other Fed Grants and Reimbursement | $258,000 | |

An appropriation transfer of $9,618,000 is requested by the Director of the Department of Transportation and Public Works (DTPW) to increase expenditure authority and revenue for various capital projects.

This appropriation transfer will provide DTPW with expenditure authority in the first half of the year prior to the approval of the carryovers. This is being done so that work can continue on existing projects without having to wait until May. Subsequent, to the final approval of the carryovers, this fund transfer will be reversed through an administrative appropriation transfer. Below is a brief explanation for the transfer of funds by project:

- **Project WH002011 Inter-Jurisdictional Traffic System Implementation**: Substantial work will be completed in the early spring.
- **Project WH01002 Mill Road (43rd Street to Teutonia Avenue)**: The preliminary design for the reconstruction will begin in early 2011.
- **Project WH01005 West College Avenue (South 51st Street to South 27th Street):** The preliminary design for the reconstruction will begin in early 2011.
- **Project WH01007 South 13th Street (West Rawson Avenue to West College Avenue):** The preliminary design for the reconstruction will begin in early 2011.
- **Project WH01017 South 76th Street (West Puetz Street To West Imperial Drive):** The preliminary design for the reconstruction is ongoing. The billing for the project is anticipated in early 2011.
- **Project WH02005 West Oklahoma (South 76th Street to South 108th Street):** The preliminary design is ongoing. The completion of preliminary design is anticipated in early 2011.
- **Project WH02201 North 107th Street (Brown Deer Road to North County Line Road):** The preliminary design work will begin this spring.

- **Project WH03002 Oak Creek Parkway Bridge #741:** Pending the selection of a consultant, the preliminary design work for the replacement of Oak Creek Parkway Bridge #741 will start in early 2011.
- **Project WH03003 Milwaukee River Parkway Bridge #674:** Construction work for the replacement of Milwaukee River Parkway Bridge #647 is done. Final billing will be taking place early 2011.
- **Project WH03006 Whitnall Park Bridge over Root River:** Pending the selection of a consultant, the preliminary design work for the replacement of Whitnall Park Bridge – Root River will start in early 2011.
- **Project WH03007 Milwaukee River Parkway Bridge #646:** Pending the selection of a consultant, the preliminary design work for the replacement of Milwaukee River Parkway Bridge #646 will start in early 2011.
- **Project WH03016 West Oklahoma Avenue over Honey Creek:** Construction work for the replacement of West Oklahoma Avenue over Honey Creek will resume as soon as weather permits.
- **Project WH08003 Lake Park Bridge over Drainage Ravine:** Construction work for the rehabilitation of Lake Park Bridge over the Drainage Ravine will resume early in 2011.
- **Project WH08004 Kinnickinnic River Parkway Bridge #569:**Construction work for the rehabilitation of Kinnickinnic River Parkway Bridge #569 will resume in early 2011.
- **Project WH08014 South 76th Street (CTH U) Bridge #575 over the Root River:** Preliminary design work for the rehabilitation of South 76th Street (CTH U) Bridge #575 over the Root River will begin in early 2011.
- **Project WH08201 East College Avenue (South Howell Avenue to South Pennsylvania Avenue):** The real estate acquisition for the reconstruction of East College Avenue (South Howell Avenue to South Pennsylvania Avenue) will be completed in early 2011.
- **Project WH08301 West Silver Spring (North 124th Street to North 69th Street):** Construction for West Silver Spring (North 124th Street to North 69th Street) was completed in 2010 and billing will be processed in early 2011.

  **Project WH08303 West Silver Spring Drive Bridge over Little Menomonee River:** Reconstruction of West Silver Spring Drive Bridge over Little Menomonee River was completed in 2010 and billing will be processed in early 2011.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

01-27-11 FINANCE AND AUDIT COMMITTEE APPROPRIATION TRANSFERS
C DEPARTMENTAL File No. 11-1
(Journal, December 16, 2010)

Action Required
Finance Committee

WHEREAS, department requests for transfers within their own accounts have been received by the Department of Administrative Services, Fiscal Affairs, and the Director finds that the best interests of Milwaukee County will be served by allowance of such transfers;

THEREFORE, BE IT RESOLVED, that the Director, Department of Administrative Services, is hereby authorized to make the following transfers in the 2011 appropriations of the respective listed departments:

| | | | From | To |
|---|---|---|---|---|
| 1) | 1021 – Veteran Services | | | |
| | 6050 | – Contract Personal Services Short | | $6,000 |
| | 5312 | – Social Security | $ 459 | |
| | 5199 | – Salary | 5,541 | |

The Acting Director, Veterans Service Office, requests a fund transfer of $6,000 to allow for continued employment of a temporary worker.

Currently there is a vacancy in the office that is not expected to be filled until later in 2011. Due to this, there are salary and social security savings associated with the vacancy.

The fund transfer requests that a portion of the savings from the salary and social security be transferred to Temporary Services to fund the continued employment of the temporary worker. In 2010, this position was paid via grant by the Parks Department. In late 2010, this grant expired and Veteran Services was subsequently cross charged for this position. There is still a very strong need for this position within Veteran Services for 2011.

This fund transfer results in a $0 tax levy change.

TRANSFER SUBMITTED TO THE COUNTY EXECUTIVE 01/18/11.

