

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN SANTA FE COUNTY AND FIRST NATIONAL SANTA FE  
TO PROVIDE BANKING SERVICES**

**THIS AGREEMENT** is made and entered into this 30<sup>th</sup> day of June 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and First National Bank of Santa Fe, N.A. d/b/a First National Santa Fe, whose principal place of business is located at 2101 Mountain Road, Albuquerque, NM 87104, hereinafter referred to as the "Contractor".

**WHEREAS**, the County Treasurer's Office handles all banking, treasury, and investment activities and the County Finance Department handles accounts payable, accounts receivables, payroll, and financial reporting functions; and

**WHEREAS**, it is the County's intention to minimize banking costs, improve operational efficiency and maximize its investment capabilities and requires banking services to achieve these goals; and

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal Request for Proposals (RFP) No. 2015-0074-TR/IC for the provision of banking services; and

**WHEREAS**, based upon the evaluation criteria established within the RFP for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; and

**WHEREAS**, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**NOW, THEREFORE**, it is agreed between the parties:

**1. SCOPE OF WORK**

**A. GENERAL STATEMENT OF BANKING SERVICES REQUIRED**

- 1) The banking services shall be directed towards five major goals:
  - a) The safety and liquidity of County funds;
  - b) Maximum potential for interest earnings on operational funds;
  - c) The efficient utilization of available banking services;
  - d) The responsiveness and ability to provide high-quality banking services;
  - e) Minimization of banking costs for the County.
- 2) Collateral: The County requires a depository that is fiscally strong and able to provide the required services on an uninterrupted basis. County funds are public funds and require collateralization in accordance with NMSA, Section 6-10-21 and NMAC 2-60-4, in general, and as specifically delineated by the County's Investment Policy. If funds are not swept to an agreed upon, SEC registered money market fund or overnight repurchase agreement account, all un-invested time and demand funds, which exceed current FDIC insurance coverage, Santa Fe County requires collateralized at 102% with securities specifically authorized pursuant to NMSA 6-10-7 and by the County's Investment Policy. Authorized collateral shall include only:

- a) Obligations of the U.S. Treasury.
- b) Obligations of U.S. Agencies and Instrumentalities.
- c) Irrevocable Letters of Credit Issued by the Federal Home Loan Bank of Dallas.

An independent third party institution, outside the bank's holding company, shall hold all securities pledged to the County, as collateral. Pledged securities shall be held on the books of the third party institution in the name of the County. The pledging bank will be contractually liable for securing and reporting the monthly market value of pledged securities, and for the continuous monitoring and maintenance of required margin levels. The pledging bank shall provide a monthly listing of pledged securities to the County Treasurer which shall include market values and complete security descriptions. The Contractor shall identify the third party institution that it intends to utilize for collateralization services, and shall fully disclose all associated costs for providing such services.

The depository shall be required to agree to all collateral requirements and the County's Investment Policy.

## B. OVERVIEW

The County currently maintains twenty-six (26) bank accounts with our custody bank. The approximate average daily balances for these accounts are outlined below:

	Account Description	Account Type/Notes	Interest Bearing		Acct Analysis		Approx. Avg. Daily Bal	Statement Cycle
			Yes	No	Yes	No		
1.	SFC Operations (MAIN)	Interest posted to account	X		X		15,000,000	Weekly
2.	County Treasurer	ZBA Daily Sweep from Opers.		X	X		0	Monthly
3.	Credit Card	ZBA Daily Sweep to Opers.		X	X		0	Monthly
4.	Lockbox	ZBA Daily Sweep to Opers.		X	X		0	Monthly
5.	Warrant	ZBA Daily Sweep from Opers.		X	X		0	Daily
6.	Fire Department	Sweep from Opers. (as needed)		X	X		2,000	Monthly
7.	County Manager	Sweep from Opers. (as needed)		X	X		1,000	Monthly
8.	Corrections Maintenance	Sweep from Opers. (as needed)		X	X		2,000	Monthly
9.	Inmate Trust Fund	Interest swept to Opers monthly	X		X		400,000	Monthly
10.	Juvenile Trust Fund	Interest swept to Opers monthly	X		X		10,000	Monthly
11.	Bail Bond	Interest posted to account	X		X		45,000	Monthly
12.	SFC Housing Services Escrow	Interest posted to account	X		X		155,000	Monthly
13.	SFC Public Housing Escrow	Interest posted to account	X		X		37,000	Monthly
14.	Sheriff Bond	Interest posted to account	X		X		250,000	Monthly
15.	Sheriff Forfeiture	Interest posted to account	X		X		30,000	Monthly
16.	Sheriff Writ	Interest posted to account	X		X		11,000	Monthly
17.	GOB 2009 Series	Interest posted to account	X		X		1,300,000	Monthly
18.	SFC Housing Authority	Interest posted to account	X		X		7,000,000	Monthly
19.	Road Projects	Interest posted to account	X		X		95,000	Monthly
20.	Santa Fe Affordable Housing Fund	Interest posted to account	X		X		1,605,000	Monthly
21.	GOB 2011 Refunding Series	Interest posted to account	X		X		28,000	Monthly
22.	GOB 2013 Series A	Interest posted to account	X		X		550	Monthly
23.	Savings - Operations	Interest posted to account	X		X		20,000,000	Monthly
24.	SFC Region III HIDTA	No interest pd; no fees charged		X		X	8,500	Monthly
25.	SFC Region III JAG	No interest pd; no fees charged		X		X	3,000	Monthly
26.	Flexible Spending Trust	No interest pd; no fees charged		X		X	15,500	Monthly

Funds are “swept” from the Main Operations account to the Warrant account and to the County Treasurer account to cover disbursements. The Main Operations account has been used as a “clearing” account for receipt of funds from matured investments, before initiating a next-day transfer-out of those funds. The Main Operations account also receives “sweeps” of funds initially deposited in the Lockbox account, when active, and the Credit Card account, daily.

Most bank activity will occur in the Main Operations Account. This account may be swept to a SEC registered money market fund, or an overnight repurchase agreement account whenever the County Treasurer determines a need for such an account; however, the County has the right to sweep any, or all, accounts as deemed necessary to accommodate the County’s business processes. ACH (both incoming and outgoing), wires and securities transactions occur, for the most part, in the Main Operations Account, but can occur in both the County Treasurer account and the SFC Housing Authority account. Positive Pay has been established for Payroll and Accounts Payable checks clearing the Warrant Account, and for checks issued from the County Treasurer account. Additionally, Positive Pay has been established for the Inmate Trust Fund account, and may eventually be required on all accounts. Reconciliation capabilities are currently required for all accounts.

- 1) Gross receipt taxes are collected through the State and received and deposited monthly by ACH or Wire transfer. An average of \$6.5 million is received monthly, usually on the 15<sup>th</sup>.
- 2) Approximately \$ 5.0 million is processed in payables monthly.
- 3) The County has a bi-weekly payroll for approximately 957 employees totaling an average \$1.5 million. The County requires ACH payroll transactions for approximately 772 employees averaging \$1 million on a bi-weekly basis.

The County anticipates that it will maintain the current account structure. All account balance decisions will be made by the County Treasurer.

Any or all County funds may be maintained and invested by the County outside of this Agreement. The County Treasurer will be under no obligation to maintain funds in the bank except under a compensating balance situation.

Primary responsibility for administration of this Agreement within the County organization resides with the County Treasurer who shall monitor the bank’s performance against provisions of the Agreement, including the Contractor’s submitted proposal. The County Treasurer shall be responsible for administering the agreement with respect to day-to-day activities, including deposits and withdrawals, ACH and wire transactions, maintenance of account balances, daily reporting, etc. A list of County personnel authorized to deal directly with the bank shall be provided to the Contractor. The Contractor shall provide a similar list of key personnel authorized to make decisions for the bank to the County.

### C. REQUIRED BANKING SERVICES

#### 1) Consolidated Account Structure with Sweep Mechanism

The County’s banking transactions occur, for the most part, in the Main Operations account. This account serves as the “master” account for automated sweeps between operations-related accounts. Contractor shall automatically sweep funds both “from” and “to” specified ZBA or target-balance accounts, on both a daily basis and, to cover checks (warrants) in assuring that all its funds are earning the best, then-current interest rate

available at all times. The County may require the ability to sweep to a money market fund or overnight repurchase agreement in order to procure this full investment goal. A SEC registered government, or enhanced government, money market fund or overnight repurchase agreements must be used for the sweep. If the bank has a valid alternative to a SEC money market fund it should be proposed. A repurchase agreement with the bank is acceptable as a sweep investment vehicle as long as the rate is competitive with fed funds and the securities purchased are equal to AAA rated government securities or U.S. Treasuries.

2) Automated Cash Management Information Access

The County requires on-line cash management services and daily balance reporting for timely access to balance information and transactions. Minimum automated services shall comply with the foregoing and shall include:

- a) prior day summary balance reporting on all accounts,
- b) initiation and monitoring of stop pays,
- c) ACH fraud filter exception transactions,
- d) positive pay exception transactions,
- e) initiation and monitoring of account transfers, and
- f) initiation and monitoring of wire transfers i.e. Federal Government transfers from DOJ, HUD, etc.

- 3) All statements shall be available on-line. Daily reporting shall include descriptive and image detail on all transactions, and summary account reporting shall include both ledger and collected balances, and include one-day float.

4) Standard Deposit Services

Standard commercial deposit services are required for all accounts. Deposits will consist of coin, currency and endorsed checks. The County requires same bank day credit on all cash (coin and currency) deposits. Coin may be deposited loose, or partially filled bags. Coins will not be rolled. The County averages one daily deposit by armored car. Locking deposit bags are required. The County will not encode checks. The County Treasurer may have a recurring need for strapped cash and coins.

All deposits received by the bank's established deadline shall be processed for same day credit. The Contractor shall also guarantee immediate credit on all incoming wire transfers, US Treasury checks, ACH transactions, on-us items, and U.S. government security maturities and coupon amounts.

The County expects all checks to clear based on the bank's current published availability schedule, but, any other availability policies shall be provided to the County. Failure to credit County accounts in a timely fashion shall require interest payment reimbursement to the County at the then current daily Fed Funds rate.

5) Standard Disbursing Services

Standard disbursing services for all accounts are required to include the payment of all County checks without charge upon presentation. Checks are written for operations, payroll and accounts payable through the Warrant Account and County Treasury

Accounts. Checks are also issued from the Inmate Trust Fund, Juvenile Trust Fund, Sheriff's Bond Account, Sheriff's Writ Account and SFC Public Housing Escrow.

6) Positive Pay

To safeguard against fraudulent checks, positive pay services shall be provided. Positive pay is currently used for payroll and accounts payable in the Warrant Account. Positive pay is also used in the County Treasurer's Account, and the Inmate Trust Account. The County requires positive pay services to provide complete indemnification for fraudulent checks.

7) Wires and Funds Transfer Services

The County currently has approximately four outgoing repetitive wires, per month, from the main operations account. Some outgoing, non-repetitive wires for purchases, and some non-repetitive incoming wires for revenue, may also be required. Incoming wire transfers shall receive immediate same day collected credit. Wire initiation and monitoring shall be available on-line. The County requires compensation for delays caused by bank errors at the day's Fed Funds rate.

8) Optical Imaging

The County requires optical imaging for all accounts that issue checks.

9) ACH Services

ACH services are required. ACH transactions (both incoming and outgoing) are currently being processed in both the main operations, and the County Treasurer's accounts. The County requires the ability to initiate both debit and credit ACH transactions in order to accommodate the County's business processes for direct deposit, vendor payments, distribution of property tax, and utilities and tax billings. The County requires the ability to accept or reject any ACH transactions initiated by anyone other than authorized County personnel.

10) Lock Box

The County requires the Contractor to incorporate a lockbox service for Tax Collections into the banking arrangement but may not choose to use the service. The County currently bills 65,000 customers on a computer generated, bar coded statement, with payment coupons. The Contractor shall create a posting file compatible with the County's software, with data scanned from the payment coupons.

It is critical that the lockbox encoding and reporting provide full information for research on individual checks which are returned or imaged after processing. It is critical that batch references enable the County to facilitate that research. All items processed thru the lock box shall be posted to the credit of Santa Fe County on the same business day.

11) Account Analysis

Monthly account analysis reports shall be provided for each account, together with a consolidated account analysis report by the fifth business day after calendar month end.

Within five business days of receipt of the monthly account analysis (and subsequent approval of the fees by County) the bank may direct debit the designated account for fees due if compensation is being calculated on straight fees.

A complete account analysis shall be required monthly regardless of the payment basis.

12) Monthly Statements

The Contractor shall provide daily, weekly and/or monthly account statements, as needed, on all accounts. Hard copy statements shall include complete supporting documentation. Statements shall be received by the second business day of the succeeding month, and shall be available online.

At a minimum, the following information will be required for each account statement:

- a) Imaged detail of all debit and credit transactions;
- b) Images of all cleared checks;
- c) Full wire and ACH trailer information, if not remitted previously;
- d) Images of all deposit slips
- e) Beginning and ending balances, and average daily balances;
- f) Copies/images of all transactions performed by bank personnel.

13) Account Executive

To insure smooth contract implementation and continuation of services, a specific account executive and a back-up shall be assigned to the County Treasurer's account to coordinate services and expedite the solution of any problem encountered. The account executive shall be available to County staff on banking matters as needed and at regularly scheduled monthly meetings which are required.

14) Overdrafts

Every effort shall be made to eliminate intra-day and inter-day overdrafts.

15) Return Item Debits (Checks/ACH)

Complete information shall be provided for all returned item debits, whether returned check items, or ACH reversals. Original paper copies of all returned checks shall be mailed to the County. Images of all returned checks shall be made available online through account inquiry. Descriptions of ACH reversal shall contain the payee name, reason for return, and the customer reference number as detailed within the original ACH file.

16) Stop Payment Requests

The County currently averages (5) five stop pays a month. An online stop payment process shall be provided by the Contractor.

**17) Courier or Armored Car Service**

The Contractor shall provide courier or armored car services. The courier shall deliver the County Treasurer's deposit to the bank each business day (from one County deposit location).

**13. Merchant Card Services**

The County is currently accepting credit/debit card payments for property taxes, via the Santa Fe County online site, and over-the-counter payments. The Contractor shall create and host a payment site for credit/debit card transactions. Additionally, the County may wish to consider using credit/debit cards in payment of County services not related to property taxes.

**2. ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the reasonable satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

**3. COMPENSATION, INVOICING AND SET-OFF**

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The County reserves the right to utilize either a direct fee basis (per item) or a compensating balance basis (or a combination of each) for payment of services under this Agreement. The County reserves the right to change the fee methodology during the contract period upon no less than 30 days written notice (via email or fax) to the Contractor with the change commencing the first of the next following month. This will enable the County to take advantage of changing interest rate environments.

- a) When a direct fee basis is used as the basis for compensation, fees will be paid as a direct debit to a designated account after a five-day County review and approval of the account analysis charges.

The Contractor shall provide the County with an "account analysis statement" within five business days after calendar month-end. Within five business days of the County's receipt of the monthly account analysis statement, County staff will review the proposed fees, and will either agree or disagree with the amount to be charged. When the County has approved the final monthly account analysis fee, the

Contractor shall initiate a direct debit in the Main Operations account for the agreed upon amount.

- b) When a compensating balance basis is used for the basis of compensation, the County will require monthly carry-over of balances.

