

# CITY OF SATELLITE BEACH

CITY COUNCIL  
APRIL 6, 2016

WORKSHOP  
6:45 P.M.

REGULAR MEETING  
7:00 P.M.



Posted: 04/01/16

**CITY OF SATELLITE BEACH, FLORIDA**

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565 CASSIA BOULEVARD 32937-3116  
(321) 773-4407  
(321) 779-1388 FAX



INCORPORATED 1957

# **AGENDA**

## **CITY COUNCIL WORKSHOP MEETING**

**SATELLITE BEACH COUNCIL CHAMBER  
565 CASSIA BOULEVARD, SATELLITE BEACH, FL 32937**

**APRIL 6, 2016  
6:45 P.M.**

- 1. CALL TO ORDER BY VICE-MAYOR BRIMER**
- 2. INTERVIEW BOARD APPLICANT**

Pursuant to Section 286-0105, FSS, if an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a verbatim transcript of the proceedings may be required and the individual may need to insure that a verbatim transcript of the proceedings is made. In accordance with the Americans with Disabilities Act and Section 286.26, FSS, Persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's office.

### CITY OF SATELLITE BEACH APPLICATION TO SERVE ON CITY BOARDS

MAR 19 2016

Name Stephen P. Nieroda Home Phone 321-626-2856  
 Address 1125 HWY A1A, APT 401 E-mail SNIERODA@GMAIL.COM  
 Business EXIT 1ST CLASS REALTY Business Phone 321-259-3990  
 Address 4865 N. WICKHAM RD, Suite 104, Melbourne, FL 32940  
 Education B.S. - COMPUTER SCIENCE  
 Relevant Experience 22 years as a REAL ESTATE AGENT, the LAST 5 years as  
BROKER/OWNER.

(Use additional sheets if necessary, or attach resume.)

*verified 3/5/16 LMO*

Are you a registered voter in Brevard County? Yes  No   
 Are you a resident of the City of Satellite Beach? Yes  No   
 Do you hold public office? Yes  No   
 Do you serve on a City board now? Yes  No

PLEASE CHECK THE BOARD(S) BELOW YOU ARE INTERESTED IN, AND RANK MULTIPLE SELECTIONS.  
(See reverse for board descriptions.)

- BEAUTIFICATION BOARD
- BOARD OF ADJUSTMENT\*
- CODE ENFORCEMENT BOARD\*
- COMMUNITY REDEVELOPMENT AGENCY (CRA) ADVISORY BOARD
- COMPREHENSIVE PLANNING ADVISORY BOARD\*
- LIBRARY BOARD
- PENSION PLAN BOARD OF TRUSTEES (GENERAL EMPLOYEES) \*
- PENSION PLAN BOARD OF TRUSTEES (FIREFIGHTERS AND POLICE) \*
- PLANNING AND ZONING ADVISORY BOARD\*
- RECREATION BOARD
- SAMSONS ISLAND WORKING BOARD

\*Board members must file financial disclosure statements.

WHY DO YOU THINK YOU ARE QUALIFIED TO SERVE ON THE BOARD(S) YOU SELECTED?  
16 years AS AN I.T. Professional for large organizations along with 22  
 years in Real Estate has helped me learn how to work AS A TEAM  
 TO ACHIEVE A COMMON OBJECTIVE & GET RESULTS.  
 WOULD YOU CONSIDER SERVING ON A BOARD NOT SELECTED ABOVE? YES  NO

Signature [Signature] Date 3-8-16

Submit completed applications to: City Clerk, 565 Cassia Boulevard, Satellite Beach, FL 32937  
PHONE: 773-4407 FAX: 779-1388 E-Mail: [lolaxa@satellitebeach.org](mailto:lolaxa@satellitebeach.org)

Notice: Under Florida law, any written information you provide to the City, including any email address, is a public record. If you do not want your email address released in a public records request, do not: (i) send email to the City or (ii) include your email address in any application or correspondence to the City. Instead, contact the City by phone or in writing (but do not include your email address).

**CITY OF SATELLITE BEACH, FLORIDA**

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565 CASSIA BOULEVARD 32937-3116  
(321) 773-4407  
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INCORPORATED 1957

# **AGENDA**

## **CITY COUNCIL REGULAR MEETING**

SATELLITE BEACH COUNCIL CHAMBER  
565 CASSIA BOULEVARD, SATELLITE BEACH, FL 32937

**APRIL 6, 2016  
7:00 P.M.**

1. **CALL TO ORDER BY VICE-MAYOR BRIMER**
2. **MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE LED BY VICE-MAYOR BRIMER**
3. **CITIZEN COMMENTS**
4. **CITY COUNCIL COMMENTS**
5. **CITY MANAGER REPORT**
6. **PRESENTATION BY GEHRING GROUP, INC. ON HEALTH INSURANCE SELF-INSURED PLAN UPDATE**
7. **DISCUSS/TAKE ACTION ON AWARD OF BID AND A BUDGET AMENDMENT TO FUND THE RECONSTRUCTION OF THE DAVID R. SCHECHTER COMMUNITY CENTER DANCE FLOOR (ITB NO. 14/15-08 - REBID)**
8. **DISCUSS/TAKE ACTION ON AN AGREEMENT BETWEEN THE CITY OF SATELLITE BEACH AND T.D. BANK, N.A. FOR BANKING SERVICES (RFP NO. 15/16-01)**
9. **DISCUSS/TAKE ACTION ON STAFF PROPOSAL TO APPLY ANY SAVINGS FROM ROAD RESURFACING PROJECTS TO ADDITIONAL PROJECTS**

Pursuant to Section 286-0105, FSS, if an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a verbatim transcript of the proceedings may be required and the individual may need to insure that a verbatim transcript of the proceedings is made. In accordance with the Americans with Disabilities Act and Section 286.26, FSS, Persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's office.

- 10. DISCUSS/TAKE ACTION ON THE 2015 ROAD RESURFACING PROGRAM – CHANGE ORDER #1**
- 11. DISCUSS/TAKE ACTION TO PIGGYBACK OFF OF AN AGREEMENT WITH THE BREVARD COUNTY ENGINEERING CONSULTANT ATKINS NORTH AMERICA INC., TO PERFORM A MUCK REMOVAL ASSESSMENT (PHASE I) OF CITY CANALS**
- 12. DISCUSS/TAKE ACTION ON RESOLUTION NO. 967, A RESOLUTION OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO WATER CONSERVATION; MAKING FINDINGS; DECLARING APRIL 2016, AS WATER CONSERVATION MONTH; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE**
- 13. AGENDA ITEMS FOR NEXT REGULAR COUNCIL MEETING**
- 14. APPOINTMENT TO BOARDS**
- 15. ADOPTION OF MINUTES: MARCH 16, 2016, REGULAR MEETING**

# City Manager's Report



To: Mayor and City Council Members  
From: City Manager Courtney Barker, AICP  
Meeting Date: 4/6/2016

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**Lil' Sports Super Hero Challenge** will be held on **April 9, 2016** at the **David R. Schechter Community Center gymnasium**. Youth 2½-6 years old will participate in a variety of fun, athletic events to encourage super hero powers of speed, agility and fair play! The cost is \$7 per competitor and registration should be completed at the Satellite Beach Recreation office or online by April 8, 2016.

On **April 16, 2016**, the Annual "**Run For It 5k**" will be held at the **David R. Schechter Community Center** to benefit the non-profit To Write Love on Her Arms. To register or find out more info, visit <https://secure.runningzone.com/runforit5k/>.

On **April 17, 2016**, enjoy the **PAL/Lion's Club Pancake Breakfast** at the **Satellite Beach Civic Center** from **8am-12pm**. Tickets are \$5/adults and \$3/children available at the PAL office, the Satellite Beach Recreation office or from a Lion's Club member.

## Informational Items:

1. The City of Indian Harbour Beach has amended their direction on the trapping of the coyotes in the Gleason Park area due to evidence of residents feeding the coyotes. They will be setting up traps immediately and euthanize the animals if they cannot find a relocation property. They believe they might have a property available, but will euthanize any trapped coyotes until then.
2. I have received a thank you letter regarding our Community Paramedic, Melanie Drake (see attached).

## Action Items:

1. The Charter Review Committee and staff are recommending scheduling a City Council Special Meeting on April 20, 2016 at 6pm. This Special Meeting will give the Committee Chair and staff an hour to present the Committee's report and answer questions from City Council.
2. I am requesting City Council approve a Special Edition *Beachcaster* to highlight issues related to the Lagoon. Staff members have received numerous questions regarding correct fertilizer application requirements, clean up efforts of the City and County, and how residents can volunteer to help. We believe a Special Edition *Beachcaster* would be the best way to address these questions.