## 2011 BUDGETED CONTINGENCY APPROPRIATION SUMMARY

| | |
|---|---|
| 2011 Budgeted Contingency Appropriation Budget | $8,650,000 |
| Approved Transfers from Budget through December 16, 2010 | |
| Unallocated Contingency Balance December 16, 2010 | $ 8,650,000 |
| Transfers Pending in Finance & Audit Committee through 01/27/10 | |
| Total Transfers Pending in Finance & Audit Committee | $ - |
| Net Balance | **$ 8,650,000** |

h:budget/docbdgt/finance/contingency.xls

**COUNTY OF MILWAUKEE**

**INTER-OFFICE COMMUNICATION**

DATE : January 10, 2011

TO : Committee on Economic and Community Development
Committee on Finance and Audit

FROM : Craig C. Dillmann, Manager of Real Estate Services
Department of Transportation and Public Works

SUBJECT : From UWM Innovation Park, LLC requesting an amendment to the Real Property Purchase Agreement for County-owned land located in the Northeast Quadrant of the County Grounds in the City of Wauwatosa.

**BACKGROUND:**

In May 2009 the Milwaukee County Board of Supervisors adopted Resolution File No. 09-14(a)(g) approving a Development Agreement and accepting a Real Property Purchase Agreement ("Purchase Agreement") from UWM Innovation Park, LLC ("UWM") for approximately 88.9 acres of land in the Northeast Quadrant of the County Grounds for the development of a new College of Engineering and Applied Science Campus, known as Innovation Park. The Purchase Agreement, as extended by the County Board in December 2010, includes the current schedule of payments by UWM for the $13.55 million purchase price as follows:

- Initial $5 million payable at closing on January 15, 2011
- Second $5 million payable on the one (1) year anniversary of closing or January 15, 2012
- $887,500 payable on January 15, 2013
- $887,500 payable on January 15, 2014
- $887,500 payable on January 15, 2015
- $887,500 payable on January 15, 2016

The County Board adopted Resolution File No. 09-14(a)(n) in December 2009 approving a Habitat Restoration Landscaping Plan ("Habitat Plan"), which preserves and protects the environmentally sensitive areas of the land to be acquired by UWM. In response to the County Board approving the Habitat Plan, the Purchase Agreement and Development Agreement

were amended to incorporate the elements of the Habitat Plan.

In May 2010, the City of Wauwatosa ("City") Common Council approved the Preliminary Business Planned Development, the change of zoning and the land division by CSM and in September 2010 the following events occurred:

- The City approved the creation of a Tax Incremental Financing District to fund the public infrastructure improvements for Innovation Park.
- UWM waived the three major contingencies of the Purchase Agreement (Preliminary Business Plan Development (i.e.; site plan), the change in zoning and the land division by CSM), thus eliminating them as a condition of closing.
- The CSM, which legally divides and describes the land to be conveyed to UWM was fully executed and will be recorded in conjunction with the closing.
- Mr. Michael Lovell, the dean of UWM's College of Engineering and Applied Science, was named the interim chancellor upon the departure of Chancellor Santiago.
- A $5.4 million federal grant was secured to fund the construction of the "business accelerator" building within Innovation Park.

In November 2010, the County Board adopted Resolution File No. 10-14(a)(j) extending the Contingency Waiver Date in the Purchase Agreement until December 15, 2010. The extension was granted for UWM to solidify the donations necessary to fund the purchase of the County-owned land and to address the remaining closing contingencies in the Purchase Agreement. In the attached letter dated December 15, 2010, UWM waived all the remaining closing contingencies and per the Purchase Agreement deposited an additional $175,000 of earnest money to the existing $25,000 currently in escrow with the title company (title company confirmed receipt of the $175,000 on December 17, 2010). In the letter, UWM indicates they are in the position to make the first $5 million installment payment of the $13.55 million purchase price at closing in early February 2011, but may not be able to raise the second $5 million payment
by the one-year anniversary of closing as required in the Purchase Agreement. Therefore, UWM requested in the letter that the County consider granting an amendment to the Purchase Agreement that would extend each of the five remaining installment payment dates from closing by twenty-four (24) months.
In the enclosed letter, dated January 5, 2011, UWM has reinforced their

commitment to close on the purchase of the land and make the initial $5 million payment of the $13.55 million purchase price. However, as they did in in their December 15, 2010 letter UWM is requesting an extension for each of the installment payment dates for the remaining $8.55 million of the purchase price by twenty-four (24) months,. Therefore, UWM is requesting an amendment to the Purchase Agreement incorporating the following:

1. Extend the closing date to February 15, 2011.
2. Extend each of the purchase price installment payment dates by twenty four months.
3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such property from the lien of its first mortgage.
4. Provide that gross sale proceeds paid to the County per par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.
7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to Milwaukee County within thirty (30) days of receipt, and credited against the next installment payment due the Milwaukee County.
8. Provide that the County Executive and County Clerk, or other appropriate County official(s) are authorized to execute any and all releases and/or terminations to eliminate the appropriate exceptions to the title commitment for closing.

**RECOMMENDATION:**

Staff recognizes that the uncertain economic environment has had a material adverse impact on UWM's fundraising ability for the Innovation Park project. The importance of the project to UWM, the County and the region again calls for a unified partnership to accomplish this mutually beneficial objective. Each entity of the partnership is contributing toward the project; the City of Wauwatosa by creation of a $12 million Tax Incremental Financing District for the project infrastructure, the U.S. Department of Commerce with a $5.4 million grant toward construction of the first building and Milwaukee County by conveying the land needed for the project at fair market value, while protecting environmental components of the land. Therefore, staff recommends approval of an amendment to the Purchase and Development Agreement incorporating the following:

1. Extend the closing date to February 15, 2011, with the initial $5 million payment due at closing.
2. Extend each of the purchase price installment payment dates after closing by twenty four months or as follows:
    - Second $5 million payable on February 15, 2014
    - $887,500 payable on February 15, 2015
    - $887,500 payable on February 15, 2016
    - $887,500 payable on February 15, 2017
    - $887,500 payable on February 15, 2018
3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such property from the lien of its first mortgage.
4. Provide that gross sale proceeds paid to the County per par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.