All operations-related accounts shall be swept to their targeted compensating balance prior to computation of net monthly banking fees due.

- c) Regardless of the payment methodology a monthly account analysis shall be required.
  - d) All item and account charges shall remain at the price quoted for the duration of this Agreement regardless of changes in service volumes during the term of this Agreement. Should new services be required during the contract period not initially contemplated, those services will be provided at fees not more than the Contractor's then current published rate and must be approved by the County Treasurer. Any changes in fees for the remaining extension periods shall be negotiated and approved by the County Treasurer in writing. The rate increase in any extension period shall not exceed Consumer Price Index (CPI) increases (for the Western Region) during the same period, as reported by the Bureau of Labor Statistics.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach; provided, however, that such time for determination shall not exceed ninety (90) days from the last payment due date for which payment was not made (the "Pertinent Payment Date"). In the event that the County is unable to determine such exact amount of damages upon ninety (90) days from the Pertinent Payment Date, it shall



either (i) immediately remit to the Contractor all funds due from the Pertinent Payment Date to the end of such ninety-day period, or (ii) immediately provide notice of termination of this Agreement.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

### **3. EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for two (2) additional years upon the approval of the County. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

Fees and service charges included in this Agreement shall remain in effect for the initial two-year period; however, any Federal Reserve service charge increase may be passed through to the County upon 30-day written notice. Should new services be required during the contract period not contemplated by this Agreement, those services will be provided at fees not more than the bank's then current published rate. Any changes in fees for the two optional extension periods will be negotiated and must be approved by the County Treasurer in writing. In no instance will the rate increases in extension periods exceed the CPI increases during the same periods as reported by the Bureau of Labor Statistics.

### **5. TERMINATION**

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

### **6. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County,

and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

## **7. INDEPENDENT CONTRACTOR**

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

## **8. ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

## **9. SUBCONTRACTING**

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

## **10. PERSONNEL**

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

## **12. CONFIDENTIALITY**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County. However, if the Contractor is required by any competent governmental or regulatory authority to disclose any such confidential information, then the Contractor will promptly notify the County, to the extent permissible by law. In addition, the Contractor shall cooperate with the County in any commercially reasonable efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded to the confidential information. If, in the absence of a protective order, the Contractor is, as confirmed by the Contractor's legal counsel, compelled as a matter of law to disclose any confidential information, the Contractor may,

without liability under this Agreement, disclose only the part of the confidential information required by law to be disclosed (in which case, prior to such disclosure, the Contractor will advise and consult with the County regarding the nature and wording of such disclosure), and will use commercially reasonable efforts to obtain confidential treatment thereof.

**13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

**14. CONFLICT OF INTEREST**

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**16. ENTIRE AGREEMENT; INTEGRATION**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**17. NOTICE OF PENALTIES**

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

## **19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

## **20. RECORDS AND INSPECTIONS**

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

## **21. INDEMNIFICATION**

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

## **22. SEVERABILITY**

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the parties hereto shall replace such term or condition with a new and mutually acceptable provision that, being valid and enforceable, most closely approximates the original intent of the parties and the economic effect produced by the prior term or condition.

## **23. NOTICES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County  
Office of the County Attorney  
102 Grant Avenue  
Santa Fe, New Mexico 87501

To the Contractor: First National Santa Fe  
Attn: Sam Collins  
2011 Mountain Rd, NW  
Albuquerque, NM 87104

## **24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

## **25. FACSIMILE SIGNATURES**

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

## **26. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

**27. INSURANCE**

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 per aggregate.

**28. PERMITS, FEES, AND LICENSES**

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**29. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,**

The Contractor hereby irrevocably appoints Strategic Growth Bank Incorporated, located at 201 E. Main, Third Floor, El Paso, Texas 79901, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

**32. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

**SANTA FE COUNTY**

Miguel M. Chavy  
Robert A. Anaya, Chair  
Santa Fe County Board of Commissioners

6/30/15  
Date

**ATTESTATION:**

Geraldine Salazar  
Geraldine Salazar  
Santa Fe County Clerk

6-30-2015  
Date



**APPROVED AS TO FORM:**

Gregory S. Shaffer  
Gregory S. Shaffer  
County Attorney

6-29-15  
Date

**FINANCE DEPARTMENT:**

Carole H. Jaramillo  
Carole H. Jaramillo  
Finance Director

6/29/15  
Date

**CONTRACTOR:**

Samuel K. Collins, Jr.  
Signature  
Samuel K. Collins, Jr.  
Print Name

6.29.2015  
Date  
Vice President Public Funds  
Print Title

SFC CLERK RECORD 07/02/2015

# Exhibit A

## FEE SCALE

AFP/TMA Code	Core Banking Services	Unit Description	Monthly Volume	Price per Unit	Estimated Fee
10-99-99	DDA Account Maintenance Fee	Account	20	\$15.00	\$300.00
	DDA Account Statement (hardcopy)	Statement	44	\$0.00	\$0.00
01-00-20	ZBA Master Account Fee	Account	1	\$0.00	\$0.00
01-00-20	ZBA Subsidiary Account Fee	Account	7	\$25.00	\$175.00
01-02-00	Debits Posted	Transaction	1933	\$0.12	\$231.96
01-01-01	Credits Posted	Transaction	273	\$0.50	\$136.50
25-02-02	ACH Debits Posted	Transaction	10	\$0.10	\$1.00
25-02-02	ACH Credits Posted	Transaction	146	\$0.10	\$14.60
10-02-10	On-Us Items	Transaction	1137	\$0.05	\$56.85
10-02-14	Non On-Us Items	Transaction	11017	\$0.09	\$991.53
10-00-15	Cash Deposited	Transaction	2214	\$0.004	\$8.86
10-04-04	Charge Back/Returned Item Fee	Item	22	\$10.00	\$220.00
10-04-00	Charge Back/Returned Item- Remittance of Hardcopy	Item	22	\$10.00	\$220.00
35-03-00	Incoming Wires- Domestic	Transaction	1	\$10.00	\$10.00
35-01-03	Outgoing Wires- Domestic, Manual Process	Transaction	1	\$25.00	\$25.00
35-01-00	Outgoing Wires- Domestic, Initiated Online	Transaction	6	\$15.00	\$90.00
15-04-20	Stop Payments- Manual Process	Transaction	1	\$35.00	\$35.00
15-04-10	Stop Payments- Initiated Online	Transaction	5	\$15.00	\$75.00
50001	Lockbox- Account Maintenance Fee	Account	1	\$97.50	\$97.50
450101	Lockbox- Items Processed & Imaged	Item	3436	\$0.35	\$1,206.04
050530	Lockbox- Exception/Rejected Items Processing	Item	53	\$4.55	\$241.15
50400	Lockbox- Online Retrieval of Check/Coupon Image	Image	1	\$325.00	\$325.00
50424	Lockbox- Transmission of Data File	File	1	\$292.50	\$292.50
20-01-20	Account Reconciliation- Online Site Accessed	Times accessed	2000	\$0.00	\$0.00
151752	Account Reconciliation- Online Retrieval of Paid Check Image	Image	20	\$0.0000	\$0.00
151752	Account Reconciliation- Online Retrieval of Statement	Statement	20	\$0.0000	\$0.00
151752	Account Reconciliation- Online Retrieval of Deposit Slip Image	Image	5	\$0.0000	\$0.00
151752	Account Reconciliation- Online Retrieval of Returned Item Image	Image	22	\$0.0000	\$0.00
151752	Research- Conducted by Bank	Hour	1	\$0.00	\$0.00
	Security Tokens- Online Access	Token	20	\$0.00	\$0.00
15-13-50	CD Rom- Monthly	CD Rom	2	\$25.00	\$50.00
	<b>SUB-TOTAL CORE BANKING SERVICES</b>				<b>\$4,803.48</b>
AFP/TMA Code	Software/Modules/Subscription Fees (as required)	Unit Description	Monthly Volume	Price per Unit	Estimated Fee
	Online Access- Base Fee		20	\$0.00	\$0.00
200200	Account Reconciliation/Activity- Online		20	\$0.00	\$0.00
35999	Wire Access/Transaction Processing- Online		8	\$0.00	\$0.00
151352	Image Retrieval- Online		20	\$0.00	\$0.00
200305	Account Statement-Online Retrieval		20	\$0.00	\$0.00
350124	Transfers Between Internal Accounts- Online		8	\$0.00	\$0.00
25-01-02	ACH Access- Online Debit Trans. (direct deposit, vendor pmt, etc.)		8	\$0.00	\$0.00
25-01-02	ACH Access- Online Credit Trans. (A/R billing)		8	\$0.00	\$0.00
15-00-30	Positive Pay Reporting & Exception Processing- Online		10	\$0.00	\$0.00
50600	Lockbox Access- Transmittal/Image Retrieval		8	\$0.00	\$0.00
	<b>SUB-TOTAL SOFTWARE/MODULES/SUBSCRIPTION FEES</b>				<b>\$0.00</b>
	<b>Other</b>				
	<b>Deposit Coverage Fee</b>		\$ 46,000,000	0.000042	\$1,916.67
	<b>TOTAL ESTIMATED FEES</b>				<b>\$6,720.15</b>

The data provided in this estimate is for illustrative purposes only. Actual account activity, volume, and balances are required to provide real pricing that is specific to each clients' account. An accurate "net charge to your account" will be calculated and will vary based on the actual data resulting from your account activity after the account has been established.



## Exhibit A

### Earnings Credit Calculation

The County may elect to offset all or a portion of assessed service fees with an Earnings Credit that may be generated according to the following formula:

#### Definitions:

- **ACB** (Average Collected Balance) – equals (**ALB - AF**)
- **AF** (Average Float) – the average aggregate amount of uncollected checks during each monthly period
- **ALB** (Average Ledger Balance) – the average aggregate amount of deposit balances during each monthly period
- **DP** (Days in Period) – days during each month
- **ECR** (Earnings Credit Rate) – 0.51%
- **RR** (Reserve Requirement) – a calculation charge corresponding to the percentage of deposit funds that will be held in reserve (typically 10% for the Contractor)

$$\text{Monthly Earnings Credit} = \text{ACB} \times (1 - \text{RR}) \times (\text{ECR} \times (\text{DP}/365))$$

## SIDE LETTER AGREEMENT

This Side Letter Agreement ("Side Letter") to the Cash Management Master Services Agreement entered into by and between First National Bank of Santa Fe, N.A. (the "Bank") and Santa Fe County, New Mexico (the "Customer") (the "Master Agreement") is hereby entered into by and between the Bank and the Customer as of June \_\_, 2015. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Master Agreement.

Whereas, the Customer desires for Bank personnel to act as "Senior Administrators" for the Customer on its behalf with respect to the Services;

Whereas, the Bank wishes to accommodate the Customer's such desire under certain terms and conditions;

Whereas, the parties to this Side Letter wish to memorialize the express terms and conditions of such accommodation by the Bank in a legally binding agreement, while yet preserving intact and in full force all other terms and conditions of the Master Agreement;

Now, therefore, for good and valid consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

### **1. Administrator Services**

a. Customer's use of the Services is subject to the terms and provisions of the Master Agreement, which is hereby incorporated by reference into this Side Letter to the extent such terms and provisions are not modified by this Side Letter. In the event of any conflict between this Side Letter and the Master Agreement, the Side Letter shall control.

b. The Bank personnel designated below agree to serve as Senior Administrators for the Customer's Accounts pertaining to the Services, and by entering into this Side Letter, Customer expressly authorizes such individuals (or their successors as designated in writing by the Bank) to exercise such Senior Administrator authority and privileges on behalf of the Customer, as agents of the Customer:

i. \_\_\_\_\_

ii. \_\_\_\_\_

c. The parties hereto agree that the Bank, in acting as agent for the Customer, shall act solely upon express instructions of the Customer in taking any actions pertaining to the Services in which the Customer is enrolled. Unless otherwise designated in writing to the Bank prior to such actions being taken, the Bank may rely upon the instructions of any person exercising actual or apparent authority on behalf of the Customer to transmit instructions to the Bank, whether or not such person is authorized, and regardless of whether such instructions are given orally, in writing, with or without proper Credentials, or in compliance with any applicable Security Procedures.

## 2. Responsibilities of the Customer

### a. Security.

Notwithstanding anything in this Side Letter or any other instrument to the contrary, the Customer shall remain solely responsible for the protection of its Credentials and any access items governing its Accounts with respect to the Services. The Customer will remain subject in all respects to the requirements of the Master Agreement pertaining to its responsibility to protect its Credentials and to observe all Security Procedures. The Customer shall retain sole liability for any compromise of its Credentials or any breach of Security Procedures.

The Bank shall be responsible only for exercising commercially reasonable standards of care in protecting the Credentials of the Customer in accordance with its internal policies and procedures and any applicable law. The Customer, by entering into this Side Letter, hereby agrees that such standards of care are commercially reasonable.

### b. Accuracy of Information.

The Customer shall bear sole responsibility for:

- i. Ensuring that all instructions transmitted to the Bank are duly authorized;
- ii. Ensuring the accuracy of all instructions transmitted to the Bank; and
- iii. Promptly reporting to the Bank any suspected errors in connection with any transaction relating to the Services, or any suspected compromise of its Credentials.

The Bank shall be responsible for:

- i. Providing any pertinent transaction records to the Customer, upon prior written request given in reasonable fashion, for the purpose of verifying or confirming the instructions received from the Customer; and
- ii. Promptly correcting any transactional errors with respect to the Services that were clearly demonstrated to have been the result of the Bank's failure to comply with a clear and express instruction of the Customer (of which such instruction there is a clear and undisputed record of it having been received by the Bank in timely fashion).

### c. Instruction Procedures.

Customer shall be solely responsible for: (i) limiting the manner in which instructions may be given by the Customer, (ii) designating any persons whom have exclusive authority to give instructions to the Bank, (iii) designating procedures for the proper transmission

and confirmation of such instructions to the Bank, and (iv) verification of its instructions to the Bank. Unless otherwise specified in writing to the Bank, the Customer hereby agrees that the Bank may accept any instructions of any variety from the Customer with respect to its administration of the Services on the Customer's behalf (whether oral or written, authorized or not) and that the Bank is entitled to rely upon the veracity and due authorization of any such instructions that the Bank determines in its sole and absolute discretion to have come from the Customer.

The Bank shall also be entitled, in its sole and absolute discretion, to reject any purported instructions of the Customer which the Bank determines in its sole and absolute discretion to be:

- i. Contrary to policies and procedures of the Bank;
- ii. Contrary to applicable law;
- iii. Not duly authorized by the Customer;
- iv. Unclear or impractical, or
- v. Contrary to the terms, provisions, or capabilities associated with the Bank's provision of the Services.

### **3. Term**

This Side Letter shall be in effect for as long as the Master Agreement is in effect, unless terminated by either party in writing upon thirty (30) days' advance notice. The Bank reserves the right to terminate this Side Letter immediately and without notice under the following circumstances:

- i. The Customer breaches its obligations under this Side Letter or the Master Agreement;
- ii. Any of the representations or warranties given in connection with this Side Letter should be untrue or inaccurate either at the time given or at any time in the future;
- iii. Continued administration of the Customer's Accounts with respect to the Services should at any time become contrary to applicable law or the policies and procedures of the Bank.