**From:** Don Hughes  
**Sent:** Tuesday, March 29, 2016 11:56 AM  
**To:** Szymczyk, Eddie  
**Cc:** Melanie Drake; Courtney Barker  
**Subject:** RE: Community Paramedic visit

Thank you for your comments. Melanie has done an awesome job.

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**From:** Szymczyk, Eddie [<mailto:Eddie.Szymczyk@martinhealth.org>]  
**Sent:** Tuesday, March 29, 2016 11:43 AM  
**To:** Don Hughes  
**Cc:** Wolfberg, Steve  
**Subject:** Community Paramedic visit

Chief Hughes:

I just want to express my sincere thanks for you and Melanie meeting with me this past Monday to discuss your community paramedic program. I'm very impressed with the program and how you've grown it to meet the needs of your citizens of Satellite Beach and how compassionate you are about serving the needs of your community. The program addresses their medical and social needs and is flexible, which contributes effective and practical solutions in the health care environment. Lastly, Melanie is certainly an asset to your program and it's success. She is very compassionate and truly cares about taking care of her patients in the community. She appears to be very organized and demonstrates a willingness to adapt to various procedures and incorporate new ideas which was evident in the afternoon meeting with all of the healthcare advocates that were in attendance. Thanks again for your time and appreciate the information about your program.

Eddie Szymczyk  
Operations Manager  
Martin Health System  
Advanced Medical Transport  
Office 772- 223-5793  
Cell 772-631-5101



## CITY COUNCIL AGENDA ITEM

# #7

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### DISCUSS/TAKE ACTION ON AWARD OF BID AND A BUDGET AMENDMENT TO FUND THE RECONSTRUCTION OF THE DAVID R. SCHECHTER COMMUNITY CENTER DANCE FLOOR (ITB NO. 14/15-08 - REBID)

To: City Manager Courtney Barker  
From: Recreation Director Kerry Stoms  
Meeting Date: 4/6/2016  
Department: Recreation

**Recommended Action:** Approve bid selection of Brandon Stillion, Inc. for replacement of the dance floors in the David R. Schechter Community Center and approve a budget amendment for additional funding in the amount of \$90,720 to come from the Capital Assets Fund.

**Summary:** In June 2015, the City released an invitation to bid (ITB No. 14/15-08 - REBID) for the purposes of replacing the two specialty dance floors in the David R. Schechter Community Center which are original to the building. The single bidder was Brandon Stillion, Inc. whose proposal was for the removal and replacement of all the dance flooring and subfloor. His proposal cost was \$90,720. At the time this estimate was received from the dance floor company, the subfloor seemed to be in decent condition and we were not aware of the extent of the replacement. Since then, the subfloor has shown signs of extreme deterioration and must be completely removed and replaced. Brandon Stillion, Inc. has confirmed that the price as quoted last year will be honored. The Recreation Department reports that over 600 customers of all ages use these two rooms each week, participating in dance and exercise programs. These programs represent 36% of our annual program income.

The cost estimate included in the City's FY 14/15 Capital Improvement Plan budget was \$40,000 to replace only the dance floor, and did not include the subfloor. However, as the project did not move forward last year, these budgeted funds were not carried forward into the current fiscal year but were returned to unallocated reserves within the Capital Assets Fund.

**Budget Impacts:** Funding is available in the Capital Assets Fund reserves to cover the \$90,720 project cost. The life expectancy of the new floor is approximately 15 years.

**Attachments:**

- ITB No. 14/15-08 - REBID
- Brandon Stillion, Inc. Bid Submittal
- Photos of the existing dance floors



City of Satellite Beach  
Support Services Department  
565 Cassia Blvd.  
Satellite Beach, Florida 32937  
Phone (321) 773-4407  
Fax (321) 779-1388

**June 26, 2015**

## **Invitation to Bid (ITB No. 14/15-08 - REBID)**

The City of Satellite Beach will be receiving sealed proposals at the Satellite Beach City Hall, 565 Cassia Blvd., Satellite Beach, FL 32937 for:

### **Dance Floor Replacement – David R. Schechter Center**

**ITB No. 14/15-08**

This bid is for a qualified firm to remove the existing subfloor and install new subfloor and dance floor in two (2) dance studios located at the David R. Schechter Center, 1089 S. Patrick Drive, Satellite Beach, FL 32937. It is the intent of the City of Satellite Beach to require a successful bidder to remove the existing subfloor and install new subfloor and dance floor in the dance studios in accordance with the Scope of Work defined in this Invitation to Bid.

**Bid Due Date: 2:15 p.m. on July 13, 2015**

Satellite Beach City Hall, 565 Cassia Blvd., Satellite Beach, FL 32937

### **Scope of Work**

The City currently has two dance studios located at 1089 S. Patrick Drive. Dance Studio #1 measures 40' X 48' and Dance Studio #2 measures 43' X 53'. Both studios currently consist of a plywood subfloor and with a flooring overlay. The installation of the new subfloor and dance floor must include at least the following scope of work:

- 1) Demolish and properly dispose of existing subfloor
- 2) Reconstruct subfloor and install one layer of ½" underlayment grade plywood
- 3) Install one layer of ¾" T and G underlayment grade plywood, finish side up
- 4) Flooring shall be the "Timestep" Collection which is a product manufactured by Stagestep Flooring Solutions.
- 5) Flooring shall be installed in accordance with Stagestep Flooring Solutions [www.stagestep.com/resources-installation-guides-and-instructions.php](http://www.stagestep.com/resources-installation-guides-and-instructions.php)
- 6) Flooring must be installed using the heat welding method along the seams to assure moisture does not get into the subfloor.
- 7) Project must begin August 1, 2015 and conclude August 16, 2015.

Invitation to Bid document may be obtained by accessing the City of Satellite Beach website at [www.satellitebeachfl.org](http://www.satellitebeachfl.org) under "Bids", ITB No. 14/15-08 document entitled Dance Floor Replacement. Any questions regarding the scope of work can be answered by contacting Kerry Stoms, Recreation Director (321) 773-6458 or via email: [kstoms@satellitebeach.org](mailto:kstoms@satellitebeach.org).

## **Submittal Information**

### **1. Bid submittal**

Mark the document **ITB No. 14/15-08 Dance Floor Replacement** on the lower left-hand corner of the front of the envelope and mail or hand deliver to Assistant City Manager Andy Stewart, City of Satellite Beach, City Hall, 565 Cassia Blvd., Satellite Beach, FL 32937 in a sealed envelope. Two (2) original proposals must be submitted no later than 2:15 p.m. on July 13, 2015 at which time the names of the firms submitting bids will be read out loud.

Bids should be itemized identifying the costs associated with the demolition and replacement.

### **2. Information and Clarification**

For information concerning bidding procedures, contact Assistant City Manager Andy Stewart (321) 773-4407 Ext. 231 or via email: [astewart@satellitebeach.org](mailto:astewart@satellitebeach.org). It is the bidder's responsibility to request clarification on any aspects of the bid prior to bidding.

Addendums to the bid will be faxed or e-mailed according to the information City Hall has on file for the bidder. It is the bidder's responsibility to ensure City Hall has the full name of your organization, complete address, name of the individual that addenda should be directed to, and the individual's telephone and fax number, and e-mail.

In case any bidder fails to acknowledge receipt of such addenda or addendum, his/her Bid will nevertheless be construed as though it had been received and acknowledged and the submission of his/her Bid will contribute acknowledgement of the receipt of same. All addenda are a part of the Bid Documents and each Bid will be bound by such addenda, whether or not received by Bidder. It is the responsibility of each Bidder to verify that he/she has received all addenda issued before the Bids are due.

### **3. Pre-Bid Meeting**

The City will not provide a pre-bid meeting and will meet with interested bidders on an individual basis to answer any questions related to the invitation to bid.

### **4. Award Implementation**

Upon award of the contract, the awarded vendor shall carry on the services and adhere to the contract during any disputes or disagreements which may arise between the vendor and the City.

The City reserves the right to reject any and all bids.

The City reserves the right to modify the scope of work and negotiate pricing with the selected contractor if it is deemed in the best interest of the City of Satellite Beach, FL.

## **5. Termination/Cancellation Clause**

The City shall have the right to unilaterally cancel, terminate or suspend this Contract, in whole or in part, if the City deems performance has not been satisfactory.