7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to the County within 30 days of receipt, and credited against the next installment payment due Milwaukee County.
8. Provide that the County Executive and County Clerk, or other appropriate County official(s) are authorized to execute any and all releases and/or terminations to eliminate the appropriate exceptions to the title commitment for closing.

**FISCAL NOTE:**

The requested twenty-four (24) month extension in the schedule of payments after closing will still result in the initial $5 million payment to the County at closing. Postponing the payments after closing by twenty-four months would result in a $5 million shortfall in 2011 revenue that was budgeted in a number of capital projects (for capital project detail, see fiscal note form attached to the subject resolution). The extended payment schedule will also result in a decrease in the anticipated revenue in 2012 by $887,500. The total nominal value of the original agreement and the amended agreement are each $13.55 million. Since the cash flows under the extended payment schedule are being received over a longer period of time, the net present value of the amended agreement is $342,616 less than the original agreement. However, if the gross sale proceeds from the sale of real property in UWM Innovation Park are paid to the County by UWM and credited in the inverse order of the due dates for such payments, as called for under the amended agreement, the twenty-four month extension period would be shortened and the $5 million shortfall in 2011 reduced. In addition, per the amended agreement, all philanthropic donations received by UWM, in excess $1.8 million, for the acquisition of the Innovation Park property and paid to the County would also reduce the $5 million shortfall in 2011.

_____
Craig C. Dillmann, Manager
Real Estate Services

ECD Committee Meeting Date: January 24, 2011
F&A Committee Meeting Date: January 27, 2011
Attachments

cc: Lee Holloway, County Executive
Michael Mayo Sr., County Board Chairman
Supervisor James Schmitt, District 19
Jack Takerian, Director, Transportation and Public Works
Renee Booker, Director-Administrative Services
Steve Cady, Fiscal and Budget Analyst, County Board
Josh Fudge, Fiscal Mgt Analyst

cd\committee\UWMamendmemoJan2011

File No.
(Journal )

(ITEM ), From UWM Innovation Park, LLC requesting an amendment to the Real Property Purchase Agreement for County-owned land located in the Northeast Quadrant of the County Grounds in the City of Wauwatosa, by recommending adoption of the following resolution:

**A RESOLUTION**

WHEREAS, in May 2009 the Milwaukee County Board of Supervisors adopted Resolution File No. 09-14(a)(g) approving a Development Agreement and accepting a Real Property Purchase Agreement ("Purchase Agreement") from UWM Innovation Park, LLC ("UWM") for approximately 88.9 acres of land in the Northeast Quadrant of the County Grounds for the development of a new College of Engineering and Applied Science Campus, known as Innovation Park. The Purchase Agreement, executed on July 1, 2009, includes the following schedule of installment payments by UWM for the $13.55 million purchase price:

- Initial $5 million payable at closing on January 15, 2011
- Second $5 million payable on the one (1) year anniversary of closing or January 15, 2012
- $887,500 payable on January 15, 2013
- $887,500 payable on January 15, 2014
- $887,500 payable on January 15, 2015
- $887,500 payable on January 15, 2016

; and

WHEREAS, the County Board adopted Resolution File No. 09-14(a)(n) in December 2009 approving a Habitat Restoration Landscaping Plan ("Habitat Plan"), which preserves and protects the environmentally sensitive areas of the land to be acquired by UWM. In response to the County Board approving the Habitat Plan, the Purchase Agreement and the Development Agreement were amended to incorporate the elements of the Habitat Plan; and

WHEREAS, in May 2010, the City of Wauwatosa ("City") Common Council approved the Preliminary Business Planned Development for Innovation Park, the change of zoning and the land division by CSM and in September 2010 the following events occurred:

- The City approved the creation of a Tax Incremental Financing District ("TIF") district to fund public infrastructure improvements for Innovation Park.

- UWM waived the three major contingencies of the Purchase Agreement (Preliminary Business Plan Development (i.e.; site plan), the change in zoning, and the land division by CSM), thus eliminating them as a condition of closing.
- The CSM, which legally divides and describes the land to be conveyed to UWM was fully executed and will be recorded in conjunction with the closing.
- Mr. Michael Lovell, dean of UWM's College of Engineering and Applied Science, was named the interim chancellor upon the departure of Chancellor Santiago.
- A $5.4 million federal grant was secured to fund the construction of the "business accelerator" building within Innovation Park.

; and

WHEREAS, in November 2010, the County Board adopted Resolution File No. 10-14(a)(j) extending the Contingency Waiver Date in the Purchase Agreement until December 15, 2010. The extension was granted to solidify the donations necessary to fund the purchase of the County-owned land and to address the remaining closing contingencies in the Purchase Agreement; and

WHEREAS, by letter dated December 15, 2010, UWM waived all the remaining closing contingencies and per the Purchase Agreement agreed to deposit an additional $175,000 of earnest money to the existing $25,000 currently in escrow with the title company (received by the title company on December 17, 2010). UWM indicated in the letter they are in position to make the first $5 million installment payment of the $13.55 million purchase price at closing in early February 2011, but may not be able to raise the second $5 million payment by the one-year anniversary of closing, as required in the Purchase Agreement. UWM requested in the letter that the County consider granting an amendment to the Purchase Agreement that would extend each of the five remaining installment payment dates from closing by twenty-four (24); and

WHEREAS, by subsequent letter dated January 5, UWM outlined their request to extend the installment payment schedule for the remaining $8.55 million of the purchase price as follows:

1. Extend the closing date to February 15, 2011.
2. Extend each of the purchase price installment payment dates by twenty-four months.
3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such

property from the lien of its first mortgage.