### **4. Representations and Warranties of the Customer**

The Customer hereby represents and warrants to the Bank the following:

a. It is duly authorized to enter into this Side Letter by all proper organizational action, and that its signatories are duly authorized to execute this Side Letter on its behalf, such signatures being valid specimens.

b. Entering into this Side Letter will not contravene any of the Customer's organizational or charter documents, nor will entering into this Side Letter contravene any

applicable law or order to which the Customer is subject, nor will entering into this Side Letter contravene any contract or instrument to which the Customer is a party.

c. The Customer fully understands and accepts its obligations under this Side Letter and the Master Agreement, and wishes to be bound thereby.

d. All persons that the Customer shall designate in writing as authorized to transmit instructions to the Bank on its behalf are in fact duly authorized to exercise such authority and persons on whom the Bank may place full reliance.

e. The Customer has sufficient insurance coverage in place (according to industry standards) to protect against risk of loss from erroneous transactions or instructions given in connection with its use of the Services.

f. The Customer will comply with all of its obligations under the Master Agreement and applicable law in performing this Side Letter.

## **5. Disclaimer of Warranty**

IN ADDITION TO ANY AND ALL DISCLAIMERS GIVEN UNDER THE AGREEMENTS PERTAINING TO THE SERVICES, THE BANK AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AND AGENTS HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND (WHETHER EXPRESS OR IMPLIED) IN CONNECTION WITH THE SERVICES OR ITS ADMINISTRATION THEREOF ON BEHALF OF THE CUSTOMER.

## **6. Limitation of Liability**

The Customer hereby expressly agrees that the Bank shall in no way be responsible nor liable for any cause of action or loss arising from or in connection with the content of any instruction transmitted to the Bank. Absent gross negligence or willful misconduct on the part of the Bank, the Customer hereby agrees that the Bank shall bear no liability whatsoever for any causes of action or losses accruing to the Customer that result from or arise in connection with the Bank's compliance with instructions of the Customer.

## **7. Choice of Law**

This Side Letter is to be governed by and enforced in accordance with the laws of the State of New Mexico, without regard for its provisions relating to conflict of laws. In the event of any dispute under this Side Letter, the parties hereto irrevocably submit to the jurisdiction of the First Judicial District Court, Santa Fe County, New Mexico. **THE PARTIES HEREBY ACKNOWLEDGE AND AGREE TO A WAIVER OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH THE JUDICIAL RESOLUTION OF ANY DISPUTES ARISING IN CONNECTION WITH THIS AGREEMENT.**

## **8. Severability**

If any of the terms or provisions of this Side Letter are found to be invalid or unenforceable, this Side Letter shall remain in effect, and such invalid or unenforceable provision shall be replaced with a valid or enforceable one that is negotiated in good faith by the parties to accomplish the same general purpose and intent of this Side Letter to the extent possible. The parties also hereby agree that in the event that a court of competent jurisdiction should find any such provisions of this Side Letter invalid or unenforceable, that such court should endeavor to replace such invalid or unenforceable provision with one that gives effect to the original intent of the parties in forming this Side Letter, to the fullest extent possible.

## **9. Entire Agreement**

The terms and provisions of this Side Letter hereby represent the entire agreement of and supersede any and all prior or contemporaneous agreements or understandings between the parties with respect to the matters addressed herein, regardless of whether they were oral or written.

## **10. Counterparts**

This Side Letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

[Signature Page Follows]

In witness whereof, the parties below hereby execute and enter into this Side Letter as of the date dated hereof.

**SANTA FE COUNTY**

By: Miguel M. Chavez  
Name:  
Title: Commissioner

**FIRST NATIONAL BANK OF  
SANTA FE, N.A.**

By: [Signature]  
Name: Samuel R. Collins, Jr.  
Title: Vice President Public Funds

Approved as to form  
Santa Fe County Attorney  
By: [Signature]  
Date: 6/29/15  
Cecilia Garamulo  
6/29/15

**ATTEST:**

Geraldine Salazar  
**GERALDINE SALAZAR**  
**COUNTY CLERK**  
6-30-2015



SFC CLERK RECORD07/02/2015



## CASH MANAGEMENT SERVICES MASTER AGREEMENT

This CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") is entered into by and between First National Bank of Santa Fe, N.A. and Santa Fe County, New Mexico ("Customer"), and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). Pursuant to the terms and conditions of this Agreement, Customer has engaged Bank to perform the Services selected by Customer on the applicable Enrollment Form, signed by one or more Authorized Representatives of Customer. This Agreement controls the general terms and conditions for the use of the Cash Management Services provided by Bank and is supplemented by Service Addenda which govern the use, rights and responsibilities of each of those respective Services. This Agreement and each Service Addendum may include Enrollment Forms, exhibits, appendices, schedules or similar materials, and all other Documentation provided by Bank in connection with use of the Services. Unless otherwise agreed, this Agreement, including the Service Addenda and Documentation, will be deemed accepted by Customer upon acceptance of provision by Bank of a Service to Customer. The terms and conditions of the Agreement will apply to the Services and the Accounts that access the Services, in addition to the Deposit Account Agreements. Unless otherwise provided, to the extent any provision of this Agreement conflicts with a Service Addendum, that provision of the Service Addendum will control. To the extent any term or provision of this Agreement conflicts directly with any term or provision of Customer's Deposit Account Agreements or the Documentation, the provision of this Agreement (including any Service Addendum and Enrollment Form) will control. All transfers to and from an Account will be subject to the terms and conditions applicable to such Account as set forth in the Deposit Account Agreement, including but not limited to transfer limitations, as may be amended by this Agreement.

In this Agreement, "First National Bank of Santa Fe", "Bank", "we", "us" and "our" refer to First National Bank of Santa Fe, N.A. The words "Customer", "you" and "your" refer to you, the Customer.

1. **Definitions.** Except as otherwise provided herein, the capitalized terms set forth below shall have the following meanings when used in this Agreement.

**"Account"** refers to your First National Bank of Santa Fe deposit account or loan.

**"Account Analysis"** refers to a form of Account provided by Bank on which a certain percentage of average balances held in the Account will receive a funding credit to offset other fees or charges assessed to the Customer (the "Earnings Credit Rate").

**"ACH"** refers to the Automated Clearing House which is any organization that processes electronic payments under NACHA Rules.

**"Admin User"** is the employee or other person whom is authorized to provide us with Communications regarding the Services, Accounts, and Users; whom you will designate on an Enrollment Form signed by an Authorized Representative.

**"Authorized Representative"** refers to each of the officers of Customer and any authorized signer on the Accounts, acting individually or together, and who are authorized by Customer to give us Communications with respect thereto, including determining the Services available to you, designating company Admin Users, and executing or electronically transmitting the Enrollment Form.

**"Business Day"** refers to any day that Bank is open for business, during Bank's normal business hours on such day.

**"Communication"** refers to any instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.

**"Credentials"** refers to all security access requirements provided to the Customer for access to Services.

**"Deadline"** refers to the time at which any transaction must be completed and delivered to the Bank if it is to be processed on the same Business Day as it is received.

**"Designated Address"** refers to the address to which all correspondence will be provided.



connection with the Services, even if Bank has previously approved their use. Customer agrees to notify Bank promptly if any Bank-provided Software or equipment becomes defective. Bank's sole responsibility (if any) in such instances will be to use commercially reasonable efforts to repair or replace defective software or equipment provided by Bank.

Customer agrees to comply with the terms of any software license(s) provided to Customer in connection with the Services. Customer may not transfer, distribute, copy, reverse engineer, modify or alter such software. Unless otherwise agreed by Bank in writing, the computer programs, Documentation, Security Procedures, equipment, Software and System provided to Customer in connection with the Services are Bank's property and must be returned to Bank upon request. You accept full responsibility for the security and confidentiality of all matters related to the Hardware and Software. We are not responsible for the installation and setup of any Hardware or Software unless provided otherwise in the Documentation.

- 2.4. Misuse of the Services. You must not use, and you must not allow any Admin User or User to use, the Services for illegal purposes or for the transmission of material that is unlawful, harassing, libelous, invasive of another's privacy, abusive, threatening, obscene, or that infringes the rights of others.
- 2.5. Delayed Processing. In addition to any allowances provided to Bank in any other agreement Bank has with Customer, Customer agrees that Bank may delay posting of an inbound credit to Customer's Account(s), or delay the processing of an outbound transaction, when the delay is due to a suspicion that the transaction may be in violation of applicable law, or is otherwise under review by Bank.
- 2.6. Eligibility/Financial Requirements. You may be asked to designate certain Accounts for specific purposes in connection with the Services. If you fail to designate Account(s) we are under no obligation to provide Services to those accounts, regardless of their affiliation with you or your Authorized Representatives.

You must designate your Accounts as Account Analysis accounts and are subject to the Account Analysis fees which are available upon request.

Customer agrees to maintain sufficient available funds in Customer's Account to cover all transactions requested through the Service and applicable fees, or such other amounts as Bank may specify from time to time. Customer agrees that Customer's funds may be held by Bank for a period of time during the term of a Service Addendum and following termination of the Services, to protect Bank against any possible losses relating to the use by Customer of the Services. If Bank does hold funds, Bank may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions) in any order that Bank chooses. Bank may, in its sole and absolute discretion, allow overdrafts/over-limits or negative balances, but Bank may also disallow such overdrafts/over-limits or negative balances at any time without prior notice to Customer. Bank may prevent or reverse any payments or other service in any order that Bank chooses as a means of preventing or recovering any overdrafts or other exposures. If Customer does not have sufficient or available funds or credit in Customer's Account for which a particular transaction was requested, Bank may charge any Account of Customer's with Bank to cover the cost of the transaction as well as any corresponding fees. Alternatively, and at Bank's sole and absolute discretion, Bank may overdraw Customer's Accounts and Customer may be charged an overdraft or other fee (such as fees for returned checks or other electronic items), which shall be immediately paid by Customer. Customer's obligation to pay Bank remains immediately due and payable whether or not the rejected, returned or adjusted entry was processed in accordance with any requirement of any applicable laws or rules applicable to any party other than Bank; and notwithstanding any other claims related to such entries. Nothing in the Agreement shall be construed as Bank's commitment or obligation to lend money to Customer.

We may periodically establish transaction limitations for certain Services. If at any time there is an adverse change of a material nature in your financial circumstances, you will immediately provide written notice to us. We may require that you provide further financial information acceptable to us and/or we may establish lower transaction limitations for you. You may be subject to a formal credit underwriting process completed by the Bank prior to the Bank providing certain Service(s) to you. We may, in our sole and absolute discretion, change limits we have established for you at any time; and shall provide prompt prior notice to you in advance of any such changes to such limits. You further authorize us to obtain your credit history or financial situation from third parties as a condition to providing Services to you.

Customer grants Bank a security interest in Customer's Accounts to secure the repayment of any obligation that Customer incurs under the Agreement. The security interest provided under the Agreement is in addition to any other security interest Bank may have in Customer's Accounts or other assets.

#### 4. Security.

- 4.1. Admin User. You agree to comply with the Security Procedures required for the Service requested. If we provide you with User Documentation or Security Procedures, you agree to follow the instructions contained therein. We may provide you with one or more identification numbers, Login IDs and/or Passwords, or other Multi-Factor Authentication methods or processes to access the Services. You agree to designate an Admin User with the authority to determine who will be authorized to use the Services on your behalf. You assume sole responsibility and liability for the actions of your Admin User, the authority he or she gives others to act on your behalf, and the actions of the persons designated by the Admin User to use the Services. You or your Admin User will designate which Accounts will be used for Service payments and transfers.
- 4.2. Credentials/Passwords. Customer and Bank may agree to certain Credentials, which may include procedures, codes, encryptions, passwords and other security devices, systems, and Software designed to verify the authenticity (but not errors in transmission or content, including discrepancies between account names and numbers) of information, instructions, orders and other Communications. If Bank takes any action not provided for in the Security Procedures in connection with any Communication, such additional action shall not be deemed to become a part of the Security Procedures.
  - 4.2.1. For any Services requiring security Credentials, each Admin User and User will be given a Login ID and initial Password (which must be changed at initial access of the Service). Each Admin User and/or User will determine what Password will be used and acknowledge that the Password is not to be communicated to the Bank at any time. Thereafter, the Admin User and/or User may change the Password at any time for enhanced security, and shall be required to change it regularly. Bank recommends that you create a password that utilizes various alphabetical and numerical characters. Your password should not be associated with any commonly known personal identification, such as social security numbers, addresses, dates of birth, or names of children and should not be written down. All Credentials are highly confidential, and you must safeguard them at all times. To the fullest extent permitted by applicable law, you must not disclose, and you must institute procedures to prevent your Users and Admin Users from disclosing, any Credential to any person (including but not limited to any other User or employee of yours), firm, corporation, or governmental entity. You must notify us promptly by telephone, confirmed in writing, if any Credential has been compromised.
- 4.3. Account Number Reliance. Bank may act on a Communication by reference to the account number only, even if the name on the account is also provided.
- 4.4. Email Messages. You should be aware that many forms of e-mail are not encrypted and may not be secure. If you wish to transmit electronic messages to us containing any Credential, or any other information you wish to keep confidential, you must use a secure method of transmission.
- 4.5. Security Procedures. Before using a Service and before sending a Communication to Bank, Customer will review the Security Procedures and determine whether they are able to provide a commercially reasonable method for verifying whether a Communication is from the Customer. Customer agrees not to use a Service if Customer is unable to determine that the Security Procedures can provide a commercially reasonable method for verifying that a Communication is Customer's. As part of the review, Customer will consider the size, type, and frequency of Communications Customer will make or anticipates making, along with such other factors as Customer may deem relevant or appropriate.
  - 4.5.1. You agree to (i) comply with our instructions and any User Documentation that we provide to you; (ii) take reasonable steps to safeguard the confidentiality and security of the Password, the Equipment, and any of the Bank's property or information provided to you in connection with the Service; (iii) limit access to your Security Procedure, Password, and Equipment to persons who have a need for such access; (iv) initiate control practices to regularly monitor employee access to the Service; (v) notify us immediately if you have any reason to believe the security or confidentiality required by this provision has been or may be compromised; and (vi) immediately change the Password if you know or suspect that the confidentiality of the Password has been compromised in any way. In connection with Customer's safeguarding obligations, Customer will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent unauthorized access to or use of any Service, Documentation, Credentials, or Security Procedures. Customer assumes all risks associated with disclosure of any part of the Credentials or Security Procedures, including to its employees. Customer agrees to limit disclosures of Credentials to those employees or agents it will authorize to access the Services on Customer's behalf, or who have a specific need to know such Credentials.
  - 4.5.2. You acknowledge that the purpose of a Security Procedure is for verification of authenticity and not for the detection of errors (e.g., duplicate instructions or errors in information you provide to us). We are not obligated

pursuant to the terms of this Agreement and any future disclosures required by law, including electronic fund transfer disclosures, may be made electronically by posting the notice on the Bank website or by email. You agree to notify Bank immediately of any change in your email address.