City of satellite beach

Estimate #  
Date

000039  
07/07/2015

**Brandon Stillion Inc**

302 Norwood avenue  
Satellite Beach, Florida 32937

Phone: 321-288-1173

Email: brandonfloor@hotmail.com

Description	Quantity	Rate	Total
Vinyl Removal	4200.0	\$1.00	\$4,200.00
Sub floor Removal	4200.0	\$3.00	\$12,600.00
Disposal	1.0	\$750.00	\$750.00
Water Proof Membrane	4200.0	\$1.50	\$6,300.00
2 X 4 Grid Material	250.0	\$6.56	\$1,640.00
1/2" Plywood	150.0	\$22.50	\$3,375.00
3/4" Tongue and groove Plywood	150.0	\$39.00	\$5,850.00
Subfloor Construction	4200.0	\$6.60	\$27,720.00
Stage step Floors Time Step Collection	6.0	\$990.00	\$5,940.00
Stage step Floors Time Step Collection	7.0	\$1,095.00	\$7,665.00
Adhesive	8.0	\$260.00	\$2,080.00

<b>Description</b>	<b>Quantity</b>	<b>Rate</b>	<b>Total</b>
Welding Rods	3.0	\$110.00	\$330.00
Freight	1.0	\$1,500.00	\$1,500.00
Vinyl And Welding labor	1.0	\$7,600.00	\$7,600.00
Stage step vented Wall Base	5.0	\$480.00	\$2,400.00
Adhesive	1.0	\$145.00	\$145.00
Freight	1.0	\$150.00	\$150.00
Wall Base Labor	1.0	\$475.00	\$475.00

<b>Subtotal</b>	<b>\$90,720.00</b>
<b>Total</b>	<b>\$90,720.00</b>

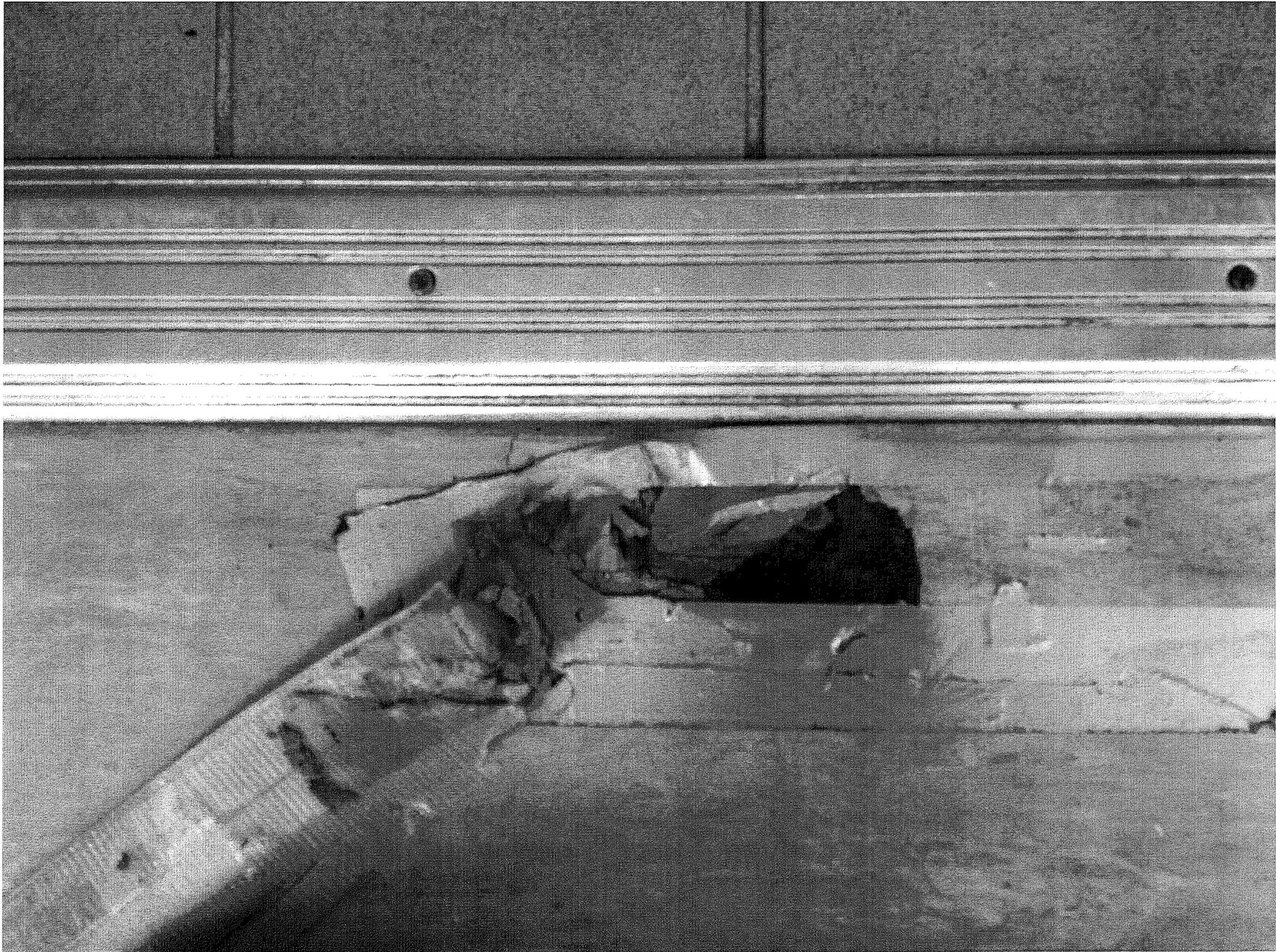
**Notes:**

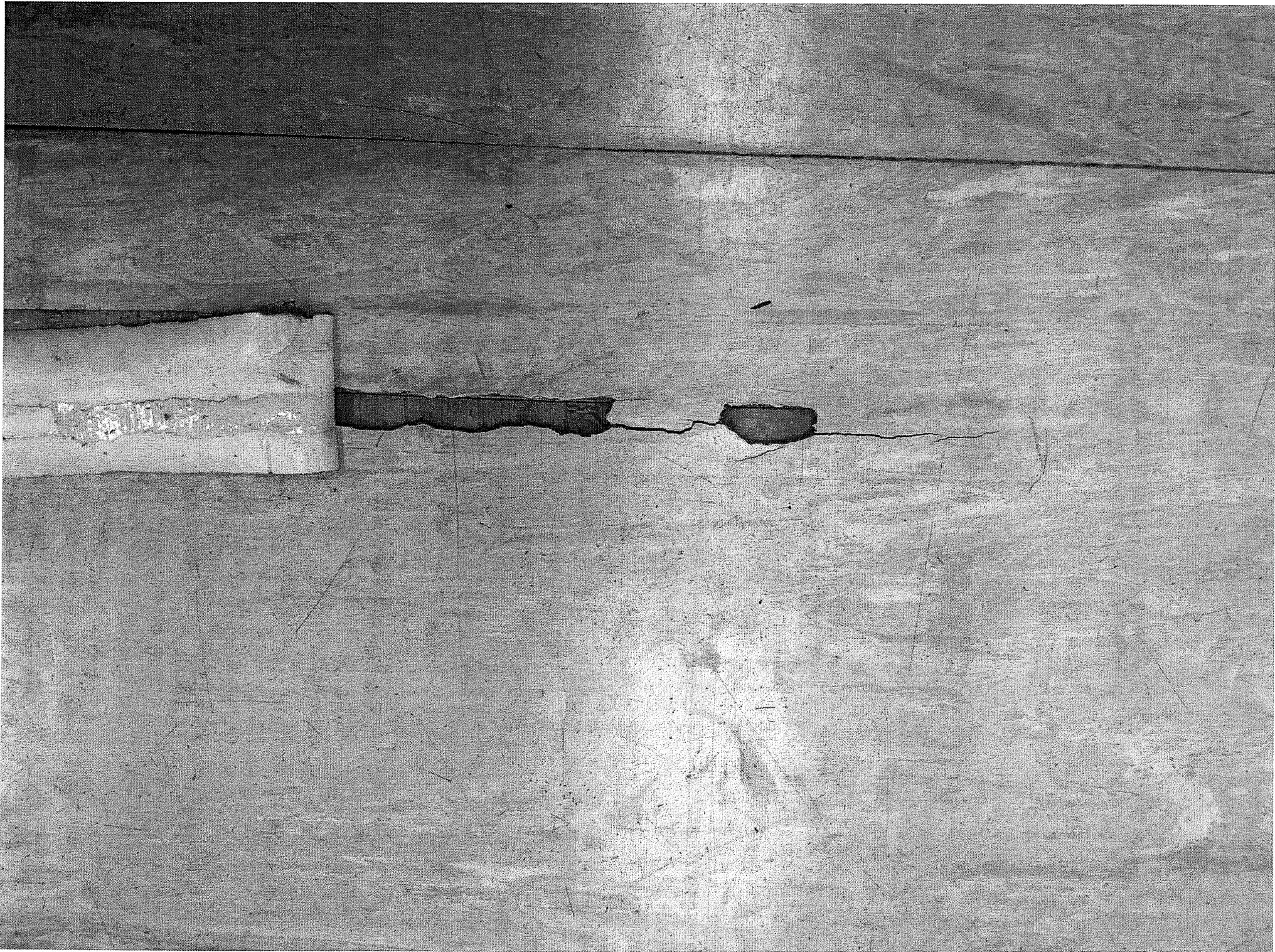
Bid itb no 14-15-06. if total reconstruction isn't necessarily needed invoice may be adjusted as needed

By signing this document, the customer agrees to the services and conditions outlined in this document.