4. Provide that gross sale proceeds paid to the County per par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.
7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to Milwaukee County within thirty (30) days of receipt, and credited against the next installment payment due the Milwaukee County.
8. Provide that the County Executive and County Clerk, or other appropriate County official(s) are authorized to execute any and all releases and/or terminations to eliminate the appropriate exceptions to the title commitment for closing.

;and

WHEREAS, at the meeting on January 24, 2011, the Committee on Economic and Community Development recommended the following:

1. Extend the closing date to February 15, 2011, with the initial $5 million payment due at closing.
2. Extend each of the purchase price installment payment dates after closing by twenty-four months as follows:

    - Second $5 million payable on February 15, 2014
    - $887,500 payable on February 15, 2015
    - $887,500 payable on February 15, 2016
    - $887,500 payable on February 15, 2017
    - $887,500 payable on February 15, 2018

3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such property from the lien of its first mortgage.
4. Provide that gross sale proceeds paid to the County per par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.
7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to the County within 30 days of receipt, and credited against the next installment payment due Milwaukee County.
8. Provide that the County Executive and County Clerk, or other appropriate County official(s) are authorized to execute any and all releases and/or terminations to eliminate the appropriate exceptions to the title commitment for closing.

; and

WHEREAS, staff recognizes that the uncertain economic environment has had a material adverse impact on UWM's fundraising ability for the Innovation Park project and the importance of the project to UWM, the County and the region again calls for a unified partnership to accomplish this mutually beneficial objective; and

WHEREAS, each partner is contributing toward the project; the City of Wauwatosa by creation of a $12 million Tax Incremental Financing District for the project infrastructure, the U.S. Department of Commerce with a $5.4 million grant toward construction of the first building and Milwaukee County by conveying the needed land for the project at fair market value, while protecting environmental components of the land; now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby approves the following revisions to the Purchase Agreement and Development Agreement with UWM:

1. Extend the closing date to February 15, 2011, with the initial $5 million payment due at closing.
2. Extend each of the purchase price installment payment dates after closing by twenty-four months as follows:

    - Second $5 million payable on February 15, 2014
    - $887,500 payable on February 15, 2015
    - $887,500 payable on February 15, 2016
    - $887,500 payable on February 15, 2017
    - $887,500 payable on February 15, 2018

3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such property from the lien of its first mortgage.
4. Provide that gross sale proceeds paid to the County per par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.
7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to the County within 30 days of receipt, and credited against the next installment payment due Milwaukee County.
8. Provide that the County Executive and County Clerk, or other appropriate County official(s) are authorized to execute any and all releases and/or terminations to eliminate the

appropriate exceptions to the title commitment for closing.

; and

BE IT FURTHER RESOLVED, the County Executive and County Clerk, or other appropriate County officials are authorized to execute an amendment or an amended Purchase Agreement and Development Agreement, after Corporation Counsel approval, incorporating the aforementioned revisions to the Purchase Agreement and Development Agreement as well as the authority to execute any and all releases and/or terminations to eliminate the appropriate exceptions in the title commitment for closing and the release of aforementioned lands from its first mortgage.

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** January 10, 2011

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** From UWM Innovation Park, LLC requesting an amendment to the Real Property Purchase Agreement for County-owned land in the Northeast Quadrant of the County Grounds in the City of Wauwatosa.

**FISCAL EFFECT:**

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☒ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | -5,000,000 | -887,500 |
| | Net Cost | 5,000,000 | 887,500 |

**DESCRIPTION OF FISCAL EFFECT**

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. An amendment to the Real Property Purchase Agreement is being requested by the Department of Transportation and Public Works. The request is seeking to change the payment schedule by UWM in order to postpone some of the payments further into the future.

B. The change in the schedule of payments would result in a $5,000,000 shortfall in 2011 revenue that was budgeted in a number of capital projects. The change in payment schedule will also result in $887,500 less revenue in 2012 compared to the original agreement. The total nominal value of the original agreement and the amended agreement are each $13,550,000. Since the cash flows under the amended agreement are being received over a longer period of time, the net present value of the amended agreement is $342,615 less than the original agreement.

C. The amended agreement would result in a shortfall of $5,000,000 of revenue that is budgeted in the 2011 Adopted Capital Improvements Budget. The projects that would be impacted are WP174 Parks Major Maintenance ($100,000) (Domes HVAC Repairs & Upgrades), WP186 Parks Naturalization ($61,000), WZ600 Zoo Master Plan ($200,000), WO114 Countywide Infrastructure Improvements ($2,848,382), WO205 Fiscal Automation Program ($65,000), WO444 BHD/MCSO Electronic Medical Records System ($500,000), WO514 War Memorial Window Replacement and Reseal ($42,000), WO515 War Memorial Window Ledge Leak Repairs ($15,300), and WO949 Inventory and Assessment

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

of County Buildings ($1,168,318). In 2012, the amended schedule would decrease anticipated revenue by $887,500 compared the original agreement. The complete schedule of payments is listed below:

| Year Revenue is Recorded | Current Schedule of Payments | | Revised Schedule of Payments |
|---|---|---|---|
| 2010 | $5,000,000 | | $5,000,000 |
| 2011 | $5,000,000 | | $0 |
| 2012 | $887,500 | | $0 |
| 2013 | $887,500 | | $5,000,000 |
| 2014 | $887,500 | | $887,500 |
| 2015 | $887,500 | | $887,500 |
| 2016 | | | $887,500 |
| 2017 | | | $887,500 |

D. The discount rate used for the calculation of the net present value was 2%. This is based on the County's current investment rates. The DAS consulted with the County's Financial Advisors regarding the discount rate.