- 5.4. Fees. Customer agrees to pay Bank the fees prescribed in Bank's current fee schedule for each of the Services, as amended from time to time, a copy of which is available upon request. Bank may amend the Service pricing from time to time. Account Analysis fees as well as fees for the Services will be detailed on your Account Analysis statement and provided upon request. An Earnings Credit Rate will be applied to any fees charged for the billing period. Unless other arrangements are made for payment of shortfalls, Bank will automatically debit any Account maintained by Customer with Bank in the amount thereof. Even in the event that the amount owing bears a rate of interest, Customer remains obligated to immediately repay the amount in full to Bank. Bank may amend the Service pricing from time to time. Special or additional Services performed at Customer's request will be subject to additional terms and fees. In addition to the Service fees, Customer agrees to pay all taxes, tariffs, and assessments levied or imposed by any government agency in connection with the Services, the Agreement, and/or the Software or equipment made available to Customer (excluding any income tax payable by Bank). Customer is also responsible for paying the costs of any communication lines and any data processing charges payable to third parties in connection with provision of the Services. If Customer is required by the laws of any relevant jurisdiction to make any deduction or withholding from any fees, interest, or other amounts, on account of tax or other charges, the Customer shall withhold the same and pay it to the relevant authority, and shall pay Bank such additional amount as may be necessary to ensure Bank receives an amount equal to the amount it would have received had no such deduction or withholding been made.
- 5.5. Third Parties. Customer acknowledges and agrees that Bank may arrange to provide Software, if required, and/or may arrange for the Service covered by the Agreement to be performed or provided by third parties, including its affiliates. Customer further agrees that any such party is a third party beneficiary of this Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it was Bank, including the limitations on liability and the indemnities described in the Agreement. Bank's ability to provide certain Services may be dependent upon Bank's ability to obtain or provide access to third party networks. In the event that any third party is unavailable or that we determine, in our sole and absolute discretion, that we cannot continue providing any third party Service access, we may discontinue the related Service (upon not less than forty-five (45) days' prior notice to you) or may provide the Service through an alternate third party.
- 5.5.1. To the extent Customer authorizes a third party to access the Services on Customer's behalf, Customer will be solely responsible and liable for all actions or omissions of said third party relating to such third party's access to the Services on Customer's behalf. Customer expressly assumes the risks associated with providing Service access rights to its agents or third party vendors, including the risk of unauthorized or erroneous transactions. Bank will not be responsible, nor have any liability whatsoever for any services Customer receives from Customer's agents, or third party vendors. Bank reserves the right to require Customer to agree to additional terms and conditions as a condition precedent to Customer's use of any agent or third party vendor in connection with Customer's access to the Services. You agree that the Bank has no duty to monitor, detect or report any errors, omissions, or unlawful activities by your agents or third party vendors, and that you will not hold Bank liable in any manner for actions or omissions of your agents or third party vendors.
- 5.6. Disclosure of Account Information and Transfers. Bank may disclose information about Customer's Accounts, or the transactions made by Customer when: (i) the disclosure is necessary to complete a transfer or Service; (ii) the disclosure is requested in order to verify the existence and condition of Customer's Account or account for a third party, such as a credit bureau or merchant; (iii) the disclosure is required to comply with government agency or court orders or is otherwise authorized, required, or permitted by law; or (iv) Customer gives Bank Customer's permission. Without limiting the foregoing, Customer authorizes the transfer of any information relating to Customer to and among the branches, subsidiaries, representative offices, affiliates, contractors, vendors and agents of Bank and to any third parties selected by any of them, wherever situated, for confidential use in connection with the provision of products or Services to the Customer (including for data processing purposes), and further acknowledges that any such branch, subsidiary, representative office, affiliate, contractor, vendor or agent or shall be entitled to transfer any such information as required or permitted by any law, court, regulator or legal process.
- 5.7. Recall, Amendments, and Cancellations. If the Customer informs Bank that it wishes to recall, cancel, or amend a Communication after it has been received by Bank, Bank may, but will not be required to, use commercially reasonable efforts to assist the Customer to do so, but shall not be liable for any loss, cost, or expense suffered by the Customer if Bank does not, or is unable to, amend, cancel, or recall that Communication. The Customer hereby agrees to indemnify Bank against any loss, liability, claim, or expense (including legal fees) that it may incur in connection with assisting the Customer in recalling, canceling, or amending a Communication.
- 5.8. Reconciliation. Customer will inspect all information made available by Bank in connection with the Services. Customer agrees to promptly, by telephone and in writing, notify Bank of any errors in such information or any

- 6.6. Headings. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions thereunder.
- 6.7. Severability. If any provision of this Agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect.
- 6.8. Representations and Warranties. Customer represents and warrants to Bank that:
- (a) It is duly organized and validly existing, and is in good standing in every jurisdiction where required;
  - (b) It has the authority to execute and deliver the Agreement and Enrollment Form(s);
  - (c) The officers executing and delivering the Agreement and the Enrollment Form(s) for and on behalf of Customer, are duly authorized to do so;
  - (d) Any consent, authorization, instruction or Communication required in connection with the Agreement and each Service Addendum has been provided by any relevant third party; Bank may rely upon the authority of each Authorized Representative for all purposes until Bank has received written notice acceptable to it of any change from an Authorized Representative and Bank has had a reasonable time to act thereon (after which time it shall rely upon the changed version);
  - (e) Any act required by any relevant governmental or other authority in connection with the Agreement has been or will be done (and will be renewed if necessary);
  - (f) Its performance of the Agreement and use of the Services will not violate any applicable law, contract, regulation or other requirement; and
  - (g) Unless otherwise agreed to in writing by Bank, the Accounts established by Customer with Bank and the Services Customer establishes or uses in connection with the Accounts will only be used for lawful business purposes and not for personal, family, or household purposes.

Customer expressly acknowledges that the Agreement is a legal, valid, and binding obligation. Customer further acknowledges that Bank, in entering into the Agreement, is acting and relying upon the foregoing representations and warranties, and was induced to do so upon reliance on such representations and warranties. You will be deemed to have restated each of the foregoing representations and warranties as of each day on which a User uses a Service and upon the delivery of any new or amended Enrollment Form(s).

6.9. Limitation on Liability; Indemnification; and Disclaimer of Warranties.

- 6.9.1. Limitation of Liability. Bank's obligations shall be limited to those set forth in the Agreement. In no event shall Customer hold Bank liable for (i) any punitive, indirect, consequential or special damages or lost profits, even if Bank has been advised of the possibility of such damages; (ii) the acts or omissions of a contractor, vendor, processor, third party servicer or vendor used by Customer or Bank, or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (iii) negligence on the part of Customer or breach of any agreement with Bank; (iv) any loss, cost, expense, or damage to Customer in connection with any Communication, Software, or any technical computer service, including Software installation or de-installation performed by Bank, or Customer's or Bank's use thereof; (v) any ambiguity, inaccuracy or omission in any instruction, Communication, or information provided to Bank; (vi) any liability or losses relating to the application of any government or funds-transfer system rule, guideline, policy, or regulation; (vii) the lack of available funds in Customer's Account for completing a transaction; (viii) Bank's inability to confirm to its satisfaction the authority of any person to act on Customer's behalf; (ix) Customer's failure to follow any applicable software manufacturer's recommendations or Bank's Service instructions; (x) any liability or losses arising from internet sites related to the Services or maintained or operated by Bank; (xi) the use or the inability to use such sites by any party; or (xii) in connection with any failure or performance, error, omission, interruption, defect, delaying in operation or transmission, computer virus or line or system failure, even if Bank, or its representatives are advised of the possibility of such damages, losses, or expenses. There may be other exceptions to Bank's liability, as stated in the Deposit Account Agreements. Bank will not be responsible for determining the compatibility of any installed Software with other system components or for any failure of any technical servicing or Software installation to provide access to the particular Service which such installation was intended to make available.
- 6.9.2. Customer agrees that Bank's total liability and Customer's sole and exclusive remedy for actual costs and losses resulting from Bank's actions and/or omissions, whether the claim is in contract or tort, will not exceed the compensation you have actually paid for the Service during the month in question. Any claim, action or proceeding by Customer to enforce the terms of the Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action, or proceeding first occurs. Customer agrees to cooperate with Bank in any loss recovery efforts Bank undertakes in connection with the Services. Customer acknowledges that Service fees have been established in contemplation of: (i) these limitations on Bank's liability, (ii) Customer's agreement to review statements, confirmations, and notices promptly and to notify Bank immediately of any discrepancies or problems; and (iii) Customer's agreement to assist Bank in any loss recovery effort.

- (e) The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of attorneys' fees and expenses in such manner as is determined to be appropriate by the arbitrator(s).
- (f) All proceedings under this Section 6.15, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all Parties.
- (g) The fact that the dispute resolution procedures specified in this Section 6.15 shall have been or may be invoked shall not excuse any Party from performing its obligations under the Agreement and during the pendency of any such procedure all Parties shall continue to perform their respective obligations in good faith, subject to any rights to terminate this Agreement or any Purchase Document that may be available to any Party.
- (h) All applicable statutes of limitation shall be tolled while the procedures specified in this Section 6.15 are pending. The Parties will take such action, if any, required to effectuate such tolling.

UNLESS SPECIFICALLY PROVIDED OTHERWISE UNDER LAW, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL, OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.

- 6.16. Final Agreement; Amendment. The Agreement and its associated Service Addenda constitute the final and complete agreement between Bank and Customer with respect to the Services and any required Software, and supersedes all other oral or written agreements, understandings, and representations. Bank may amend (add, delete, or change) the terms of the Agreement, including the terms of any Service Addendum and any applicable fees. Bank may make such amendments, additions, changes, or deletions at any time and in Bank's sole and absolute discretion. Customer's continued use of the Services will evidence Customer's consent to any amendments, including additions, changes, or deletions.
- 6.17. Term and Termination. The term of the Agreement will commence for the Service(s) upon execution of the applicable Enrollment Form(s) and will continue in full force and effect thereafter until terminated as follows:
  - 6.17.1. Customer may terminate any or all of the Services under the Agreement, with or without cause, upon 30 days prior written notice to Bank; and
  - 6.17.2. Bank may terminate, suspend or restrict some or all of Customer's access to the Services under the Agreement, with or without cause, at any time immediately upon notice to Customer. Such termination will not affect any obligations arising under the Agreement prior to termination. Upon termination, Bank may terminate Customer's access to the Services, and Customer will terminate its access to and use of the Services, except to the extent necessary to process transactions that were in process prior to the termination date. Within 30 days after termination of the Agreement, Customer will, at its own expense, promptly uninstall and remove all Software provided from its computers and return to Bank any Software, Hardware, and equipment provided by Bank for the Service, including the Documentation, Security Procedures, and any materials relating to the Service in its possession or under its control, destroy all copies of, and materials relating to, the Documentation that cannot be returned, and upon request from Bank certify in writing to Bank that all copies have been returned or permanently and securely destroyed. Customer will be responsible and liable to Bank for the replacement cost of all lost, stolen, or damaged equipment that was provided by Bank to Customer in connection with the Service. Upon termination of the Agreement, all Services and any Licenses shall automatically terminate.
  - 6.17.3. We may, but are not required to, process any transfer or other transaction that was scheduled through the Services but had not yet been processed at the time of termination. With respect to any such transfer or other transaction we have processed, termination of this Agreement will not affect the rights and obligations of the parties with respect thereto.
- 6.18. Confidentiality. Unless otherwise provided in the Service Addendum, all Documentation and Software provided pursuant to this Agreement constitute Bank's, its contractor's or vendor's, or Bank's agents' (as applicable) confidential information ("Confidential Information"). Bank, its contractors or vendors, or Bank's agents (as applicable) will remain the sole owner of all such Confidential Information, and Customer will not acquire any rights in such Confidential Information as a result of Customer's use of any Service except as set forth in any applicable Service Addendum. Customer will maintain the confidentiality of the Confidential Information and will not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense, or otherwise make any of it available to any person or entity, other than its employees who have a need to use the Confidential Information in connection with the applicable Service. Customer shall notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, or use (each, an "Unauthorized Use") of any Confidential Information, and if it is responsible for the Unauthorized Use, it will, at its own expense, promptly take all actions, including initiating

## GLOBAL ADDENDUM TO CASH MANAGEMENT SERVICES AGREEMENT

This Global Addendum ("Addendum") to the Cash Management Master Services Agreement (the "Master Agreement"), the Business Online Banking Addendum, the Lockbox Service Addendum, and all other addenda to the Master Agreement (such as executed both presently or in the future, the "Service Addenda") entered into by and between First National Bank of Santa Fe, N.A., a national banking association (the "Bank") and Santa Fe County, an instrumentality of the State of New Mexico (the "Customer") is hereby entered into by and between the Bank and the Customer as of June 10, 2015. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Master Agreement.

Whereas, the Customer is prohibited by applicable law from granting the indemnities provided to the Bank in the Master Agreement and certain Service Addenda;

Whereas, the Customer desires to enter into the Master Agreement and the Service Addenda, subject to compliance in all respects with regard to applicable law;

Whereas, the Bank desires to enter into the Master Agreement and the Service Addenda with the Customer, and to accommodate the Customer's compliance obligations under applicable law, in addition to modifying certain dispute resolution provisions also as an accommodation to the Customer;

Whereas, the parties to this Addendum wish to memorialize the express terms and conditions of such accommodation by the Bank in a legally binding agreement, while yet preserving intact and in full force all other terms and conditions of the Master Agreement;

Now, therefore, for good and valid consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

### **1. Discharge of Indemnities.**

Section 6.10 of the Master Agreement, Sections 2.8 and 5.7 of the Automated Clearinghouse Origination Addendum, Section 7 of the Cash Vault Service Addendum, Section 3.4 of the Commercial Credit Sweep Service Addendum, Section 7 of the Lockbox Addendum, Sections 2.7 and 4.1 of the Positive Pay Services Addendum, Section 2.7 of the Wire Transfer Service Addendum, and Section 3.4 of the Zero Balance Account Service Addendum, in which the pertinent indemnity provisions are contained; in addition to all other indemnity provisions as contained in other Service Addenda (collectively, the "Indemnity Provisions"), are hereby waived by the Bank, but only to the extent required by applicable law. The Customer is hereby discharged from such Indemnity Provisions, but only to the extent required by applicable law.

### **2. Dispute Resolution.**

Section 6.14 of the Master Agreement is hereby amended by adding the phrase, "Any disputes arising in connection with this Agreement or any Service Addendum shall, to the extent

not resolved independently by the parties hereto, be submitted to the jurisdiction of the First Judicial District Court, Santa Fe County, New Mexico. ***THE PARTIES HEREBY ACKNOWLEDGE AND AGREE TO A WAIVER OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH THE JUDICIAL RESOLUTION OF ANY DISPUTES ARISING IN CONNECTION WITH THIS AGREEMENT.***” to the end of such Section 6.14.

Section 6.15 of the Master Agreement is hereby deleted in its entirety.

### **3. Restatement of Agreements.**

Except as modified or amended by this Addendum, all other terms, provisions, and conditions of the Master Agreement and the Service Addenda shall remain in full effect.

### **4. Representations and Warranties of the Customer**

As a condition precedent to the Bank’s entering into this Addendum, the Customer hereby represents and warrants to the Bank the following:

a. It is duly authorized to enter into this Addendum by all proper organizational action and by applicable law, and that its signatories are duly authorized to execute such agreement on its behalf, such signatures being valid specimens thereof.

b. Entering into this Addendum will not contravene any of the Customer’s organizational or charter documents, nor will entering into this Addendum contravene any applicable law or order to which the Customer is subject, nor will entering into this Addendum contravene any contract or instrument to which the Customer is a party.

c. The Customer is prohibited by statute or other form of applicable law from granting the Indemnity Provisions as originally constructed in the Master Agreement and Service Addenda;

d. The Customer fully understands and accepts its obligations under this Addendum, the Master Agreement, and the Service Addenda and wishes to be bound thereby.

e. The Customer will comply with all of its remaining obligations under the Master Agreement, the Service Addenda, and applicable law in performing this Addendum.