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City of satellite beach







## CITY COUNCIL AGENDA ITEM

# #8

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### DISCUSS/TAKE ACTION ON AN AGREEMENT BETWEEN THE CITY OF SATELLITE BEACH AND T.D. BANK, N.A. FOR BANKING SERVICES (RFP NO. 15/16-01)

To: City Manager Courtney Barker  
From: Assistant City Manager Suzanne Sherman  
Meeting Date: 4/6/2016  
Department: Support Services

**Recommended Action:** Authorize the Mayor to sign the Certificate of Resolution and the City Manager to sign the Agreement for Banking Services with T.D. Bank.

**Summary:** On October 8, 2015 the City issued Request for Proposals (RFP) No. 15/16-01 to solicit proposals from qualified financial institutions to provide a full range of banking services for a three-year period. The initial posting of this RFP resulted in only one submittal, and the response due date was extended to December 22, 2015 to seek additional proposals. Responses were received from the following two vendors: T.D. Bank and Regions Bank. The evaluation committee met on January 8, 2016, and recommended award to T.D. Bank. City Council approved this award at their January 20, 2016 meeting.

To initiate services with T.D. Bank, authorization to sign two documents is requested from City Council. The Governmental Entity Certificate of Resolution form must be signed by the Mayor and is required to provide authority for the City Manager, Assistant City Manager, and Comptroller to manage the City's bank accounts and related transactions. The Cash Management Master Agreement governs the relationship between the City and T.D. Bank regarding use of products and services, has been reviewed by the City Attorney, and must be signed by the City Manager.

**Budget Impacts:** A significant reduction in banking costs is anticipated from this award. With the current vendor, the City's current estimated monthly fees total \$1,499.19, and the estimate based on the T.D. Bank proposal is \$153.18. Although these fees fluctuate each month based on transaction type and volume, this estimate represents an 89% reduction in monthly fees.

**Attachments:**

- T.D. Bank Governmental Entity Certificate of Resolution
- T.D. Bank Cash Management Master Agreement



America's Most Convenient Bank®

GOVERNMENTAL ENTITY CERTIFICATE OF RESOLUTION
(For Deposit Accounts)

Depositor (Name of Governmental Entity): City of Satellite Beach
Address: 565 Cassia Blvd, Satellite Beach, FL 32937 TIN: 59-0949593
Financial Institution: TD Bank, N.A
11000 Atrium Way
Mt. Laurel, NJ 08054

I HEREBY CERTIFY that I am the duly elected and qualified Authorized Governmental Agent and keeper of records for the Depositor (also referred to as "Governmental Entity") named above, that the following is a true and complete copy of a Resolution duly adopted at a meeting of the Governing Body of said Governmental Entity held on, or dated on April 6, 2016 in accordance with the law and the by-laws of, or consent of, said Governmental Entity, and that my delivery of this Certificate of Resolution to Financial Institution certifies to Financial Institution that such Resolution is still in full force and effect.

I FURTHER CERTIFY that the name of the Depositor set forth above is the complete and correct name of the Governmental Entity and that the Governmental Entity is organized and existing under and by virtue of the laws of the State/Commonwealth/District of Florida a Governmental Entity.

RESOLVED, that the Financial Institution named above, at any one or more of its offices or branches, be and it hereby is designated as a Financial Institution of and depository for the funds of this Governmental Entity, which may be withdrawn on checks, drafts, advices of debit, notes or other orders for the payment of monies (including electronic orders) bearing the signature of, or as otherwise authorized by, any one (1) of the following officers, employees or agents of this Governmental Entity ("Agents"), whose actual signatures are shown below:

Table with 3 columns: Title, Name, Signature. Rows include City Manager (Courtney Barker), Assistant City Manager (Suzanne Sherman), and Comptroller (Jennifer Howland).

FURTHER RESOLVED, the Agents, whose names and signatures appear above, are hereby authorized to open and maintain a deposit account or accounts of the Governmental Entity with the Financial Institution, subject to the terms and conditions of the Business Deposit Account Agreement, as it may be amended from time to time (the "Account Agreement").

FURTHER RESOLVED, that the Financial Institution is hereby directed to accept and pay without further inquiry any item or payment order drawn against any of the Governmental Entity's accounts with the Financial Institution bearing the signature of or as otherwise authorized by any such Agents even though drawn or endorsed to the order of any Agent signing or tendered by such Agent for cashing or in payment of the individual obligation of such Agent or for deposit to the Agent's personal account, and the Financial Institution shall not be required or be under any obligation to inquire as to the circumstances of the issue or use of any item signed, or payment order authorized, in accordance with the resolutions contained herein, or the application or disposition of such item or payment order or the proceeds of the item or payment order.

FURTHER RESOLVED, that any one of such Agents is authorized to endorse all checks, drafts, notes and other items payable to or owned by this Governmental Entity for deposit with the Financial Institution, or for collection or discount by the Financial Institution, and to accept drafts and other items payable at the Financial Institution.

FURTHER RESOLVED, that the above named agents are authorized and empowered to execute such other agreements, including, but not limited to, special depository agreements and arrangements regarding the manner, conditions or purposes for which funds, checks or items of the Governmental Entity may be deposited, collected, or withdrawn and to perform such other acts as they deem reasonably necessary to carry out the provisions of these resolutions.

FURTHER RESOLVED, that the authority hereby conferred upon the above named Agents shall be and remains in full force and effect until written notice of the revocation thereof shall have been delivered to and received by the Financial Institution at the location where an account of the Governmental Entity is maintained and Financial Institution has had a reasonable period of time to act upon such notice.

I FURTHER CERTIFY that the persons named above occupy the positions set forth opposite their respective names and signatures; that the foregoing resolutions now stand of record on the books of the Governmental Entity; that they are in full force and effect and have not been modified in any manner whatsoever.

IN TESTIMONY WHEREOF, I have hereunto set my hand on \_\_\_\_\_ and attest that the signatures set opposite the names listed above are their genuine signatures.

CERTIFIED TO AND ATTESTED BY:

SEAL

X

Authorized Governmental Agent or Assistant Authorized Governmental Agent

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(Title)

**Note:** In case the Authorized Governmental Agent or other certifying officer is designated by the foregoing resolutions as one of the signing officers, this certificate should also be signed by a second Officer or Director of the Governmental Entity and that the Financial Institution shall be and is authorized to honor and pay the same whether or not they are payable to bearer or to the individual order of any Agent or Agents signing the same.

Rev. 11/2014 | TD Bank, N.A.



# CASH MANAGEMENT MASTER AGREEMENT

**Customer:** CITY OF SATELLITE BEACH

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

TD Bank, N.A. ("Bank") provides a broad range of non-consumer cash management products and services to its customers. The customer identified above ("Customer") wishes to use, and Bank is willing to provide to Customer, those services that have been checked below:

- 1. TD eTreasury Services (Appendix I) .....
- 2. TD ACH Origination Services (Appendix II) .....
- 3. TD Wire Transfer Services (Appendix III) .....
- 4. TD Sweep Services (Appendix IV) .....
- 5. TD Positive Pay Services (Appendix V) .....
- 6. TD Controlled Disbursement Services (Appendix VI) .....
- 7. TD Lockbox Services (Appendix VII) .....
- 8. TD Digital Express Services (Appendix VIII) .....
- 9. TD Account Reconciliation Services - Full (Appendix IX) .....
- 10. TD Account Reconciliation Services – Partial (Appendix X) .....
- 11. TD Deposit Reconciliation Services (Appendix XI) .....
- 12. TD Check Imaging Services (Appendix XII) .....
- 13. TD Zero Balance Account Services (Appendix XIII) .....
- 14. TD Currency Services (Appendix XIV) .....
- 15. TD EscrowDirect Services (Appendix XV) .....
- 16. TD BAI2 File Transmission Services (Appendix XVI) .....
- 17. TD Data Exchange Services (Appendix XVII) .....
- 18. TD ACH Third Party Sender Services (Appendix XVIII) .....
- 19. TD Image Cash Letter Services (Appendix XIX) .....
- 20. TD Healthcare Remittance Management Services (Appendix XX) .....
- 21. TD Data Transmission Services (Appendix XXI) .....
- 22. TD ACH Positive Pay Services (Appendix XXII) .....
- 23. TD Currency Services for Smartsafe (Appendix XXIII) .....