Department/Prepared By Craig Dillmann

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

## 2011 Projects Finance with UWM Land Sale Revenue

| Project | Description | Miscellaneous Revenue/ Sale of Asset | |
|---|---|---|---|
| WP174 | Parks Major Maintenance - Domes HVAC Repairs & Upgrades | 100,000 | |
| WP18601 | Parks Naturalization | 61,000 | |
| WZ60001 | Zoo Master Plan | 200,000 | |
| WO11401 | O'Donnell Park Improvements | 540,382 | |
| WO11403 | City Campus Facade and Other Inspections | 220,000 | |
| WO11409 | Research Park Infrastructure Improvements | 27,600 | |
| WO11410 | County Grounds Improvements | 120,000 | |
| WO11411 | Courthouse Complex Improvements | 996,000 | |
| WO11412 | HOC Infrastructure Improvements | 62,400 | |
| WO11413 | DHHS Infrastructure Improvements | 6,000 | |
| WO11414 | Senior Center Infrastructure Improvements | 36,000 | |
| WO11415 | Trimborn Farm Infrastructure Improvements | 24,000 | |
| WO11416 | Transit Infrastructure Improvements | 115,200 | |
| WO11417 | Parks Infrastructure Improvements | 466,800 | |
| WO11418 | Zoo Infrastructure Improvements | 234,000 | |
| WO20502 | Fiscal Automation Program | 65,000 | |
| WO44401 | BHD/MCSO Electronic Medical Records System | 500,000 | |
| WO51401 | War Memorial Window Replacement and Reseal | 42,000 | |
| WO51501 | War Memorial Window Ledge Leak Repairs | 15,300 | |
| WO94901 | Inventory and Assessment of County Buildings | 1,168,318 | net of airport |
| | **Total Projects Funded with UWM Land Sale Revenue** | **$5,000,000** | |

1440 East North Avenue
Milwaukee, WI 53202

(414) 906-4640
(800) 654-0434
(414) 906-4680 fax

President
David H. Gilbert
(414) 906-4670

January 5, 2011

Craig C. Dillmann
Manager of Real Estate Services
Milwaukee County
2711 West Wells Street, 5th Floor
Milwaukee, WI 53208

Dear Craig:

Re: July 1, 2009 Purchase Contract for Northeast Quadrant of the Milwaukee County Grounds (the "Contract")

As you know, UWM Innovation Park, LLC is prepared to move forward and close on the purchase of the approximately 89 acre parcel located in the northeast quadrant of the Milwaukee County grounds. Pursuant to my December 15, 2010 letter to Chairman Holloway (copy attached), we waived the remaining contingencies under the Contract and deposited an additional $175,000 of earnest money with Chicago Title on December 17, 2010.

For the reasons stated in my December 15 letter, we respectfully request that Milwaukee County approve an amendment to the Contract during its January/February 2011 legislative cycle that would extend each of the payment dates for the remaining installments of the purchase price by twenty four months. Such an extension will in no way slow down our fundraising efforts for this project. It is our desire to pay the purchase price in full as soon as possible, and (subject to preliminary retention of some funds for upfront operating expenses and recoupment of advances for the initial purchase price) all philanthropic funds raised for acquisition of this property will be paid promptly to Milwaukee County as and when received, irrespective of the installment payment dates.

Moreover, as you are also aware, we are already in the process of marketing the Eschweiler parcel for acquisition and redevelopment by a third party developer. We have informed the group of developers who have expressed interest in this parcel that we will want to close the sale of the parcel during the first half of 2011. A substantial portion of the proceeds from this sale will be paid to Milwaukee County. We will agree to apply the sale proceeds due the County from this parcel (as well as all proceeds due the County from other land sales at UWM Innovation Park) as a credit against the last installment payments due under the Contract. This will have the effect of accelerating the last installment payment date (possibly to a date earlier than the last date currently provided for under the Contract) as well as providing a flow of funds to the County starting in 2011, well in advance of the next installment payment date.

In addition to addressing the extension of the installment payment dates and the application of sale proceeds, we believe it is important to establish clear mechanisms for obtaining releases of parcels of land from the County's first mortgage lien in the event of a land sale or in conjunction with dedications to the City of Wauwatosa or utility companies for infrastructure installation. Accordingly, here are the specific amendments to the Contract that we request be adopted in order to accommodate all of the foregoing:

1. Extend the closing date to February 15, 2011.
2. Extend each of the purchase price installment payment dates by twenty four months.

3. Provide that 75% of all gross sale proceeds from a sale of real property in UWM Innovation Park shall be paid to Milwaukee County in consideration of the County's release of such property from the lien of its first mortgage.
4. Provide that gross sale proceeds paid to the County pursuant to par. 3, above, shall be credited against the outstanding installment payments due the County in the inverse order of the due dates for such installment payments, thereby shortening the payment schedule.
5. Provide that in consideration of UWM Innovation Park, LLC's payment of the initial $5 million at closing, Milwaukee County will release from its first mortgage the amount of land necessary to construct the "accelerator building" being funded by a U.S. Economic Development Administration grant (not to exceed two acres).
6. Provide that the County will agree to release from its first mortgage those portions of the site that the City of Wauwatosa requests be dedicated to the City or must be granted to a utility company to accommodate the installation of public improvements and site infrastructure, such as streets, sewer, water, gas and electric.
7. Provide that all philanthropic funds in excess of $1.8 million received for the acquisition of the Innovation Park property be paid to Milwaukee County within thirty days of receipt and credited against the next installment payment due Milwaukee County.
8. Provide that the County Executive or County Clerk, or other appropriate County official(s), are authorized to execute any and all releases and/or terminations to eliminate the appropriate exceptions to the title commitment for closing.