### **5. Disclaimer of Warranty**

IN ADDITION TO ANY AND ALL DISCLAIMERS GIVEN UNDER THE AGREEMENTS PERTAINING TO THE SERVICES, FIRST NATIONAL BANK OF SANTA FE AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AND AGENTS HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND IN CONNECTION WITH THE SERVICES OR ITS ADMINISTRATION THEREOF ON BEHALF OF THE CUSTOMER.

## **6. Limitation of Liability**

The Customer hereby expressly agrees that the Bank shall in no way be responsible nor liable for any cause of action or loss arising from or in connection with the provision of any of the Services by the Bank. Absent gross negligence or willful misconduct on the part of the Bank, the Customer hereby agrees that the Bank shall bear no liability whatsoever for any causes of action or losses accruing to the Customer that result from or arise in connection with the Bank's provision of such Services to the Customer.

## **7. Choice of Law**

This Addendum is to be governed by and enforced in accordance with the laws of the State of New Mexico, without regard for its provisions relating to conflict of laws.

## **8. Component Agreement Provision.**

The parties acknowledge and agree that this Addendum, the Master Agreement, and the Service Addenda form components of an entire service relationship between the Bank and the Customer, which shall be governed by that certain Professional Services Agreement entered into between the Bank and the Customer to Provide Banking Services (the "PSA"). In the event of any conflict between the express terms of this Addendum, the Master Agreement, or any Service Addenda (absent an express written modification by the parties to the contrary), the terms and provisions of the PSA shall control.

## **9. Severability**

If any of the terms or provisions of this Addendum are found to be invalid or unenforceable, this Addendum shall remain in effect, and such invalid or unenforceable provision shall be replaced with a valid or enforceable one that is negotiated in good faith by the parties to accomplish the same general purpose and intent of this Addendum to the extent possible. The parties also hereby agree that in the event that a court of competent jurisdiction should find any such provisions of this Addendum invalid or unenforceable, that such court should endeavor to replace such invalid or unenforceable provision with one that gives effect to the original intent of the parties in forming this Addendum, to the fullest extent possible.

## **10. Entire Agreement**

The terms and provisions of this Addendum hereby represent the entire agreement of and supersede any and all prior or contemporaneous agreements or understandings between the parties with respect to the matters addressed herein, regardless of whether they were oral or written.



## **11. Counterparts**

This Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

**[Signature Pages Follow]**

In witness whereof, the parties below hereby execute and enter into this Addendum as of the date dated hereof.

**SANTA FE COUNTY**

By: Miguel M. Chavez  
Name:  
Title: Commissioner

**FIRST NATIONAL BANK OF  
SANTA FE, N.A.**

By: [Signature]  
Name: Samuel H. Collins, Jr.  
Title: Vice President Public Funds

Approved as to form

Santa Fe County Attorney

By: [Signature]

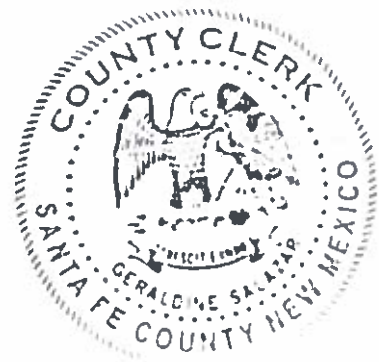
Date: 6-17-16

Cecilia H. Jaramilla  
6/20/15

**ATTEST:**

[Signature]  
**GERALDINE SALAZAR**  
**COUNTY CLERK**  
6-30-2015

SFC CLERK RECORD07/02/2015





## CASH VAULT SERVICE ADDENDUM

This CASH VAULT SERVICE ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Cash Vault Services ("Cash Vault") provided by Bank or Service Provider. Customer acknowledges receipt and agrees to be bound by these terms and conditions, the Cash Management Services Master Agreement and any other Documentation. Except as provided otherwise herein, capitalized terms used in this Service Addendum shall have the same meaning as set forth in the Agreement.

The Cash Vault provides the Customer with processing of Cash Deposits to their Account with the Bank. Bank or Service Provider will provide to Customer the Cash Vault described in this Service Addendum which will enable the Service Provider to receive, count, process, deposit and report on all payments received by the Customer's Armored Carrier at a specified Cash Vault Processing location assigned to the Customer. The Cash Vault will also provide currency and coin to the Customer as requested through the Cash Vault online access provided by the Bank's Service Provider. To the extent Customer accesses the Cash Vault using the Bank's online services, Customer's use of the Cash Vault must be facilitated pursuant to the separate Business Online Banking Addendum.

By using Cash Vault you agree to be bound by the terms and conditions of the Business Online Banking Service Addendum and the Cash Management Services Master Agreement.

### 1. Definitions.

**"Armored Carrier"** refers to any secure transportation company that delivers negotiable instruments for processing to the Bank's Service Provider for processing.

**"Cash Orders"** refers to any requests from Customer to deliver currency or coin to the Customer's location by Armored Carrier.

**"Deposit"** refers to any secured delivery of cash, coin and/or checks delivered to the Service Provider for processing to the Customer's Account.

**"Service Provider"** the provider of the Cash Vault on behalf of the Bank.

**"Verified Deposit"** refers to the physical counting and verifying of the currency and coin by the Service Provider.

### 2. Accessibility.

2.1. Primary Account Designation. Customer may use Cash Vault to facilitate the processing of Deposits to any deposit Account Customer maintains with Bank (other than those with deposit restrictions, such as certificate of deposits). The Account to which Customer designates as the deposit account shall be referred to as the Cash Vault Account for the purpose of this Service Addendum. Customer authorizes Bank to debit the Cash Vault Account (or any other Account maintained by Customer at Bank) for any fees or other amounts due Bank in connection with Cash Vault. If the Cash Vault Account is closed for any reason, Customer's Cash Vault will be stopped

pickup by the Customer's Armored Carrier. However, the Bank, at its sole and absolute discretion, may deposit the funds to the Account based on the Verified Deposit.

- 3.8. Processed Items. Deposits processed through Cash Vault will be deemed to have been received by Bank for deposit when delivered to the Service Provider. A deposit will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Service Provider has verified that the Deposit is acceptable to Bank in its sole and absolute discretion, and all conditions specified by the Bank for the Deposit have been met; and (ii) Service Provider and Bank have successfully performed all further validation routines with respect to the Deposit. Notwithstanding the foregoing, Deposits received by Bank may be rejected by Bank in Bank's sole and absolute discretion.
- 3.9. Unaccepted Items. If a Deposit or partial Deposit is not accepted by Cash Vault, Customer may deposit that item through the Bank directly.
- 3.10. Cash Orders. Customer may request the delivery of currency or coin from the Service Provider to be delivered by their Armored Carrier using online access provided by the Bank or the Service Provider. Deadlines and timing of delivery of Cash Orders are specified in the Documentation and are subject to change upon the Bank's notification to the Customer. Cash Orders will be debited from your Account on the day the order is shipped to the Customer.
- 3.11. Discrepancies. All discrepancies between amounts declared and cash verified will be reported and adjusted to the Account on the date verified. Discrepancies in Cash Orders must be reported in writing to the Bank within 24 hours of delivery of the Cash Order and backup materials must be provided with the request. Instructions on reporting these discrepancies are contained in the Documentation.

#### 4. Customer Rights and Responsibilities.

- 4.1. Customer shall maintain the Cash Vault Account at Bank for the crediting of Deposits and debiting charges for Cash Orders.
- 4.2. After completion of the initial training program for Cash Vault and Business Online Banking provided by Bank at the time of implementation of Cash Vault, Customer will be responsible for providing any secondary, supplemental, or continuing training related to proper use of Cash Vault. Bank will not be responsible for any delays, errors, or faults in connection with Cash Vault-related transactions arising from insufficient training of Customer's employees or affiliated personnel.
- 4.3. Customer will instruct their employees on how to prepare Deposits for the Cash Vault. Customer will provide all materials to their employees at their own expense. Bank is not responsible for improperly completed Deposits or other anomalies that do not adhere to the instructions provided by the Customer on the Enrollment Form or in the Documentation provided by the Bank. Any Deposits that do not meet the criteria as defined by Bank will be returned to the Customer in their entirety and will not be processed by Bank or Service Provider unless the Bank, in its sole and absolute discretion, determines that the Deposit can be processed. The Bank may, at its sole and absolute discretion, contact the customer for instructions on processing any Deposits that do not adhere to the preparation instruction provided to the Customer to determine how they will be processed by the Service Provider or if they should be returned to the Customer.
- 4.4. Customer will provide, at its own expense, a broadband internet connection, such as a digital subscriber line (DSL) or other connection having equivalent or greater bandwidth and all other Hardware, Software, including a compatible internet browser, and other equipment and supplies required to use Cash Vault, all of which must satisfy any minimum requirements set forth in the Documentation or as otherwise may be acceptable to Bank. Customer will provide, or obtain from another party selected by Customer at Customer's expense, support and maintenance of such internet connection and all other Hardware, Software, and equipment required to use Cash Vault.

- 5.3. Subject to the terms of this Service Addendum, availability of credit from Deposits processed under this Service Addendum will be subject to the Funds Availability Schedule of Bank, which may be amended without notice to Customer.
- 5.4. Bank may, in its sole and absolute discretion, refuse to process any Deposit. Bank may from time to time establish transaction limitations for both Deposits and/or Cash Orders and assign them to Customer.
- 5.5. In addition to any other rights Bank may have as regards the Accounts of Customer, Bank may hold and use funds in any Customer Account following termination of this Service Addendum for such time as Bank reasonably determines that any Payment processed by Bank or Service Provider prior to termination may be returned, charged back, or otherwise be a cause for any loss, liability, cost, exposure, or other action for which Bank may be responsible.

Bank will adhere to all instructions provided by Customer on the Enrollment Form for the processing of Deposits through Cash Vault.

6. Compliance with Law. Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to Cash Vault, including, without limitation, Regulation CC, the UCC and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Service Addendum. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to Cash Vault under all applicable U.S. federal and state laws, regulations, and rulings; including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including the Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.
7. Customer's Agreement to Indemnify Bank. In addition to any rights or obligations provided for in the Agreement, Customer shall indemnify, defend, and hold harmless Bank, its parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively, "Indemnitees") from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to Bank's own gross negligence or willful misconduct):
  - 7.1. Bank or Service Provider acting as a "reconverting bank" under the Check 21 Act through the creation of "substitute checks" or purported substitute checks using an Imaged Item or an illegal Imaged Item;
  - 7.2. Bank presenting to Paying Bank an Imaged Item for payment;
  - 7.3. Customer's failure to exercise due care in handling and preparing the Deposits or Cash Orders.

This Section shall survive the termination of this Service Addendum.

8. Bank's Liability. In addition to any limitations on liability provided for in the Agreement, Bank will not be liable to Customer for any refusal of a Payor Bank to pay an Imaged Item or Substitute Check for any reason (other than the breach of contract, gross negligence or willful misconduct of Bank), including that the original Check, Imaged Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature. The Bank will not be liable for any counterfeit or damaged currency received from Customer. Furthermore, Bank's liability for errors or omissions with respect to the data transmitted or printed by Bank in connection with this Service Addendum will be limited to correcting such errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Imaged Items or Substitute Checks to the payor financial institution.
9. Disaster Recovery. Bank shall maintain a disaster recovery plan for the Service in the event of delays or unavailability of the Service, which such plan Bank may determine in its sole and absolute discretion.

## COMMERCIAL CREDIT SWEEP SERVICE ADDENDUM

This COMMERCIAL CREDIT SWEEP SERVICE ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Commercial Credit Sweep Service ("Sweep Service") provided by Bank. You acknowledge receipt and agree to be bound by these terms and conditions, the Agreement and other Documentation provided to you at your first use of the Services requested. Customer may provide Sweep Communications to Bank in accordance with the terms and conditions of this Service Addendum. Subject to the terms of this Service Addendum, Bank may execute a Communication received in the name of the Customer, presented using the Enrollment Form unless otherwise specifically agreed to in writing. Customer is responsible for all Communications to the fullest extent provided by law and as set forth in this Service Addendum.

The Sweep Service allows customers to specify a Revolving Line of Credit that is linked to other Accounts that sweep designated funds to and/or from each other based on both the instructions provided by Customer and the availability of funds in the Accounts linked. These instructions are authorized by the Customer using the Sweep Service Enrollment form and provided to the Bank for processing. The Accounts designated may include any Customer credit facility and/or checking Accounts and can be designated in conjunction with the Zero Balance Account Service.

1. **Definitions.** Unless otherwise defined below or elsewhere in this Service Addendum, terms in this Service Addendum shall have the meaning provided in the Agreement.

"Advances" refers to a disbursement of loan funds made, or to be made, to Customer or on Customer's behalf under the terms and conditions of the Loan Agreement/Note.

"Credit Facility" refers to any loan agreement established between the Customer and Bank. "Funding Account" refers to any Account that sweeps funds to another Account.

"Loan Agreement/Note" refers to any agreement between Bank and Customer that allows the Customer to request funds be Advanced from the Bank and the Customer is obligated to repay those Advances under terms and conditions detailed in the Loan Agreement.

"Receiving Account" refers to any Account that receives funds from another Account in the hierarchy.

"Revolving Line of Credit" refers to a Loan Agreement/Note under which the Bank agrees to make Advances to Customer from time to time from the date of the Loan Agreement to the expiration/maturity date, provided the aggregate amount of such Advances outstanding at any time does not exceed the maximum allowed under the Loan Agreement/Note. Customer may borrow, partially or wholly prepay, and re-borrow under the Loan Agreement/Note.

"Sweep" refers to the movement of the funds between the Accounts that are part of the Sweep Service.

2. **Accessibility.**

- 2.1. **Primary Account Designation.** Customers using the Sweep Service must designate a Credit Facility and the Account(s) that the Credit Facility will be Sweeping funds to and/or from, the minimum and maximum thresholds for those accounts, and the hierarchical relationship between them on a Sweep Service Enrollment Form. The Customer may use the Sweep Service to facilitate the Sweep of funds to and/or from any checking Account or Credit Facility Customer maintains with Bank (this does not include Certificates of Deposit or other Accounts that may carry restrictions on activity). Customer authorizes Bank to debit their Account (or any other Accounts maintained by Customer at Bank) for any fees or other amounts due Bank in connection with the Sweep Service. If the Account is closed for any reason, Customer's Sweep transactions will not be processed and the Sweep Services may be stopped. To reinstate the Sweep Service in such a case, the Customer must designate a new Account.

- 2.2. **Eligibility.** The Customer must meet certain eligibility requirements in order to open a Credit Facility with the Bank and use the Sweep Services, including a credit review and underwriting process to determine if the Customer

qualifies for a Credit Facility. Customer may be asked to provide financial and other business-related information to the Bank, and Customer will promptly provide the items requested. Customer may also be subject to periodic inspections or audits of their financial information in order to maintain use of the Sweep Service.

2.3. Service Access. The Sweep Service does not require any Service access.

2.4. Customer Rights. Subject to the terms of this Service Addendum, Bank hereby grants Customer a non-exclusive, non-transferable right to access and use the Sweep Service in connection with Customer's own business operations in accordance with the Documentation. Without limiting the generality of the foregoing, Customer agrees neither to (i) make the Sweep Service available or allow use of the Sweep Service in a computer bureau service business, or on a timesharing basis, nor to (ii) otherwise disclose or allow use of the Sweep Service by or for the benefit of any third party.