24. TD Electronic Bill Payment Presentment & Payment Services (Appendix XXIV) ....

25. TD Integrated Payables Processing Services (Appendix XXV).....

25. TD Electronic Lockbox (Bill Payment Aggregation) Services (Appendix XXVI) .....

The “Cash Management Service(s)” or “Service(s)” shall hereafter mean the cash management service(s) identified above and provided by Bank (and/or Bank’s third-party service providers) to Customer pursuant to this Agreement, the Appendices, including Amended Appendices, as defined below, exhibits, Setup Form(s), and any service guides or manuals made available to Customer by Bank.

### Agreement

This Cash Management Master Agreement (this “Agreement”) is by and between Bank and Customer. Bank agrees to provide to Customer and Customer agrees to use certain Cash Management Services (as defined above) offered and approved by Bank for Customer’s use. Bank and Customer agree that the Cash Management Services will be governed by the general terms and conditions of this Agreement, the rules and procedures applicable to each of the Services, the Bank response to Customer’s Request for Proposal #15/16-01 and the Contract (collectively, the “Rules”). The Rules are contained in the Appendices to this Agreement, and are hereby incorporated in and made a part of this Agreement. This Agreement shall be effective as of the effective date of the Contract and shall be signed by both parties.

By signing this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement and all applicable Appendices, as the same may be amended from time to time as further described below. This Agreement becomes effective with respect to a Cash Management Service(s) described herein when this Agreement has been executed without modification by Customer, and the Agreement becomes effective for any subsequent Cash Management Service(s) that Customer may wish to use when any relevant Appendices have been executed without modification by Customer. Bank will provide use of a Cash Management Service when Bank has received all required and properly executed agreements and forms and when Customer has satisfactorily completed Bank’s implementation, testing and training requirements, if any, in the use of the Service(s). Customer may not modify any portion of this Agreement or any Appendices to this Agreement without Bank’s prior written consent and agreement, and any attempt by Customer to do otherwise shall render Customer’s Agreement null and void.

The following terms and conditions are applicable to all Cash Management Services provided to Customer hereunder.

**1. Definitions.** Capitalized terms used in this Agreement and in any Appendix, unless otherwise defined herein or therein, shall have the meanings set forth below:

“Access Devices” means collectively all security, identification and authentication mechanisms, including, without limitation, security codes or tokens, PINs, electronic identities or signatures, encryption keys and/or individual passwords associated with or necessary for Customer’s access to and use of any Cash Management Services.

“Account” means an Account, as such term is defined in the Account Agreement, used in connection with any Cash Management Services.

“Account Agreement” means the Business Deposit Account Agreement issued by Bank and governing Customer’s deposit relationship with Bank, as the same may be amended from time to time.

“Affiliate(s)” means, with respect to any party, any company controlled by, under the control of, or under common control with such party.

“Amended Appendix” means an amendment to an Appendix that supplements or revises, but does not revoke in its entirety, a prior Appendix for a particular Service.

“Appendix” means a description of the rules and procedures applicable to a particular Service to be provided by Bank to Customer. Each such Appendix, including any Amended Appendix, is incorporated herein by reference and made a part hereof. If there is any conflict between the provisions of this Agreement and any Appendix or Amended Appendix, the Appendix or Amended Appendix shall govern, but only to the extent reasonably necessary to resolve such conflict.

“Authorized Representative” means a person designated by Customer as an individual authorized to act on behalf of Customer and/or authorized to access and use the Services, as evidenced by certified copies of resolutions from Customer’s board of directors or other governing body, if any, or other certificate or evidence of authority satisfactory to Bank, including, without limitation, any Customer enrollment or Setup Form(s) completed by Customer.

“Bank Internet System” means Bank’s Internet-based electronic information delivery and transaction initiation system, as may be offered by Bank from time to time, including but not limited to Bank’s eTreasury Services.

“*Bank Internet System Appendix*” means the agreement issued by Bank and governing Customer’s use of the Bank Internet System.

“*Business Day*” has the meaning given to it in the Account Agreement.

“*Calendar Day*” has the meaning given to it in the Account Agreement.

“*Primary Account*” means the Account designated by Customer to which any direct Service fees due Bank may be charged in accordance with this Agreement. Unless otherwise agreed upon in writing by Bank, the address for Customer associated with the Primary Account shall be the address to which all notices and other communications concerning the Services may be sent by Bank.

“*Substitute Check*” has the meaning given to it in Section 3(16) of the *Check Clearing for the 21<sup>st</sup> Century Act* (“Check 21”), P.L. 108-100, 12 U.S.C. § 5002(16).

## 2. The Services.

2.1 Bank shall provide to Customer, subject to this Agreement and the applicable Appendix, all Cash Management Services that Customer may request from time to time. Bank shall not be required to provide any Services specified in an Appendix unless Customer also provides all information reasonably required by Bank to provide to Customer the Service(s) specified therein.

2.2 Customer, through its Authorized Representative, may use the Services solely in accordance with the terms and conditions of this Agreement and the related Appendices.

2.3 With the exception of scheduled off-peak downtime periods, Bank shall make all reasonable efforts to make the Services available to Customer each Business Day.

2.4 Access to on-line Services will be denied if invalid Access Devices are used or if the user exceeds the number of invalid attempts allowed by Bank.

2.5 Customer is authorized to use the Services only for the purposes and in the manner contemplated by this Agreement.

2.6 Customer agrees to cooperate with Bank, as Bank may reasonably request, in conjunction with the performance of the Services.

2.7 Customer agrees to comply with the Rules, as they may be amended from time to time by Bank.

2.8 A number of Bank’s Services are subject to processing cut-off times on a Business Day. Customer can obtain information on Bank’s current cut-off time(s) for Service(s) by reviewing the relevant Service’s

Setup Form(s), as applicable, or by calling Cash Management Customer Care at 1-866-475-7262, or by contacting Customer’s Cash Management Sales Representative. Instructions received after a cut-off time or on a day other than a Business Day may be deemed received as of the next Business Day.

2.9 Except for the Service Fees (as further defined in Section 4.2 of this Agreement) and scope of included Services applicable to the Initial Term of the Contract and as further described in Section 14 of this Agreement. Bank may make changes to this Agreement and any Appendix at any time, where such amendments apply to all or substantially all of Bank’s Cash Management Services customers, by providing notice to Customer in accordance with the terms of this Agreement or as may be required by applicable law. Notwithstanding anything to the contrary herein, any Appendix that provides for an alternative form and method for making changes to such Appendix and for providing notice of the same shall govern for that Service. Further, notwithstanding anything to the contrary in this Agreement or in any Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any procedures and provide prompt subsequent notice thereof to Customer.

2.10 In connection with this Agreement and the Services, Customer agrees that it shall present, and Bank shall have a duty to process, only Substitute Checks that are created by financial institutions; provided, however, that this limitation shall not apply to Substitute Checks created with data from Customer pursuant to any Appendix for Services involving the creation of electronic check images using check conversion technology.

## 3. Covenants, Representations and Warranties.

3.1 Customer represents and warrants that the individual(s) executing this Agreement has/have been authorized by all necessary Customer action to sign such agreements and to issue such instructions as may be necessary to carry out the purposes and intent of this Agreement and to enable Customer to receive each selected Service. Each Authorized Representative whom Customer permits to access and use the Services is duly authorized by all necessary action on the part of Customer to (i) access the Account(s) and use the Services; (ii) access any information related to any Account(s) to which the Authorized Representative has access and (iii) engage in any transaction relating to any Account(s) to which the Authorized Representative has access.

3.2 Bank may unconditionally rely on the validity and accuracy of any communication or transaction made, or purported to be made, by an Authorized Representative.

3.3 Customer shall take all reasonable measures and exercise all reasonable precautions to prevent the unauthorized disclosure or use of all Access Devices

associated with or necessary for Customer's use of the Services.

3.4 Customer is not a "consumer" as such term is defined in the regulations promulgated pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., nor a legal representative of a "consumer."

3.5 Customer shall use the Services only for its own lawful business purposes. Customer shall not use the Services for or on behalf of any third party. Customer shall take all reasonable measures and exercise reasonable precautions to ensure that Customer officers, employees and Authorized Representatives do not use the Services for personal, family or household purposes, or any other purpose not contemplated by this Agreement.