Craig, we appreciate Milwaukee County's ongoing support and patience. This has been a long process. Once we obtain title to this property, once we commence construction of the accelerator building, once the City of Wauwatosa initiates the installation of needed infrastructure and once redevelopment activities commence on the Eschweiler parcel, UWM Innovation Park will no longer be just a concept; it will be a reality. While we believe that obtaining the extended installment payment dates is fiscally prudent for us, we hope that we will be able to perform at a significantly faster pace. And we believe that our aggressive marketing of the Eschweiler parcel and the prepayment schedule we have proposed will provide a significant infusion of cash to the County well in advance of the date that our next payment is due.

If you have any questions or require further information or clarification, please do not hesitate to give me a call.

Yours very truly,

UWM Innovation Park, LLC

By: UWM Real Estate Foundation, Inc., sole member

By:
David H. Gilbert, President

CAMBRIDGE COMMONS
1440 East North Avenue
Milwaukee, WI 53202

DAVID H. GILBERT
President
(414) 412-4140

December 15, 2010

Mr. Lee Holloway
Chairman, Milwaukee County Board of Supervisors
Milwaukee County Courthouse
901 North 9th Street, RM 201
Milwaukee, Wisconsin 53233

Dear Chairman Holloway:

This letter will confirm that UWM Innovation Park, LLC waives all of the remaining contingencies in the July 1, 2009 Purchase Contract for the Northeast Quadrant of the Milwaukee County Grounds. In accordance with the terms of the contract, we will deposit an additional $175,000 of earnest money with the title insurance company no later than Monday, December 20 (three business days following the date of our waiver).

As you know, the current economic conditions have had a material impact upon our ability to fundraise for this endeavor. Fortunately, we are in a position to make the first $5 million installment of the purchase price. We are concerned, however, that we may not be able to raise the second $5 million installment within the twelve months required under our contract. Accordingly, we respectfully request that the County consider an amendment to the purchase contract that would extend each of the payment dates for the remaining installments of the purchase price by twenty four months. We understand that the legislative cycle of the County Board would allow such an amendment to be considered and approved by the first week in February, 2011. If such an amendment were approved, we could close this transaction in early February without the specter of a potential default which we clearly wish to avoid. We therefore hope that the County will give our request very serious consideration. Our expectation is that once we close on the property and begin construction of the accelerator building and other activities, our fundraising capabilities will be enhanced and we will be able to accelerate the payments due the County. But our experience to date is that we can take nothing for granted in today's financial climate.

We are very appreciative of the cooperation and assistance you and the entire County Board of Supervisors have provided throughout this complex transaction. We firmly believe that UWM Innovation Park is one of the most important economic development initiatives currently underway in Southeast Wisconsin and we are committed to its success. We look forward to working together with you in this endeavor.

Yours very truly,

UWM Innovation Park, LLC

BY The UWM Real Estate Foundation, Inc., sole member

By: _____
David H. Gilbert, President

Cc: Mr. Craig Dillmann
Mr. Michael Orgeman
Mr. John Schapekahm

# COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

**DATE:** November 16, 2010

**TO:** Chairman Lee Holloway, County Board of Supervisors

**FROM:** Cynthia Archer, Director, Department of Administrative Services

**SUBJECT:** **UPDATES TO SECTION 56.30 OF THE MILWAUKEE COUNTY ORDINANCES**

## Issue

An audit of professional services contracting was issued by the County Board Department of Audit in December, 2008. That audit recommended that the Department of Administrative Services (DAS) update the Administrative Manual in regards to professional services contracting and prepare several technical corrections to Section 56.30 of the Milwaukee County General Ordinances. Before an update of the Administrative Manual section can be finalized, the attached amendments to the County Code must be adopted.

## Background

The 2008 Audit of Professional Services recommended that DAS bring forward the following technical corrections to s. 56.30:

- Include a provision requiring administrators to document in the contract file the justification for choosing to utilize a professional service contractor.
- Include a provision that instructs administrators to seek guidance from s. 1.13 of the Administrative Manual to help ensure compliance with professional service contract language and other requirements.
- Revise s. 56.30 to clarify the contract dollar thresholds which necessitate reports to the County Board of the decision by department administrators not to utilize the RFP changes.

The attached resolution/ordinance implements these audit recommendations. In addition, it removes references to the General Assistance Medical Program (GAMP) which is no longer in existence and updates other references as appropriate.

The Audit also recommended that DAS convene a workgroup to clarify the definition of a professional service and to distinguish professional services under Section 56.30 from contractual services governed by Chapter 32 of the Code. That workgroup has had an opportunity to review the proposed ordinance revisions.

## Next Steps

Once the County Ordinances have been updated, DAS will proceed with an update of s. 1.13 of the Administrative Manual. In addition to ordinance changes proposed here, the following resolutions and amendments to the Ordinance will be incorporated into the Administrative Manual:

| Section | Date of Action | Summary of Action |
|---|---|---|
| 56.30 (5)(d) | Feb, 2004 | Disclosure requirements applied to contract administrators and evaluation panel members |
| 9.05(2)(k) Ethics | Spt, 2008 | Restrictions on campaign contributions to county officials with approval authority |
| 42 DBE | May, 2009 | Update to Chapter 42, DBE Participation |
| 56.30 (5)(b) | Spt, 2009 | RFPs and Contracts must include the foundation and mechanism for billing |
| Reso 90-46 | Jan, 2009 | Requires that CBDP representative be represented on the evaluation panel for all PS contracts over $100,000 |
| 32, 56.30 | May, 2010 | Contracts which result in layoff must be bid subject to 56.30 |

**Fiscal Impact**

There is no fiscal impact as a result of the proposed actions.