2.5. Product Availability. The Sweep Service is available for use only on Business Days during the times set forth in the Documentation, except during maintenance periods, or such other hours as established by Bank from time to time.

### 3. Services.

3.1. Sweep Setup Communications. All instructions to setup the Sweep Service must be submitted using the Sweep Service Enrollment Form. Funds must be available in accordance with Bank's Funds Availability Policy in the Account specified when the Sweep occurs. Funds must be available in the Credit Facility according to the terms and conditions of the Credit Facility Agreement. A Sweep only occurs at nightly posting after all other daily account transactions have been processed. Any changes to the hierarchy of the Sweep Service must be submitted in writing to the Bank.

3.2. Types of Accounts. Credit Facilities and Checking Accounts can be used by the Sweep Service, and Customer can specify that the Sweep will occur either one-way (to or from) or both ways (to and from) any Account in the hierarchy. Multiple tiers of Accounts can be accommodated.


3.3. Sweep Processing. The amount of the Sweep will be determined after all credits and debits have posted at the end of the nightly processing cycle. Any debits to the Receiving Accounts that reduce the balance in these Accounts to a sum less than the threshold balance will be swept from the Funding Account. Any credits to the Funding Account that increase the balance in these Accounts will be swept to the Receiving Account. You may draw checks or other debits, and post credits against any checking account in the hierarchy and may make payments or drawdowns to the Credit Facility outside the Sweep Service.

3.4. Amendments or Cancellations. Customer will not be able to amend or cancel a Sweep that is already set to occur unless they submit in writing a Communication to the Bank prior to the Business Day that the Sweep is to occur. Bank may, in its sole and absolute discretion, use commercially reasonable efforts to act on the Customer's Communication as of the date requested. Furthermore, Customer will indemnify and hold Bank harmless from any and all liabilities, costs, and expenses Bank may incur in its efforts to complete such Communications.

### 4. Customer Responsibilities.

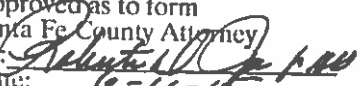
4.1. Customer must maintain sufficient availability of funds in all Funding Accounts to facilitate the Sweep to or from the Funding Accounts.

The undersigned warrants that the Customer has taken all action required by its organizational or constituent documents to authorize the undersigned to execute and deliver on behalf of Customer this Commercial Credit Sweep Service Addendum and any other documents First National Bank of Santa Fe, N.A., may require with respect to the Services. The undersigned is authorized to enter into all transactions contemplated by the provision of Services to the Customer. These may include, but are not limited to, giving First National Bank of Santa Fe, N.A, instructions on any Service and designating employees or agents to act in the name and on behalf of the Customer.

Name of Customer/Business/Organization:		
Authorized Representative Signature 	Print Name/ Title Patricia J. Varela SF County Treasurer	Date 8-17-15

First National Bank of Santa Fe, N.A.

Authorized Bank Representative Signature 	Print Name/ Title Vice President Public Funds	Date 8.21.2015
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Approved as to form  
Santa Fe County Attorney  
By:   
Date: 6-11-15



## WIRE TRANSFER SERVICE ADDENDUM

This WIRE TRANSFER SERVICE ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the Deposit Account Agreements. In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the wire transfer service ("Wire Transfer Service") provided by Bank. You acknowledge receipt and agree to be bound by these terms and conditions, the Agreement, the Business Online Banking Service Addendum and other Documentation provided to you at your first use of the Services requested. Customer may submit wire transfer Communications (All such Communications shall be deemed "payment orders" as defined in the UCC), to Bank in accordance with the terms and conditions of this Service Addendum. Subject to the terms of this Service Addendum, Bank may execute a Communication received in the name of the Customer, presented using Bank's Business Online Banking Service, unless otherwise specifically agreed to in writing. Customer is responsible for all Communications to the fullest extent provided by law and as set forth in this Service Addendum. Defined terms in this Service Addendum shall have the meaning provided in the Agreement, unless otherwise defined in this Service Addendum.


The terms and conditions in the Business Online Banking Service Addendum apply to all Customers using the Wire Transfer Service and by using the Wire Transfer Service you agree to be bound by the terms and conditions of the Business Online Banking Service Addendum and the Agreement.

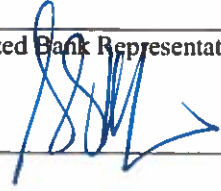
The Wire Transfer Service allows customers to initiate wire transfer Communications to third parties using Bank's Business Online Banking Service. These Communications will be processed by the Bank using the Fedwire Funds Service ("Fedwire") or any other electronic payment clearing system chosen by Bank.

### Accessibility.

- 1.1. Primary Account Designation. Customer may use the Wire Transfer Service to facilitate the initiation of Communications from any checking or savings account Customer maintains with Bank (this does not include Certificates of Deposit or other Accounts that may carry restrictions on activity). The Account from which Customer designates a wire transfer to be debited from will be referred to as the Debit Account for the purpose of this Service Addendum and the Communication. Customer authorizes Bank to debit the Debit Account (or any other Account maintained by Customer at Bank) for any fees or other amounts due Bank in connection with the Wire Transfer Service. If the Debit Account is closed for any reason, Customer's Communication will not be processed and the Wire Transfer Services may be stopped. To reinstate the Wire Transfer Service or complete a new Communication, the Customer must designate a new Debit Account.
- 1.2. Eligibility Review. You must designate your Accounts as Account Analysis accounts and are subject to the Account Analysis fees which are available upon request.
- 1.3. Service Access. The Wire Transfer Service will be accessed using the Bank's Business Online Banking Service and is subject to the terms and conditions of the Business Online Banking Services Addendum.
- 1.4. Customer Rights. Subject to the terms of this Service Addendum, Bank hereby grants Customer a non-exclusive, non-transferable right to access and use the Wire Transfer Service in connection with Customer's own business operations in accordance with the Documentation. Without limiting the generality of the foregoing, Customer agrees neither to (i) make the Wire Transfer Service available or allow use of the Wire Transfer Service in a computer bureau service business, or on a timesharing basis, nor to (ii) otherwise disclose or allow use of the Wire Transfer Service by or for the benefit of any third party.
- 1.5. Product Availability. The Wire Transfer Service is available for use only on Business Days during the times set forth in the Documentation, except during maintenance periods, or such other hours as established by Bank from time to time. Communications processed after these hours on a Business Day, or on any day that is not a Business Day, are treated as occurring on the next Business Day. It is Customer's responsibility to adjust its transmission schedules to meet the availability schedules of Bank as set forth in the Documentation or as otherwise established by Bank. Customer is further responsible for adjusting its transmission schedule to accommodate for changes in Deadlines associated with the beginning or end of Daylight Savings Time.

The undersigned warrants that the Customer has taken all action required by its organizational or constituent documents to authorize the undersigned to execute and deliver on behalf of Customer this Wire Transfer Service Addendum and any other documents First National Bank of Santa Fe, N.A., may require with respect to the Services. The undersigned is authorized to enter into all transactions contemplated by the provision of Services to the Customer. These may include, but are not limited to, giving First National Bank of Santa Fe, N.A., instructions on any Service and designating employees or agents to act in the name and on behalf of the Customer.

Name of Customer/Business/Organization:		
Authorized Representative Signature 	Print Name/ Title Patricia "Pat" Kozel SF County Treasurer	Date 8-17-15

First National Bank of Santa Fe, N. A.		
Authorized Bank Representative Signature 	Print Name/ Title Vice President Public Funds	Date 8.21.2015

Approved as to form  
Santa Fe County Attorney  
By:   
Date: 8-11-15

## POSITIVE PAY SERVICES ADDENDUM

This POSITIVE PAY SERVICES ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Positive Pay Services ("PosPay") provided by Bank. Customer acknowledges receipt and agrees to be bound by these terms and conditions, the Cash Management Services Master Agreement, this Addendum, and any other Documentation provided to you at your first use of the Services requested. Except as provided otherwise herein, capitalized terms used in this Service Addendum shall have the same meaning as set forth in the Agreement.

PosPay allows customers to submit a list of checks issued against their designated Account(s) and Bank will match those items against checks presented against Customer's designated Account(s) through the check clearing system. For all items that do not match, Customer will be able to review and determine the disposition of such unmatched checks.

### 1. Definitions.

"Available Funds" refers to funds on deposit in a designated Account, and available for withdrawal pursuant to Regulation CC and Bank's applicable Funds Availability Schedule and Policies.

"Issue File" refers to a record describing checks issued by Customer and provided by Customer to Bank. Bank will use the Issue File to create Customer's Listing of Issued Items.

"Exception Checks" means any presented checks that do not have a corresponding entry on the Listing of Issued Items.

"Listing of Issued Items" refers to the list that is created by the system from the Issue File sent by the Customer.

"Outstanding Transactions" means a cumulative list of checks reported on the Issue File, which have not been presented and approved for payment under PosPay.

"Outstanding Transactions List(s)" lists the Exceptions Checks for review by Customer.

"Presented Check" means a check drawn on a designated Account and presented to Bank for payment through the check collection system. A check presented to Bank by the payee directly (for example, one presented at an ATM, branch teller, or by mail) or in any other manner outside of Bank's automated check collection system will not be a Presented Check and will not be governed by this Service Addendum.

### 2. Accessibility.

2.1. Primary Account Designation. Customer may use PosPay to facilitate the reconciliation of any Account Customer maintains with Bank (other than those with checking or debit restrictions, such as certificate of deposits). The Account which Customer designates as the primary PosPay Account shall be referred to as the "PosPay Account" for the purpose of this Service Addendum. Customer authorizes Bank to debit the PosPay Account (or any other Account maintained by Customer at Bank) for any fees or other amounts due Bank in connection with PosPay. If the PosPay Account is closed for any reason, PosPay may be cancelled along with any unprocessed PosPay transactions. To reinstate PosPay in such a case, Customer must designate a new PosPay Account.

2.2. Eligibility. Customer must meet certain eligibility requirements, such as file format compatibility, check quality and timely delivery of Issue Files. Issue Files will be tested prior to using the PosPay to ensure transactions are captured by the system. The requirements will be provided to Customer by Bank at the

- 3.1. Customers will submit an Issue File on the date of issuance via Business Online Banking or enter individual checks into the Business Online Banking system. Bank will add these checks to the Listing of Issued Items. You agree that the Issue File will be sent in a format and medium, by the Deadline(s), at scheduled days, and at the places specified in the supporting Documentation and agreed to by you as set forth in the Check Issue File Specifications Form.
- 3.2. We will compare the information on Presented Checks against your Issue File in accordance with the schedule set forth in the Documentation. However, we will only make such a comparison: i) on Business Days (either on the day set forth in the Documentation, or on the Business Day immediately following such day), and ii) against checks that have been properly submitted in your Issue File. If the serial numbers and dollar amounts contained on your Presented Checks precisely match those contained in your Issue File, we will treat your Presented Checks as properly payable. If the items mentioned above do not match precisely, we will send you an Outstanding Issued Checks Report, in addition to any other reports we may have agreed to send you. We will make the Outstanding Transactions List available to you each Banking Day that we receive Presented Checks that did not match your Listing of Issued Items. This list will be available by the applicable Deadline identified in the supporting Documentation. Unless we receive instructions from you to return one or more of these items through PosPay, before the applicable Deadline, we will pay all Presented Checks, including non-matching items. If all Presented Checks received on a Banking Day do match the Listing of Issued Items, an Outstanding Transactions List will not be created.
- 3.3. Bank will pay any Presented Check (whether or not listed as an Outstanding Transaction) unless it is flagged by Customer for return through Bank's Business Online Banking PosPay prior to the applicable Deadline identified in the supporting Documentation. Checks listed on the Outstanding Transactions List will be processed according to the Customer's directives, provided Customer's directives are received by Bank in advance of the Deadline. If you want to place a stop payment on a check contained on the Outstanding Transactions List in Positive Pay, you must fill out a stop payment order and submit that to the Bank.
- 3.4. This Service applies to Presented Checks. It is not designed to compare your Listing of Issued Items or Outstanding Transactions List against items that are presented in any other manner including through the Automated Teller Machine (ATM), the Bank's branch tellers, or through the mail, until the item posts during normal nightly processing.
- 3.5. We assume no duty under this Service Addendum to compare or otherwise to identify and/or return duplicate checks, checks with duplicate serial numbers, improperly coded items, or checks lacking an encoded serial number. PosPay does not apply to items that have been settled before the effective date of any listing. We may pay checks with a date six (6) months in the past and checks dated for a future date unless you submit a stop payment or post-dated check order for such items.
- 3.6. You agree that we will not be obligated to verify the signatures on any check that matches the check number and amount information listed in your Issue File and Outstanding Transactions List. You understand and agree that we may compare information on the Listing of Issued Items with information that is encoded on the items presented to us for payment. We will not be required to otherwise examine checks, or seek to confirm that they are properly signed, completed, unmodified, or encoded. You agree that our responsibilities under this Service Addendum present an acceptable standard of care for PosPay as it relates to your Account. You understand that PosPay may not identify counterfeit or duplicate checks. As such, you agree to promptly review all statements, returned checks, reports, and other check and transaction information that we make available to you.
4. Customer's Rights and Responsibilities.
  - 4.1. To use PosPay, Customer must have at least one checking account at Bank, a computer, access to internet service, and an e-mail address. Customer may receive notification from the Bank if there are Exception Checks to review, but it is the Customer's responsibility to monitor for Exception Checks daily. Customer may not rely on the notification from the Bank for the Exception Checks. Customer shall indemnify and hold Bank harmless for any losses arising from Customer's failure to adequately monitor for Exception Checks.
  - 4.2. PosPay may require Customer to download Software from Bank's website; in some cases, Bank may place Software on Customer's computer as part of Bank's security and/or User verification tools. Customer is responsible for the installation, maintenance, and operation of Customer's computer and all related charges resulting therefrom. Bank is not responsible for any errors or failures caused by any malfunction of Customer's computer or any computer virus or related problems that may be associated with access to

## LOCKBOX SERVICE ADDENDUM

This LOCKBOX SERVICE ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. d/b/a First National Santa Fe ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Lockbox Services ("Lockbox") provided by Bank or Service Provider. Customer acknowledges receipt and agrees to be bound by these terms and conditions, the Cash Management Services Master Agreement and any other Documentation. Except as provided otherwise herein, capitalized terms used in this Service Addendum shall have the same meaning as set forth in the Agreement.

The Lockbox provides the Customer with expedited processing of Payments to their Account with the Bank. Bank or Service Provider will provide to Customer the Lockbox described in this Service Addendum which will enable the Service Provider to receive, sort, process, deposit and report on all payments received at a specified Post Office Box assigned to the Customer. To the extent Customer accesses the Lockbox using the Bank's online services, Customer's use of the Lockbox must be facilitated pursuant to the separate Business Online Banking Addendum.

By using Lockbox you agree to be bound by the terms and conditions of the Business Online Banking Service Addendum and the Cash Management Services Master Agreement.

### 1. Definitions.

**"Authorized Payee"** means any acceptable payee that the Customer lists on the Enrollment Form, subject to Bank approval.

**"Correspondence"** means any non-payment check or coupon that cannot be processed through Lockbox.

**"Coupon"** means a document provided by the Customer to their client that is enclosed with the Payment and can be scanned for payment details, such as account number and payment amount.