3.6 Customer and Bank shall comply with (i) all applicable laws, regulations, rules and orders; (ii) the Account Agreement; (iii) all applicable National Automated Clearing House Association ("NACHA") rules, regulations, and policies; (iv) the Uniform Commercial Code; (v) Office of Foreign Asset Control ("OFAC") sanctions; and (vi) all applicable laws, regulations and orders administered by FinCEN (collectively (i) through (vi), "Compliance Laws").

#### **4. Account Agreement; Service Fees.**

4.1 Bank and Customer agree that any Account established by Customer in connection with Services offered by Bank shall be governed by the Account Agreement, including one or more fee schedules issued by Bank for the Account. If there is any conflict between the terms and provisions of this Agreement and the Account Agreement, the terms and provisions of this Agreement shall govern, but only to the extent reasonably necessary to resolve such conflict.

4.2 During the Initial Term and any Extended Term(s) of this Agreement, as described in Section 14. Customer agrees to compensate Bank for all Accounts and Services that Bank provides pursuant to this Agreement, any Appendices, and the Contract, in accordance with the fee schedule outlined in the Contract that apply to the Services (the "Service Fees"). Any fees and charges associated with Accounts or Services that are not specified in the Contract shall be governed by Bank's standard schedule of fees and charges applicable to Accounts or Services generally. By signing below, Customer acknowledges receipt of the Account Agreement and acceptance of the Service Fees, and agrees to be bound by their terms.

4.3 Customer authorizes Bank to charge the Primary Account for all applicable charges and fees to the extent that such charges and fees are not offset by earnings credits or other allowances for Customer's Account(s). If the balance of available funds in the Primary Account is not sufficient to cover such fees, Bank may charge such fees to any other deposit Account maintained by Customer with Bank. Customer also agrees

to pay all sales, use or other taxes (other than taxes based upon Bank's net income) that may be applicable to the Services provided by Bank hereunder. Bank may charge a service charge for Account research requested by Customer in accordance with the published schedule of charges for such research.

4.4 During the Initial Term and any Extended Term(s) of this Agreement, Bank may not amend Service Fee(s) associated with those Services provided by Bank in accordance with the Contract. Notwithstanding the foregoing Bank may charge or amend Service Fee(s) associated with new or additional Services that Customer may request that are not included Services under the Contract, in aggregate or individually, at any time.

**5. Customer Identification Program.** Customer agrees to provide to Bank, before Bank begins providing any Services to Customer, any and all information required to comply with applicable law and Bank's policies and procedures relating to customer identification. Such information may include, without limitation, official certificates of customer existence, copies of Customer formation agreements, business resolutions or equivalent documents, in a form acceptable to Bank authorizing Customer to enter into this Agreement and to receive Services from Bank pursuant hereto, and designating certain individuals as Customer's Authorized Representatives.

#### **6. Software.**

6.1 Bank may supply Customer with certain software owned by or licensed to Bank to be used by Customer in connection with the Services. Customer agrees that all such software is and shall remain the sole property of Bank and/or the vendor of such software. Customer agrees to comply with all of the terms and conditions of all such license agreements and other documents to which Customer agrees to be bound. Unless otherwise agreed in writing between Bank and Customer, Customer shall be responsible for the payment of all costs of software, installation of any software provided to Customer in connection with the Services, as well as for selection, installation, maintenance and repair of all hardware required on Customer's premises for the successful operation of the software.

6.2 To the extent allowed by law, Customer shall indemnify, defend and hold harmless Bank, its successors and assigns, from and against any loss, damage or other claim or liability attributable to Customer's unauthorized distribution or disclosure of any software provided with the Services or any other breach by Customer of any software license. The provisions of this paragraph shall survive termination of this Agreement. Nothing in this Section 6.2 is, or shall be deemed to be, a waiver of sovereign immunity by Customer.

6.3 Any breach or threatened breach of this Section will cause immediate irreparable injury to Bank, and Customer agrees that injunctive relief, including

preliminary injunctive relief and specific performance, should be awarded as appropriate to remedy such breach, without limiting Bank's right to other remedies available in the case of such a breach. Bank may apply to a court for preliminary injunctive relief, permanent injunctive relief and specific performance, but such application shall not abrogate Bank's right to proceed with an action in a court of competent jurisdiction in order to resolve the underlying dispute.

**7. Computer Requirements.** For certain Cash Management Services, Customer will need to provide at Customer's own expense, a computer, all software and necessary telephone lines, Internet or other connections and equipment as needed to access the Services (collectively, the "Computer"). Customer's Internet or other web browser software must support a minimum 128-bit SSL encryption or other security measures as Bank may specify from time to time. Customer's browser must be one that is certified and supported by Bank for optimal performance. Customer is responsible for the installation, maintenance and operation of the Computer and all related charges. Customer is responsible for installing and maintaining appropriate virus protection software on Customer's Computer. Bank is not responsible for any errors or failures caused by any malfunction of the Computer or any Computer virus or related problems that may be associated with access to or use of the Services or the Computer. Bank also 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.

#### **8. Bank Third Parties.**

8.1 Customer acknowledges that certain third parties, agents or independent service providers (hereinafter "Third Parties") may, from time to time, provide services ("Third Party Services") to Bank in connection with Bank's provision of the Services to Customer and that accordingly, Bank's ability to provide the Services hereunder may be contingent upon the continuing availability of certain services from such Third Parties. Third Party Services may involve the processing and/or transmission of Customer's data, instructions (oral or written) and funds. In addition, Customer agrees that Bank may disclose Customer's financial information to such Third Parties (i) where it is necessary to provide the Services requested; (ii) in order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information; or (iii) when Customer gives its written permission.

8.2 Bank will be responsible for the acts and omissions of its Third Parties in the same manner as if Bank had performed that portion of the Services itself, and no claim may be brought by Customer against such Third Parties. Notwithstanding the foregoing, any claims against

Bank (with respect to the acts or omissions of its Third Parties) or its Third Parties shall be subject to the limitations of liability set forth herein to the same extent as if Bank had performed that portion of the Services itself. However, Bank will not be deemed to be the agent of, or responsible for, the acts or omissions of any person (other than its Third Parties), and no such person shall be deemed Bank's agent.

#### **9. Customer Information; Security Procedures.**

9.1 In providing the Services, Bank shall be entitled to rely upon the accuracy of all information and authorizations received from Customer or an Authorized Representative and the authenticity of any signatures purporting to be of Customer or an Authorized Representative. Customer agrees promptly to notify Bank of any changes to any information or authorizations provided to Bank in connection with the Services, and further agrees to promptly execute any new or additional documentation Bank reasonably deems necessary from time to time in order to continue to provide the Services to Customer.

9.2 Customer agrees that it shall be solely responsible for ensuring compliance with any security procedures established by Bank in connection with the Services, as such may be amended from time to time, and that Bank shall have no liability for any losses sustained by Customer as a result of a breach of security procedures if Bank has substantially complied with the security procedures.

9.3 Bank shall be entitled to rely on any written list of Authorized Representatives provided to Bank by Customer until revoked or modified by Customer in writing. Customer agrees that Bank may refuse to comply with requests from any individual until Bank receives documentation reasonably satisfactory to it confirming the individual's authority. Bank shall be entitled to rely on any notice or other writing believed by it in good faith to be genuine and correct and to have been signed by the individual purporting to have signed such notice or other writing. Bank may also accept verbal instructions from persons identifying themselves as an Authorized Representative, and Bank's only obligation to verify the identity of such person as an Authorized Representative shall be to call back such person at a telephone number(s) provided to Bank by Customer. Bank may, but shall have no obligation to, call back an Authorized Representative other than the Authorized Representative from whom Bank purportedly received an instruction. Bank may, but shall have no obligation to, request additional confirmation, written or verbal, of an instruction received via telephone at any time or for any reason whatsoever prior to executing the instruction. Bank may also in its discretion require the use of security codes for Authorized Representatives and/or for receiving instructions or items from Customer. Customer understands and agrees, and Customer shall advise each Authorized Representative that, Bank may, at Bank's option, record telephone conversations regarding instructions received from an Authorized Representative.

9.4 Any security procedures maintained by Bank are not intended to detect errors in the content of an instruction received from Customer or Customer's agent or vendor. Any errors in an instruction from Customer, Customer's Authorized Representative, agent or vendor shall be Customer's sole responsibility. Customer agrees that all security procedures described in this Agreement and applicable Appendix are commercially reasonable and that Bank may charge Customer's Account for any instruction that Bank executed in good faith and in conformity with the security procedures, whether or not the transfer is in fact authorized.