**Recommendation**

Approve the attached resolution and ordinance updating s. 56.30 of the General Ordinances of Milwaukee County.

Prepared by:
Davida Amenta
278-5330

_____
Cynthia Archer, Director, Department of Administrative Services

pc: Tom Nardelli, County Executive's Office
Rick Ceschin, Senior Research Analyst
Doug Jenkins, Department of Audit
Scott Manske, Department of Administrative Services

File No. 10-449
(Journal, December 16, 2010)

(ITEM 21) From the Fiscal and Budget Administrator-DAS, requesting authorization to amend Chapter 56.30 of the Milwaukee County General Ordinance, by recommending adoption of the following:

**A RESOLUTION/ORDINANCE**

WHEREAS, an audit was performed of professional service contracting by the Department of Audit and a report was issued by them in December 2008; and

WHEREAS, the audit contained certain recommendations which would require changes to County Ordinance Section 56.30 on professional services; and

WHEREAS, a workgroup was formed to review the recommendations and propose changes to County Ordinances, and to Administrative Procedure 1.13 on professional services; and

WHEREAS, at its meeting on December 9, 2010, the Committee on Finance and Audit recommended approval of the said request (vote 4-1); now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby amends Chapter 56 of the Milwaukee County Code of General Ordinances by adopting the following:

**AN ORDINANCE**

To amend Sections 56.30 (1), (2), (4) and (5) of the General Ordinances of Milwaukee County regarding professional services.

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

SECTION 1. Sections 56.30 (1) of the General Ordinances of Milwaukee County is amended as follows:

(1) *Definitions.* The meanings of certain terms used in this section are as follows, unless the context otherwise provides:

(a) *Professional services* means services, the value of which is substantially measured by the professional competence of the person performing them and which are not susceptible to realistic competition by cost of services alone. The services provided must be materially enhanced by the specific expertise, abilities, qualifications and experience of the person that will provide the service. Professional services shall typically include services customarily rendered by architects; engineers; surveyors; real estate appraisers; certified public accountants; attorneys; financial personnel; medical services, except when such services are delivered to county employees as part of a workers compensation claim;system planning; management and other consultants; and services for promotional programs. Administrative Procedure 1.13 on professional services provides additional definition regarding services that meet professional service contracting requirements under this ordinance. If a department administrator or other department personnel is uncertain if their contract should follow professional service contracting provisions under this ordinance, the department administrator must make a request of Corporation Counsel for final clarification, before beginning the contracting procedures.

(b) "Services" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than usual reports and/or drawings which are incidental to the required performance.

(c) "Request for proposal" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(d) "Contractor" means a firm or individual who formally undertakes to do anything for another.

(e) "Contract" means an agreement between two (2) or more persons to do or not to do something.

(f) "Medical services" means services provided by a licensed or recognized health care professional, professional group, ambulance or medical transportation services operated by governmental units, medical laboratories or companies of medical supplies or equipment to ~~individuals who qualify for assistance under the general assistance medical program or~~ county employees whose injury is considered a workers compensation claim. Hospitals, community-based clinics, faculty physicians and surgeons or other physicians operating from Froedtert Memorial Lutheran Hospital, nonmunicipality

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operated ambulance and medical transportation providers are excluded from this definition.

(g) "Service Contract" as defined in section 32.20 (17) means an agreement for services where an existing County position will be abolished or when an existing position will be unfunded or where a County employee will be subject to layoff or reduced work week hours which are primarily related to staff services including, but not limited to, housekeeping, security, landscaping, maintenance and other non-professional services.

SECTION 2. Sections 56.30 (2) of the General Ordinances of Milwaukee County is amended as follows:

(2) Policy

(a) *General Policy Statement*. All county departments and institution administrators are responsible for procuring professional services and for soliciting, negotiating and entering into service contracts as defined in s. 32.20(17) in accordance with the provisions of this section. However, the office of the county executive and the county board shall be exempt from the provisions contained herein as shall be the department of administration for the purpose of securing credit rating services related to debt issuance and administration.

(b) *Disadvantaged business enterprise requirement.* All County departments and institutions administrators are required to notify the disadvantaged business development (CBDP) division in writing prior to entering into professional services contracts and service contracts as defined in s. 32.20(17). Annual percentage goals for DBE participation on professional services contracts will be established as set forth by county ordinance. The procedures to be followed by departments regarding DBE participation shall conform to provisions as contained in chapter 42. No professional services contract or service contract as defined in s. 32,20(17) shall be issued without review and written approval by the CBDP division that all provisions of chapter 42 regarding disadvantaged business participation have been met.

(c) *Fiscal Constraint Statement*. Notwithstanding any provisions of section 56.30, during a period of fiscal constraint the county board may, by resolution, adopt a procedure which requires committee on finance and audit review and county board

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approval of all professional services expenditures prior to execution of said contracts.

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(d) *Reference to ordinance and administrative manual.* When a county department or institution is preparing to begin a contract for professional services the department should follow the ordinances of this chapter 56.30, chapter 42 on the requirements for using disadvantage business enterprises in county contracting, including professional services, and administrative manual section 1.13, which provides further guidance on complying with professional service contracting requirements.

(e) *Justification for using professional services.* Contract administrators must document in the contract file the justification for utilizing a professional service contract as opposed to completing the work using county staff. This justification may or may not employ a formal cost benefit analysis, depending on the circumstances.

SECTION 3. Sections 56.30 (4) (b) (4) of the General Ordinances of Milwaukee County is amended as follows:

(4) County board approval is not required for reimbursement for medical services as defined under subsection 56.30(1)(f) when those services are provided ~~to general assistance-medical program clients in accordance with section 32.90 or~~ to county employees as a workers compensation claim provided that sufficient funds are available at the time the invoice for service is submitted in the appropriate expenditure amount.