**"Payment"** means any check, ACH, Credit Card or Bill Payment Remittance received by Lockbox through the Post Office Box assigned by the Bank.

**"Property Management Lockbox"** refers to services that provide assessment or rental payment processing for the commercial or residential real estate industry.

**"Retail Lockbox"** means a Lockbox that processes large volume, low dollar payments with coupons provided by the Customer and can be scanned by the Bank or Service Provider to provide payment detail information.

**"Service Provider"** the provider of the Lockbox on behalf of the Bank.

### 2. Accessibility.

2.1. **Primary Account Designation.** Customer may use Lockbox to facilitate the processing of payments and deposits to any deposit Account Customer maintains with Bank (other than those with deposit restrictions, such as certificate of deposits). The Account to which Customer designates as the deposit account shall be referred to as the Lockbox Account for the purpose of this Service Addendum. Customer authorizes Bank to debit the Lockbox Account (or any other Account maintained by Customer at Bank) for any fees or other amounts due Bank in connection with Lockbox. If the Lockbox Account is closed for any reason, Customer's Lockbox will be

- 3.8. Processed Items. Payments processed for deposit through Lockbox will be deemed to have been received by Bank for deposit when delivered to the Service Provider. A deposit will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Service Provider has verified that the payment is acceptable to Bank in its sole and absolute discretion, and all conditions specified by the Customer for the payment have been met; and (ii) Service Provider and Bank have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, payments received by Bank for deposit may be rejected by Bank in Bank's sole and absolute discretion.
- 3.9. Unaccepted Items. If a payment is not accepted for deposit, Customer may deposit that item through the Bank directly.
4. Customer Rights and Responsibilities.
- 4.1. Customer shall maintain the Lockbox Account at Bank for the receipt of deposits of payments.
- 4.2. After completion of the initial training program for Business Online Banking provided by Bank at the time of implementation of Lockbox, Customer will be responsible for providing any secondary, supplemental, or continuing training related to proper use of Lockbox. Bank will not be responsible for any delays, errors, or faults in connection with Lockbox-related transactions arising from insufficient training of Customer's employees or affiliated personnel.
- 4.3. Customer will instruct their clients on how to complete payments for the Lockbox. Customer will provide all materials to their clients at their own expense. Bank is not responsible for improperly completed payments or other anomalies that do not adhere to the instructions provided by the Customer on the Enrollment Form. Any Payments that do not meet the criteria as defined by Customer on the Enrollment Form will be returned to the Customer in their entirety and will not be processed by Bank or Service Provider unless the Customer has chosen the review option on the Enrollment Form. The review process allows the customer to review their payments that do not meet the criteria previously defined by Customer on the Enrollment Form and to determine how they will be processed by the Service Provider or if they should be returned to the Customer.
- 4.4. Customer will provide, at its own expense, a broadband internet connection, such as a digital subscriber line (DSL) or other connection having equivalent or greater bandwidth and all other Hardware, Software, including a compatible internet browser, and other equipment and supplies required to use Lockbox, all of which must satisfy any minimum requirements set forth in the Documentation or as otherwise may be acceptable to Bank. Customer will provide, or obtain from another party selected by Customer at Customer's expense, support and maintenance of such internet connection and all other Hardware, Software, and equipment required to use Lockbox.
- 4.5. Customer shall warrant that each Payment payable to an Authorized Payee may be deposited to your Lockbox Account.
- 4.6. Customer shall be responsible for verifying Bank's processing of Customer's payments by verifying that deposits have been posted to the Lockbox Account.
- 4.7. Customer shall be responsible for installing and implementing any required changes and upgrades to Lockbox within five (5) days.
- 4.8. Customer shall exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Bank or otherwise required for use of Lockbox and shall further prevent the use of the Lockbox by unauthorized persons. Customer assumes full responsibility for any missing or unauthorized use of or access to Lockbox or disclosure of any confidential information or instructions by Customer, its employees, or agents.

- 5.5.6. Any Payments with multiple invoices or Coupons that cannot be balanced to the Payment amount.
- 5.6. Unless otherwise instructed by the Customer, the following Payments will be processed as described below:
- 5.6.1. Payments without dates will be deposited.
- 5.6.2. Payments without accompanying invoices or Coupons will be deposited.
- 5.6.3. Payments with discrepancies between the written and numerical values will be deposited at the written amount if the discrepancy is discovered at the time of processing. If not discovered at the time of the payment, the Payment will be deposited at the numerical value and Customer will be responsible for any liabilities arising out of such discrepancies.
- 5.7. Bank will retain images of the Payments for the period of time set forth in the Bank's record retention schedule which can be provided to Customer upon request, and which may change at the Bank's sole and absolute discretion.
- 5.8. In addition to any other rights Bank may have as regards the Accounts of Customer, Bank may hold and use funds in any Customer Account following termination of this Service Addendum for such time as Bank reasonably determines that any Payment processed by Bank or Service Provider prior to termination may be returned, charged back, or otherwise be a cause for any loss, liability, cost, exposure, or other action for which Bank may be responsible.
- Bank will adhere to all instructions provided by Customer on the Enrollment Form for the processing of payments through Lockbox and will return all Correspondence to Customer per the instructions on the Enrollment Form.
6. Compliance with Law. Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to Lockbox, including, without limitation, Regulation CC, the UCC and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Service Addendum. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to Lockbox under all applicable U.S. federal and state laws, regulations, and rulings; including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including the Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.
7. Customer's Agreement to Indemnify Bank. In addition to any rights or obligations provided for in the Agreement, Customer shall indemnify, defend, and hold harmless Bank, its parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively, "Indemnitees") from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to Bank's own gross negligence or willful misconduct):
- 7.1. Bank acting as a "reconverting bank" under the Check 21 Act through the creation of "substitute checks" or purported substitute checks using an Imaged Item or an illegal Imaged Item;
- 7.2. Bank presenting to Paying Bank an Imaged Item for payment;
- 7.3. Customer's failure to exercise adequate security controls or dispose of original checks in accordance with this Service Addendum, or failure to securely dispose of such original checks, in

## AUTOMATED CLEARING HOUSE (ACH) ORIGATION ADDENDUM

This AUTOMATED CLEARING HOUSE (ACH) ORIGATION ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Business Online Banking ACH origination services provided by Bank. Customer acknowledges receipt and agrees to be bound by these terms and conditions, the Agreement, the Business Online Banking Addendum and any other Documentation provided to Customer. Defined terms in this Service Addendum shall have the meaning provided in the Agreement and as defined in the Rules, unless otherwise defined in this Service Addendum. Customer may not submit ACH Entries outside Bank's Business Online Banking Services without Bank's prior written consent.

The ACH Origination Service allows Customer to initiate electronic payments to third parties using the Business Online Banking Service and the Automated Clearing House network.

1. **Definitions.** Unless otherwise defined below, in the NACHA Rules, or elsewhere in this Service Addendum, terms in this Service Addendum shall have the meaning provided in the Agreement.

**"Delivery Date"** refers to the date that the ACH file is required to be delivered to the Bank for processing Entries by the Effective Entry Date.

**"Effective Entry Date"** refers to the date specified by the Originator on which it intends a batch of Entries to be settled.

**"Entry"** shall have the meaning provided in the Rules and shall also mean the data received from Customer hereunder from which Bank prepares Entries.

**"Notifications of Change (NOC)"** refers to a non-monetary Entry transmitted by an RDFI for the purpose of identifying incorrect information contained within an Entry and providing correct data to be used on future Entries. See the NACHA Rules for further information.

**"Offset"** refers to the consolidated debit or credit entry that is created to offset the individual electronic payments created by the customer through the ACH Origination Service.

**"Prefunding"** refers to the option to fund the ACH Origination transactions on the date the Entries are created instead of on the Effective Entry Date.

**"Prenotes"** refers to a non-monetary Entry initiated by an Originator to an RDFI prior to the initiation of the first debit or credit Entry to a Receiver's account with the RDFI.

**"Reversals"** refers to a credit or debit Entry that reverses an erroneous Entry.

**"Rules"** refers to the rules of the National Automated Clearing House Association (NACHA), including but not limited to the requirements applicable to Customer's data privacy and breach notification obligations, and the local ACH Association.

**"Settlement Date"** refers to the date an exchange of funds with respect to an Entry is reflected on the books of the applicable Federal Reserve Bank.



- 2.8. Revising Entries. Bank is under no obligation to honor a Communication from the Customer to revise any Communication received, but may, in its sole and absolute discretion, use commercially reasonable efforts to honor Customer's revised Communications; *provided, however*, Bank will not be liable and Customer agrees to indemnify and hold harmless Bank from any losses arising out of Bank's attempt to honor such Communications. An accepted Communication that we honor for the purpose of revising a previous Communication thereby cancels and supersedes the original instruction. Customer may be allowed to create Reversals for Entries that have an Effective Entry Date within five (5) Business Days of the date the Reversal was created.

3. Service Description.

- 3.1. Customer will initiate credit or debit Entries by means of the ACH network pursuant to the terms of this Addendum and the Business Online Banking Addendum, the Rules. Bank is also willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. Customer will use the Bank's Business Online Banking ACH Origination Service to create and transmit such Entries.
- 3.2. Customer will initiate credit or debit Entries to Bank in accordance with the terms and conditions of this Addendum and the Business Online Banking Addendum. Customer may not originate Entries using Standard Entry Class Codes WEB, IAT or TEL without prior notice to and written approval by Bank. Bank may require Customer to submit an application in form and content acceptable to Bank, and to execute such supplemental schedules, agreements, and other documents as Bank may require, as a condition precedent to Customer's use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to Customer's use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes.
- 3.3. Security Procedures. Bank will use the Security Procedures and Credentials set forth in the Business Online Banking Addendum and the Agreement to verify the authenticity of Customer's Entries. Bank may offer to Customer or require Customer to use additional authentication tools or methods from time to time. If Customer chooses not to implement supplemental authentication tools, Customer's access to the ACH Origination Services may be limited.
- 3.4. Cutoff Hours. The cutoff hours applicable to an ACH Communication are reflected in the Documentation. An ACH Communication is considered executed when Bank executes it. If an ACH Communication is received after the cutoff hour or on a day that is not a Business Day, the Bank will process the file on the following Business Day.
- 3.5. ACH Positive Pay and Fraud Filter. The Bank offers the ACH Positive Pay and Fraud Filter Service as part of the ACH Origination Service to allow Customer to define which ACH Entries will post to their Accounts and to apply these to all incoming ACH Entries to Customer's Account. ACH Entries received prior to the definition and setup of these filters will be paid in accordance with the NACHA Rules. These definitions will not expire and must be sufficiently specific to identify the ACH Entries that are to be blocked on Customer's behalf.

4. Customer Responsibilities.

- 4.1. Compliance with NACHA Rules. A copy of the Corporate Edition of the Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). Customer agrees to obtain a copy, to understand and be familiar with the Rules, and to be responsible for maintaining current copies of the Rules. Customer agrees that information or advice received by Customer from Bank as to the Rules or the operation of the Rules is not legal advice and is not a substitute for Customer's obligation to understand and comply with the Rules.
- 4.2. Prefunding. Bank may designate Customer as "ACH Prefunding," and Bank may change Customer's designation to or from ACH Prefunding at any time, with or without cause and at Bank's sole and absolute discretion. Bank will inform Customer of its designation as an ACH Prefunding Customer, and of any change in the designation. Customer will pay Bank, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to Bank at such time as Bank may from time to time designate or, if not otherwise designated, as follows: (i) if Customer is not an ACH Prefunding Customer, no later than the opening of business on the Effective Entry Date, and (ii) if Customer is an ACH Prefunding Customer, no later than the date of transmittal of the related Entry data to Bank or at such earlier time as Bank may have established for Customer.

6.1.1. Bank shall transmit or complete the necessary authorizations for ACH Entries by the deposit deadline of the ACH set forth in the Documentation, provided: (i) such Entries are received by Bank's Delivery Date Deadline as identified in the Documentation on a Business Day, and (ii) the ACH is open for business on such Business Day. Entries shall be deemed received by Bank when the transmission (and compliance with any related Security Procedure provided for in the Documentation) is completed as provided in the Documentation. If any of the requirements of this Section 6.1.1 are not met, Bank may use commercially reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH that occurs on a Business Day.


6.2. Notification of Change. Bank shall notify Customer, by mutually agreeable means, of all NOCs received by Bank relating to Entries transmitted by Customer, no later than the time provided for such notice in the Documentation. Customer must make the changes specified in an NOC or corrected NOC (i) within six (6) Business Days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later, or (ii) as otherwise required in the Rules, if the Rules specify a different time for correction.


6.3. On-Us Entries. In the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in this Service Addendum are met. If those requirements are not met, Bank may use commercially reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

6.4. Inconsistencies. If a Receiver of an Entry is identified by both name and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a Receiver's bank is identified on a payment order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

6.5. Notice of Returned Entries. Bank shall notify Customer by phone or electronic transmission including e-mail of the receipt of a returned entry from the ACH no later than one Business Day after the Business Day of such receipt. Except for an Entry re-transmitted by Customer in accordance with the requirements of this Addendum, Bank shall have no obligation to re-transmit a returned Entry to the ACH if Bank complied with the terms of this Service Addendum with respect to the original Entry.

The undersigned warrants that the Customer has taken all action required by its organizational or constituent documents to authorize the undersigned to execute and deliver on behalf of Customer this Automated Clearing House Origination Addendum and any other documents First National Bank of Santa Fe, N. A., may require with respect to the Services. The undersigned is authorized to enter into all transactions contemplated by the provision of Services to the Customer. These may include, but are not limited to, giving First National Bank of Santa Fe, N. A., instructions on any Service and designating employees or agents to act in the name and on behalf of the Customer.

<b>Name of Customer/Business/Organization:</b>	<b>"Company Name"</b>	
Authorized Representative Signature	Print Name/ Title	Date
	Patricia "Pat" Varch S.F. County Treasurer	8-17-15

<b>First National Bank of Santa Fe, N. A.</b>		
Authorized Bank Representative Signature	Print Name/ Title	Date
	Vice President Public Funds	8.21.2015

Approved as to form  
Santa Fe County Attorney  
By:   
Date: 8-17-15

## ZERO BALANCE ACCOUNT SERVICE ADDENDUM

This ZERO BALANCE ACCOUNT SERVICE ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the deposit account agreement for the Account(s) of Customer (collectively, the "Deposit Account Agreements"). In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Zero Balance Account Service ("ZBA Service") provided by Bank. You acknowledge receipt and agree to be bound by these terms and conditions, the Agreement and other Documentation provided to you at your first use of the Services requested. Customer may provide ZBA Communications to Bank in accordance with the terms and conditions of this Service Addendum. Subject to the terms of this Service Addendum, Bank may execute a Communication received in the name of the Customer, presented using the ZBA Enrollment Form unless otherwise specifically agreed to in writing. Customer is responsible for all Communications to the fullest extent provided by law and as set forth in this Service Addendum.

The ZBA Service allows customers to specify a hierarchy of linked Accounts that sweep designated funds to and/or from each other based on both the instructions provided by Customer and the availability of funds in the Accounts linked. These instructions are authorized by the Customer using the ZBA Enrollment form and provided to the Bank for processing. The Accounts designated may include any Customer checking Accounts.