9.5 Customer agrees to adopt and implement commercially reasonable policies, procedures and systems to provide security to information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft or unauthorized access to data or information ("Data Breaches"). Customer also agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions. Customer will provide timely and accurate notification to Bank of any Data Breaches when known or reasonably suspected by Customer and will take all commercially reasonable measures, which may include, without limitation, retaining competent forensic experts, to determine the scope of and data or transactions affected by any Data Breaches, and promptly providing all such information to Bank subject to any limitation imposed on Customer by law enforcement or applicable law.

9.6 BANK'S SECURITY PROCEDURES ARE STRICTLY CONFIDENTIAL AND SHOULD BE DISCLOSED ONLY TO THOSE INDIVIDUALS WHO ARE REQUIRED TO KNOW THEM. IF A SECURITY PROCEDURE INVOLVES THE USE OF ACCESS DEVICES, THE CUSTOMER SHALL BE RESPONSIBLE TO SAFEGUARD THESE ACCESS DEVICES AND MAKE THEM AVAILABLE ONLY TO DESIGNATED INDIVIDUALS. CUSTOMER HAS THE SOLE RESPONSIBILITY TO INSTRUCT THOSE INDIVIDUALS THAT THEY MUST NOT DISCLOSE OR OTHERWISE MAKE AVAILABLE TO UNAUTHORIZED PERSONS THE SECURITY PROCEDURE OR ACCESS DEVICES TO ANYONE. CUSTOMER HAS THE SOLE RESPONSIBILITY TO ESTABLISH AND MAINTAIN PROCEDURES TO ASSURE THE CONFIDENTIALITY OF ANY PROTECTED ACCESS TO THE SECURITY PROCEDURE.

**10. Fraud Detection / Deterrence; Positive Pay.** Bank offers certain products and services such as Positive Pay (with or without payee validation), ACH Positive Pay, and Account blocks and filters that are designed to detect and/or deter check, automated clearing house ("ACH") or other payment system fraud. While no product or service will be completely effective, Bank believes that the products and services it offers will reduce the likelihood that certain types of fraudulent items or transactions will be

paid against Customer's Account. Failure to use such products or services could substantially increase the likelihood of fraud. **Customer agrees that if, after being informed by Bank or after Bank otherwise makes information about such products or services available to Customer consistent with Section 27 of this Agreement, Customer declines or fails to implement and use any of these products or services, or fails to follow these and other precautions reasonable for Customer's particular circumstances, Customer will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and Bank will not be required to re-credit Customer's Account or otherwise have any liability for paying such items.**

**11. Duty to Inspect.** Customer is responsible for monitoring all Services provided by Bank, including each individual transaction processed by Bank, and notifying Bank of any errors or other problems within ten (10) Calendar Days (or such longer period as may be required by applicable law) after Bank has made available to Customer any report, statement or other material containing or reflecting the error, including an Account analysis statement or on-line Account access. Except to the extent required by law, failure to notify Bank of an error or problem within such time will relieve Bank of any and all liability for interest upon correction of the error or problem (and for any loss from any subsequent transaction involving the same error or problem). In the event Customer fails to report such error or problem within thirty (30) Calendar Days after Bank made available such report, statement or on-line Account access, the transaction shall be deemed to have been properly authorized and executed, and Bank shall have no liability with respect to any error or problem. Customer agrees that its sole remedy in the event of an error in implementing any selection with the Services shall be to have Bank correct the error within a reasonable period of time after discovering or receiving notice of the error from Customer.

**12. Overdrafts; Set-off.** Bank may, but shall not be obligated to, complete any transaction in connection with providing the Services if there are insufficient available funds in Customer's Account(s) to complete the transaction. In the event any actions by Customer result in an overdraft in any of Customer's Accounts, including but not limited to Customer's failure to maintain sufficient balances in any of Customer's Accounts, Customer shall be responsible for repaying the overdraft immediately, without notice or demand. Bank has the right, in addition to all other rights and remedies available to it, to set off the unpaid balance of any amount owed it in connection with the Services against any debt owing to Customer by Bank, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by Bank, whether collected or in the process of collection, or in any other Account maintained by Customer at, or evidenced by any certificate of deposit issued by, Bank. If any of Customer's Accounts become overdrawn, under-

funded or for any reason contain a negative balance, then Bank shall have the right of set-off against all of Customer's Accounts and other property or deposit Accounts maintained at Bank, and Bank shall have the right to enforce its interests in collateral held by it to secure debts of Customer to Bank arising from notes or other indebtedness now or hereafter owing or existing under this Agreement, whether or not matured or liquidated.

### **13. Transaction Limits.**

13.1 In the event that providing the Services to Customer results in unacceptable credit exposure or other risk to Bank, or will cause Bank to violate any law, regulation, rule or order to which it is subject, Bank may, in Bank's sole and exclusive discretion, without prior notice, limit Customer's transaction volume or dollar amount and refuse to execute transactions that exceed any such limit, or Bank may terminate any Service then being provided to Customer.

13.2 Customer shall, upon request by Bank from time to time, provide Bank with such financial information and statements and such other documentation as Bank reasonably determines to be necessary or appropriate showing Customer's financial condition, assets, liabilities, stockholder's equity, current income and surplus, and such other information regarding the financial condition of Customer as Bank may reasonably request to enable Bank to evaluate its exposure or risk. Any limits established by Bank hereunder shall be made in Bank's sole discretion and shall be communicated promptly to Customer.

### **14. Term and Termination.**

14.1 This Agreement shall be effective when (i) signed by an Authorized Representative of Customer and accepted by Bank, and (ii) Customer delivers to Bank all documents and information, including any Setup Form(s) and electronic data, reasonably required by Bank prior to commencing to provide the Services. Bank will determine the adequacy of such documentation and information in its sole discretion and may refuse to provide the Services to Customer until adequate documentation and information are provided.

14.2 This Agreement shall continue in effect until terminated by either party with thirty (30) Calendar Days' prior written notice to the other. Either party may terminate an Appendix in accordance with the provisions of this Section without terminating either this Agreement or any other Appendix. Upon termination of this Agreement or any Appendix, Customer shall, at its expense, return to Bank, in the same condition as when delivered to Customer, normal wear and tear excepted, all property belonging to Bank and all proprietary material delivered to Customer in connection with the terminated Service(s).

14.3 If an Appendix is terminated in accordance with this Agreement, Customer must contact Cash Management Customer Care for instructions

regarding the cancellation of all future dated payments and transfers. Bank may continue to make payments and transfers and to perform other Services that Customer has previously authorized or may subsequently authorize; however, Bank is not under any obligation to do so. Bank will not be liable if it chooses to make any payment or transfer or to perform any other Services that Customer has previously authorized or subsequently authorizes after an Appendix had terminated.

14.4 Notwithstanding the foregoing, or anything contained in the Contract to the contrary, Bank may, without prior notice, terminate this Agreement and terminate or suspend any Service(s) provided to Customer pursuant hereto (i) if Customer or Bank closes any Account established in connection with the Service, (ii) if Bank determines that Customer has failed to maintain a financial condition deemed reasonably satisfactory to Bank to minimize any credit or other risks to Bank in providing Services to Customer, including the commencement of a voluntary or involuntary proceeding under the United States Bankruptcy Code or other statute or regulation relating to bankruptcy or relief of debtors, (iii) in the event of a material breach, default in the performance or observance of any term, or breach of any representation or warranty by Customer, (iv) in the event of default by Customer in the payment of any sum owed by Customer to Bank hereunder or under any note or other agreement, (v) if there has been a seizure, attachment, or garnishment of Customer's Accounts, assets or properties, (vi) if Bank believes immediate action is required for the security of Bank or Customer funds or (vii) if Bank reasonably believes that the continued provision of Services in accordance with the terms of this Agreement or any Appendix would violate federal, state or local laws or regulations, or would subject Bank to unacceptable risk of loss. In the event of any termination hereunder, all fees due Bank under this Agreement as of the time of termination shall become immediately due and payable. Notwithstanding any termination, this Agreement shall remain in full force and effect with respect to all transactions initiated prior to such termination.