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~~(a) The general assistance-medical program is specifically excluded from issuing payments to any hospital, community based clinic, faculty physicians and surgeons or other physicians operating from Froedtert Memorial Lutheran Hospital, non-municipality operated ambulance or medical transportation provider unless a specific contract for such service has been reviewed and approved by the county board. The general assistance-medical program is exempt from the requirement to issue a request for proposal as defined in subsection 56.30(5) for services provided by hospitals, ambulance or medical transportation providers. The general assistance-medical program must issue a request for proposal whenever soliciting services which could be provided~~

~~by a community based clinic, a primary care clinic, or any service which could be construed as a primary medical service.~~

~~(b)~~ (a) The risk management division is allowed to issue payments to hospitals whenever services have been rendered to county employees as part of a workers compensation claim.

SECTION 4. Sections 56.30 (5) of the General Ordinances of Milwaukee County is amended as follows:

(5) *Request for proposal.*

(a) *When required.* When it is estimated that a contract for professional services has a value of ~~twenty~~ fifty thousand dollars ~~($20,000.00)~~ ($50,000.00) and over, it is required that a request for proposal (RFP) be used to attempt to solicit a minimum of three (3) proposals. Department administrators shall give appropriate notice to prospective vendors of services to be retained. At a minimum, such notice shall include publication of an ad in a newspaper serving the Milwaukee area. The use of an RFP is discretionary for any professional services contract with a value of less than ~~twenty~~ fifty thousand dollars ~~($20,000.00)~~ ($50,000.00) If an RFP is used or not, it still is required to document the process and the reasons shall be documented in writing by the administrator and retained in departmental files for a period of seven (7) years after contract completion. Documentation shall include the RFP, memos, proposals, score sheets, analyses, contracts and any other document used in determining the award of a contract.

(1) For a contract with an estimated value between ~~twenty~~ fifty thousand dollars ~~($20,000.00)~~ ($50,000.00) and one hundred thousand dollars ($100,000.00), the request for proposal procedure need not be used if it is determined by an administrator to be cost effective to the county not to seek proposals. Such action shall be reported, in writing, with an explanation as to the benefits derived from not seeking proposals, to the county board when the contract is submitted for approval.

(2) The request for proposal procedure need not be used for a contract with an estimated value of ~~twenty~~ fifty thousand dollars ~~($20,000.00)~~ ($50,000.00) or more, if immediate action is required to preserve property or protect life, health or welfare of persons. Such action shall be reported in writing

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within forty-eight (48) hours after the initial emergency action to the county board, county executive and department of administration. Payments shall not be restricted by normal budget limitations. Appropriation transfers, if required, shall be initiated in accordance with fiscal procedures.

(3) The request for proposal procedure must be used for all contracts with an estimated value of one hundred thousand dollars ($100,000.00) or more unless action is required to protect property or protect life, health or welfare of persons, or in circumstances where contractual services are approved by specific county board action.

(b) *Content.* The request for proposal shall contain the evaluation criteria which will be used to select the successful contractor. The relative importance of each of these items will depend to some degree on specific services being sought. It is essential that the RFP enumerate the evaluation criteria which will be used to select the successful contractor. The RFP shall also include the foundation and mechanism for billing for any professional service.

(c) *Evaluation procedure.* More than one (1) person shall evaluate all proposals. Oral presentations should be used to supplement the written proposal if it will assist in the evaluation procedure. The firms to be invited to make an oral presentation can be determined after the initial review and ranking of the proposals based on the criteria outlined in the RFP.

(d) *Disclosure.* Contract administrators and evaluation panel members, or potential members, are required to fully disclose any experience, contact or relationship with bidders that would create a potential conflict, or the appearance of a conflict, in awarding or managing a contract. A conflict of interest includes a financial or business relationship or close personal or family relationship with a potential vendor. Such disclosure shall be presented to the person selecting the evaluation panel, and the administrator of the department letting the contract, or the administrator's appointing authority. The department administrator, or the administrator's appointing authority, shall review the disclosure to determine whether to disqualify the disclosing person from the process. If, in the administrator's opinion, or the opinion of the appointing authority, the disclosure does not justify disqualification, the rationale for making that determination must be documented and included in the

department's files for the contract and shall be retained as required under subsection (a) of this section. The provisions of this section are to be included in the Milwaukee County Administrative Procedures Manual. All the provisions set forth in the Milwaukee County Code of Ethics are in full force and effect and are not abrogated in any way by these requirements.

SECTION 5. This ordinance shall become effective upon passage and publication.

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**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** 10/11/10

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** Proposed Ordinance Revision Regarding Section 56.30 of the Miwaukee County Ordinances

**FISCAL EFFECT:**

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|---|---|---|---|
| **Operating Budget** | Expenditure | 0 | 0 |
| | Revenue | 0 | 0 |
| | Net Cost | 0 | 0 |
| **Capital Improvement Budget** | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

**DESCRIPTION OF FISCAL EFFECT**

**In the space below, you must provide the following information. Attach additional pages if necessary.**

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Adoption of the proposed resolution/ ordinance will accomplish several technical corrections to s. 56.30 of the MCGO as recommended by the Department of Audit in their "Audit of Professional Services Contracting" dated December 2008. It also grants the Director, Department of Administration, authority to require a department to re-bid a contract if it was incorrectly bid under a Code Section other than s. 56.30.

B. No associated costs, savings, or revenues.

C. This is a procedural change only and has no budgetary impacts.

D. None.

Department/Prepared By DAS - Fiscal

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☒ Yes ☐ No

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.