1. **Definitions.** Unless otherwise defined below or elsewhere in this Service Addendum, terms in this Service Addendum shall have the meaning provided in the Agreement.

**"Funding Account"** refers to any Account that sweeps funds to another Account.

**"Parent Account"** refers to any Account that sweeps funds automatically to or from a Zero Balance Account based on the specified balance in the Zero Balance Account as instructed by the Customer.

**"Receiving Account"** refers to any Account in the ZBA hierarchy that receives funds from another Account in the hierarchy.

**"Sweep"** refers to the movement of the funds between the Accounts that are part of the ZBA Service.

**"Zero Balance Account (ZBA)"** refers to any Account that transfers funds automatically to another Account based on instructions given by the Customer that brings the account balance to a zero balance or specific balance thresholds specified by the Customer.

2. **Accessibility.**

- 2.1. **Primary Account Designation.** Customers using the ZBA Service must designate Parent Account(s) and ZBAs, the minimum and maximum thresholds for those accounts, and the hierarchical relationship between them on a ZBA Enrollment Form. The Customer may use the ZBA Service to facilitate the Sweep of funds to and/or from any checking account Customer maintains with Bank (this does not include Certificates of Deposit or other Accounts that may carry restrictions on activity). Customer authorizes Bank to debit the Parent Account (or any other Accounts maintained by Customer at Bank) for any fees or other amounts due Bank in connection with the ZBA Service. If the Parent Account is closed for any reason, Customer's Sweep transactions will not be processed and the ZBA Services may be stopped. To reinstate the ZBA Service, the Customer must designate a new Parent Account.

- 2.2. **Eligibility Review.** You must designate your Accounts as Account Analysis Accounts, with the understanding that such Accounts are subject to the Account Analysis fees, a schedule of which is available upon request.

- 2.3. **Service Access.** The ZBA Service does not require any Service access.

- 2.4. **Customer Rights.** Subject to the terms of this Service Addendum, Bank hereby grants Customer a non-exclusive, non-transferable right to access and use the ZBA Service in connection with Customer's own business operations in accordance with the Documentation. Without limiting the generality of the foregoing, Customer agrees neither to (i)

## BUSINESS ONLINE BANKING ADDENDUM

This BUSINESS ONLINE BANKING ADDENDUM ("Service Addendum") is included as part of the CASH MANAGEMENT SERVICES MASTER AGREEMENT ("Agreement") which was entered into by and between First National Bank of Santa Fe, N.A. ("Bank") and Customer, and forms part of the Deposit Account Agreements. In the event of conflicts between the terms of this Service Addendum and the terms of the Agreement, the terms of this Service Addendum shall control. This Service Addendum controls the general terms and conditions for the use of the Business Online Banking Services provided by Bank. Defined terms in this Service Addendum shall have the meaning provided in the Agreement, unless otherwise defined in this Service Addendum. Customer acknowledges receipt of, and agrees to be bound by, these terms and conditions. As used in this Service Addendum, the term "System" will mean the online banking system offered by Bank, as described in this Service Addendum.

Certain Business Online Banking Services are subject to separate Service Addenda, in addition to this Service Addendum. If Customer is permitted to use these services, all Communications relating to these services must be processed by Customer consistent with the separate Service Addenda, as appropriate. The Bank reserves the right to require Customer to agree to additional Service Addenda at any time in order to continue use of the Services. These Addenda shall be included as part of the Cash Management Services Master Agreement.

### 1. Definitions.

**"Business Online Banking"** refers to the entire group of Services provided by Bank using the internet accessed with a single set of Credentials.

**"Exception Checks"** means any presented checks that do not have a corresponding entry on the Issue File.

### 2. Accessibility.

2.1. Access Requirements. To use the System and the Services, Customer must have (i) at least one checking account at Bank, a computer, access to internet service, and an e-mail address. Customer's internet or other web browser must adhere to the system requirements provided by the Bank to the Customer; (ii) Customer's computer should have a current operating system for Windows or Mac OS and the most recent or next most recent version of a compatible internet browser; (iii) a printer that is connected to Customer's computer that is capable of printing from Customer's browser and e-mail software; and (iv) sufficient electronic storage capacity on Customer's computer's hard-drive or other data storage unit to download and save communications and other System or Service related records. Some Business Online Banking Services may require Customer to download Software from Bank's website; in some cases, Bank may place Software on Customer's computer as part of Bank's security and/or User verification tools. Customer is responsible for the installation, maintenance and operation of Customer's computer and all related charges. Bank is not responsible for any errors or failures caused by any malfunction of Customer's computer or any computer virus or related problems that may be associated with access to or use of the Services or Customer's computer. Also, Bank is not responsible for any losses or delays in transmission of information Customer provides to Bank or otherwise arising out of or incurred in connection with the use of any internet or other service provider providing Customer's connection to the internet or any browser software. Further, Customer also agrees to be responsible for monitoring and downloading software patches, maintaining appropriate firewall settings, and ensuring that Customer's computer continually updates malware and/or virus detection/elimination software.

2.2. Eligible Accounts. The following are the types of accounts that are eligible for enrollment for the Services: checking, savings, money market accounts, and lines of credit. A certificate of deposit may also be eligible for the Services; however, in such cases, the Services will be limited to "view only" capabilities. Bank may allow other accounts to be connected to one or more Services periodically. Bank reserves the right to determine which accounts can be connected to a Service. Bank may refuse to allow certain accounts, such as accounts with special signing requirements, to be accessed through and otherwise connected to a Service.

2.3. Availability. Bank may cause the Service to be temporarily unavailable to Customer, either with or without prior notice, for site maintenance, security or other reasons, and Customer acknowledges that factors beyond Bank's control, such as telecommunications failure or equipment failure, may also cause the Business Online Banking Service to be unavailable to Customer. In such event, Customer must make alternative arrangements for scheduled transactions and will be responsible for maintaining processes that enable Customer to complete any such scheduled

performed or having occurred on the following Business Day. Bank may establish and change from time to time the period of time for which transaction information is available through the System.

### 3.3. Check Images, Statements and Notices.

*Check Images.* Bank will make available images of the front and reverse of checks posted to Accounts Customer designates during the current or previous statement period, excluding checks that were presented but were returned for any reason, but not including images of checks deposited to the Account. This Service will contain images of an item each time it is presented to us, and consequently may include more than one set of images of the same item. Images may not contain all fine or light details or markings that appear on the original item. Bank will make every reasonable effort to provide all check images, but are not required to provide any images that are not available due to poor image quality or equipment failure.

*Statements.* Bank will make available information drawn from certain statements and notices Bank provides with respect to Accounts that Customer designates. Unless otherwise expressly agreed to by Bank, this Service is for Customer's convenience only, and does not replace physical statements and notices, which will continue to be sent or made available to you unless you subscribe to the Bank's e-Statements service, subject to Bank's rules applicable to such Accounts. Customer should be aware that the information: (i) will not be an exact photocopy of the statements and notices from which such information is drawn, (ii) may be reformatted for electronic presentation, and (iii) will not include certain pre-printed information and disclosures that appear on such statements and notices.

### 3.4. Internal Transfers.

*Internal Transfers.* Customer may initiate Internal Transfers between any Accounts set up within Business Online Banking with the exception of time accounts and loans. Customer is not permitted to transfer more than the ledger balance from deposit accounts. Transfers initiated through Business Online Banking before the applicable Deadline identified in supporting Documents on a Business Day are posted to Customer's Account the same day. Transfers initiated after the Deadline on a Business Day, Saturday, Sunday, or banking holiday, will be posted on the next Business Day. Customer understands and accepts that transfers between Accounts can only be allowed for Accounts owned by the same person. Fund transfers between Accounts owned by different persons may be blocked or not allowed.

*Loan Payments.* Loan payments can be done on either a one-time or recurring basis. There may be frequency and other limitations on Customer's loan transfers. There are no pre-established limitations on the dollar amounts of transfers between Customer's loan accounts, but Customer must have sufficient available funds to make the transfer. Loan payments can only be made if there is an outstanding balance on the applicable line of credit. Loan payments made before the applicable Deadline identified in the supporting Documents on a Business Day will be reflected in Customer's Account balance on the next Business Day. Loan payments received after Bank's Deadline or requested on a date that is not a Business Day may be treated as received by Bank on the following Business Day.

*Loan Drawdowns.* Customer can also use the System to obtain an advance on a loan extended to Customer by Bank. Loan advance Communications can only be made for amounts available under the applicable line of credit. Each transfer made from a line of credit will be treated as a loan advance. Customer agrees that each transfer from a line of credit in order to make a deposit to a deposit account of Customer through the System will be subject to the terms and conditions of the applicable loan agreement, which includes interest rates and fees for loan advances.

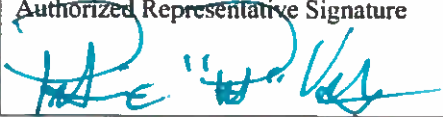
*Cancelling Transfers or Loan Communications.* In order to cancel future one-time or recurring transfers between Accounts, Customer must log onto System and cancel the transfer before the applicable Deadline identified in the Documentation on the Business Day the transfer was originally scheduled to be processed. If Customer does not make its cancellation Communication before this Deadline, then Customer's transfer may be processed as though no cancellation Communication had been made.

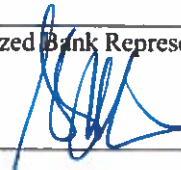
### 3.5. Check Stop Payments. Customer may stop payment on a check by providing Bank with timely, complete and accurate information as prompted by the Service. Information required may include: the account number of the Account in question; the date of check; the check number; the payee information and the EXACT amount of the check (dollars and cents). If any information is incomplete or incorrect, Bank will not be responsible for failing to stop payment on the check. Communications become effective when Bank has had a responsible opportunity to confirm their receipt and have verified that the check has not been paid. Customer may use the Business Online Banking Services to stop payment on checks that Customer has written against Customer's Accounts. If Customer wishes to cancel or amend any other Business Online Banking Service transaction (for example, wire transfers or ACH entries), Customer should use the applicable Business Online Banking Service and Customer will be subject to any limitations or inability to stop applicable to that Business Online Banking Service. If Customer contacts Bank, Bank may, at its sole and absolute discretion, attempt to assist Customer, but will not be liable for any failure to successfully stop payment on transactions.


Bank through the System in Customer's name will be authenticated using the Credentials described in this Service Addendum and the Agreement. In the event the wire transfer service through the System is unavailable, Customer should contact Bank for instructions as to the procedures to be followed for delivering wire transfer Communications to Bank in Customer's name; *provided, however*, Customer agrees that Bank is not obligated to accept any such Communication.

- 3.11. Remote Deposit Capture. Customer can use the system to transmit their deposited checks and make deposits at a remote location. This service is subject to the terms and conditions contained in the Remote Deposit Capture Service Addendum.
- 3.12. Positive Pay. Customer can use the system to review their Exception Checks and determine if the items should be paid or returned. This service is subject to the terms and conditions contained in the Positive Pay Services Addendum.
- 3.13. Event Notification. Customer may have the ability to set up an account event notification ("Alert") feature which is a convenience feature that permits Customer to request automated notification of specific situations. For example, Customer may request an Alert when an account has reached a certain balance or a check has been processed. Customer is responsible to input accurate information to set up the account notifications. Alerts do not replace standard communications Customer receives from Bank concerning Customer's Accounts. If Customer elects to receive Alerts by text messaging from us, Customer acknowledges that such messages will be automatically sent to Customer's mobile device. Customer assumes all responsibility for the secure receipt of the text messages and acknowledge that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting Customer's internet service provider(s), phone operator(s), and other relevant entities. Bank neither guarantees the delivery or the accuracy of the contents of any Alert. Bank will not be liable for losses or damages arising from (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; (iii) Customer's use or reliance on the contents of any Alert for any purposes. Bank reserves the right to terminate any Communication from Customer, for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. Customer will manage the types and timing of Customer's Alerts, and the Alerts may be stopped or suspended by Customer at any time.
- 3.14. Managing Users. Access to the Customer's Accounts through the System will be based upon the identification of the Admin User and authority levels specified by the Customer in a completed Administration Enrollment Form by an Authorized Representative. Customer may only designate one Admin User at any one time. Customer is solely responsible for designating the Admin User. Customer's Admin User may designate one or more Users or backup Admin User. Customer accepts as its sole responsibility its Admin Users' designation of Users. Customer understands and authorizes the Admin User to control access by Users of the Services through the issuance of secondary Login IDs and passwords. The Admin User may add, change, or terminate one or more Users periodically and in his or her sole discretion. Bank does not control access or use of the Services by the Admin User and Users. Also, Bank undertakes no obligation to monitor transactions effected by the Admin User or Users through the System to determine that such transactions are made and authorized by Customer. Customer agrees and acknowledges that Customer will require its Admin user and all Users to comply with all provisions of this Service Addendum and all other applicable agreements or addenda. Further, Customer acknowledges and agrees that Customer is fully responsible for the failure of the Admin User or any User to comply with the same. Customer is responsible for any transfer and other Services and charges incurred by the Admin User and any User regardless of whether Customer's authorization is exceeded and each is authorized by Customer to act individually or in concert. Customer understands that the Admin User and each User may utilize Business Online Banking Services (including inquiries, transfers and account verification) without regard to any restrictions otherwise applicable to an Account. For example, the Admin User and each User will be able to utilize the Business Online Banking Services regardless of whether they are also authorized signers on the Customer's signature card. Whenever any Admin User leaves Customer's employ or Customer otherwise revokes the authority of any Admin User to access or use the Services, Customer must immediately notify Bank in writing. Whenever any User leaves Customer's employ or Customer revokes the authority of any User to access or use the Services, Customer must notify the Admin User. Customer remains fully responsible for all use of the Login IDs, passwords and the Services occurring before Customer notifies Bank and Bank has had a reasonable opportunity to act upon Customer's written notice. The Admin User or User, as applicable, is solely responsible for deactivating such person's Credentials, as applicable. Customer remains fully responsible for all use of the Login IDs, Passwords and the Services.
- 3.15. Links to Other Services. While using the Services, Customer may be able to access uploaded content provided or operated by third parties. Unless Bank notifies Customer otherwise in writing, Bank does not operate or control any such content or any of the information, products or services on such linked websites. Customer acknowledges and agrees that: (i) Customer accesses such content and linked sites at Customer's own risk; (ii) Bank makes no representations or warranties, and assumes no responsibility for, content on any third party website and any linked site or the actions or omissions of its/their owners, operators or providers; (iii) Bank makes no endorsement of, and assumes no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by

The undersigned warrants that the Customer has taken all action required by its organizational or constituent documents to authorize the undersigned to execute and deliver on behalf of Customer this Business Online Banking Addendum and any other documents First National Bank of Santa Fe, N. A., may require with respect to the Services. The undersigned is authorized to enter into all transactions contemplated by the provision of Services to the Customer. These may include, but are not limited to, giving First National Bank of Santa Fe, N. A., instructions on any Service and designating employees or agents to act in the name and on behalf of the Customer.

<b>Name of Customer/Business/Organization:</b>	Company Name Here	
Authorized Representative Signature 	Print Name/ Title PATRICK "PAT" VARLA SF County Treasurer	Date 8-17-15

<b>First National Bank of Santa Fe, N. A.</b>		
Authorized Bank Representative Signature 	Print Name/ Title Vice President Public Funds	Date 8-21-2015

Approved as to form  
 Santa Fe County Attorney  
 By:   
 Date: 11-11-15