### **15. Limitation of Liability; Disclaimer of Warranties.**

15.1 Customer acknowledges that Bank's fees and charges for the Services are very small in relation to the amounts of transfers initiated through the Services and, as a result, Bank's willingness to provide the Services is based on the limitations and allocations of liability contained in this Agreement. Unless expressly prohibited or otherwise restricted by applicable law, the liability of Bank in connection with the Services will be limited to actual damages sustained by Customer and only to the extent such damages are a direct result of Bank's gross negligence, willful misconduct, or bad faith. In no event shall Bank be liable for any consequential, special, incidental, indirect, punitive or similar loss or damage that Customer may suffer or incur in connection with the Services, including, without limitation, attorneys' fees, lost earnings or profits and loss or damage from subsequent wrongful dishonor

resulting from Bank's acts, regardless of whether the likelihood of such loss or damage was known by Bank and regardless of the basis, theory or nature of the action on which a claim is asserted. Unless expressly prohibited by or otherwise restricted by applicable law, and without limiting the foregoing, Bank's aggregate liability to Customer for all losses, damages, and expenses incurred in connection with any single claim shall not exceed an amount equal to the monthly billing paid by, charged to or otherwise assessed against Customer for Services over the three (3) month-period immediately preceding the date on which the damage or injury giving rise to such claim is alleged to have occurred or such fewer number of preceding months as this Agreement has been in effect. Notwithstanding any of the foregoing, for transactions which are subject to Article 4A of the UCC, Bank shall be liable for such damages as may be required or provided under Article 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Agreement. This Agreement is only between Bank and Customer, and Bank shall have no liability hereunder to any third party.

15.2 Except as otherwise expressly provided in Section 8 of this Agreement, Bank shall not be liable for any loss, damage or injury caused by any act or omission of any third party; for any charges imposed by any third party; or for any loss, damage or injury caused by any failure of the hardware or software utilized by a third party to provide Services to Customer.

15.3 Bank shall not be liable or responsible for damages incurred as a result of data supplied by Customer that is inaccurate, incomplete, not current, or lost in transmission. It is understood that Bank assumes no liability or responsibility for the inaccuracy, incompleteness or incorrectness of data as a result of such data having been supplied to Customer through data transmission.

15.4 Bank is not liable for failing to act sooner than required by any Appendix or applicable law. Bank also has no liability for failing to take action if Bank had discretion not to act.

15.5 Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any entry, funds transfer order, or other instruction received from Customer) or the acts or omissions of any other person, including, without limitation, any Automated Clearing House processor, any Federal Reserve Bank, any financial institution or bank, any transmission or communication facility, any receiver or receiving depository financial institution, including, without limitation, the return of an entry or rejection of a funds transfer order by such receiver or receiving depository financial institutions, and no such person shall be deemed Bank's agent. Bank shall be excused from failing to transmit or delay in transmitting an entry or funds transfer order if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or otherwise violating any provision of any risk

control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In no event shall Bank be liable for any damages resulting from Bank's action or inaction which is consistent with regulations issued by the Board of Governors of the Federal Reserve System, operating circulars issued by a Federal Reserve Bank or general banking customs and usage. To the extent required by applicable laws, Bank will compensate Customer for loss of interest on funds as a direct result of Bank's failure to comply with such laws in executing electronic transfers of funds, if such failure was within Bank's control. Bank shall not be liable for Customer's attorney's fees in connection with any such claim.

15.6 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK, AND THE SERVICE IS PROVIDED "AS IS," AND BANK AND ITS SERVICE PROVIDERS AND AGENTS DO NOT MAKE, AND EXPRESSLY DISCLAIM ANY, WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE LIABILITY OF BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

15.7 The provisions of this Section 15 shall survive termination of this Agreement.

## 16. Indemnification.

16.1 To the extent allowed by law, Customer shall indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank due to any claim or action by any person, entity or other third-party against Bank to the extent such claim or action relates to or arises out of:

(i) any claim of any person that (a) Bank is responsible for any act or omission of Customer or (b) a Customer payment order contravenes or compromises the rights, title or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law;

(ii) any failure by Customer to observe and perform properly all of its obligations hereunder or any wrongful act of Customer or any of its Affiliates;

(iii) any breach by Customer of any of its warranties, representations or agreements;

(iv) any action taken by Bank in reasonable reliance upon information provided to Bank by Customer or any Affiliate or subsidiary of Customer; and

(v) any legal action that Bank responds to or initiates, including any interpleader action Bank commences, involving Customer or Customer's Account(s), including without limitation, any state or federal legal process, writ of attachment, execution, garnishment, tax levy or subpoena.

16.2 The provisions of this Section 16 shall survive termination of this Agreement.

16.3 Nothing contained in this Section 16 is, or shall be deemed to be, a waiver of sovereign immunity by Customer.

**17. Lawyer Trust Accounts.** This Section 17 applies to law firms that have established lawyer trust accounts, including but not limited to IOLTA, IOTA and IOLA Accounts (collectively, "Lawyer Trust Accounts"), in the State of New Jersey and as may be applicable under other States' laws. In the event that Customer is a law firm in the State of New Jersey or such other State(s) as may be applicable, and Customer's clients' funds are held in Lawyer Trust Account(s), Customer agrees and shall ensure that only lawyers that are Authorized Representatives of Customer may initiate debits from such Lawyer Trust Account(s). Such debit transfers may include, but are not limited to, wire, ACH and book transfers through the Bank Internet System or through such other Services as may be made available by Bank from time to time.

**18. Force Majeure.** Neither party shall bear responsibility for non-performance of this Agreement to the extent that such non-performance is caused by an event beyond that party's control, including, but not necessarily limited to, fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents Bank or Customer from operating normally.

**19. Documentation.** The parties acknowledge and agree that all documents evidencing, relating to or arising from the parties' relationship may be scanned or otherwise imaged and electronically stored and the originals (including manually signed originals) destroyed. The parties agree to treat such imaged documents as original documents and further agree that such reproductions and copies may be used and introduced as evidence at any legal

proceedings including, without limitation, trials and arbitrations, relating to or arising under this Agreement.

**20. Entire Agreement.** Bank and Customer acknowledge and agree that this Agreement and any amendments hereto, all other documents incorporated by reference therein, and Appendices constitute the complete and exclusive statement of the agreement between them with respect to the Services, and supersede any prior oral or written understandings, representations, and agreements between the parties relating to the Services.

**21. Amendments.** Except for the Service Fees applicable to the Contract, Bank may, at any time, amend this Agreement, the Services or Appendices in its sole discretion and from time to time. Except as expressly provided otherwise in this Agreement, any such changes generally will be effective immediately upon notice to Customer as described below. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective. Customer will remain obligated under this Agreement and any Appendices, including without limitation, being obligated to pay all amounts owing thereunder, even if Bank amends this Agreement or any Appendices. Notwithstanding anything to the contrary in this Agreement in any Appendix or the Contract, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Customer.

**22. Severability.** If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable as written, that provision shall be interpreted so as to achieve, to the extent permitted by applicable law, the purposes intended by the original provision, and the remaining provisions of this Agreement shall continue intact. In the event that any statute, regulation or government policy to which Bank is subject and that governs or affects the transactions contemplated by this Agreement, would invalidate or modify any portion of this Agreement, then this Agreement or any part thereof shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of Bank's compliance with such statute, regulation or policy.

**23. Assignment and Delegation.** Bank may assign any of its rights or delegate any of its responsibilities in whole or in part with ninety (90) days prior written notice to Customer. Customer may not assign, delegate or otherwise transfer its rights or responsibilities under this Agreement without Bank's prior written consent, which consent Bank may grant or withhold in its sole discretion.

**24. Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

**25. Non-Waiver.** No deviation from any of the terms and conditions set forth or incorporated in this

Agreement shall constitute a waiver of any right or duty of either party, and the failure of either party to exercise any of its rights hereunder on any occasion shall not be deemed to be a waiver of such rights on any future occasion.

**26. Governing Law.** Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the State of Florida.

**27. Notices.**

27.1 Except as otherwise expressly provided in this Agreement, all notices that are required or permitted to be given by Customer (including all documents incorporated herein by reference) shall be sent by first class mail, postage prepaid, and addressed to Bank at the address provided to Customer in writing for that purpose. All such notices shall be effective upon receipt.

27.2 Customer authorizes Bank to, and Customer agrees that Bank may, send any notice or communication that Bank is required or permitted to give to Customer under this Agreement, including but not limited to notice of any change to the Services, this Agreement or any Appendix, to Customer's business mailing address or Customer's business e-mail address as it appears on Bank's records, or electronically by posting the notice on Bank's website, on an Account statement or via facsimile, and that any such notice or communication will be effective and deemed delivered when provided to Customer in such a manner. Customer agrees to notify Bank promptly about any change in Customer's business mailing or Customer's business e-mail address and acknowledges and agrees that no such change will be effective until Bank has had a reasonable opportunity to act upon such notice. Customer agrees that Bank may consider any such notice or communication as being given to all Account owners when such notice or communication is given to any one Account owner.

**28. Jury Trial Waiver.** BANK AND CUSTOMER EACH AGREE THAT NEITHER BANK NOR CUSTOMER SHALL (I) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING

OUT OF, THIS AGREEMENT OR ANY ACCOUNT OR THE DEALINGS OF THE RELATIONSHIP BETWEEN BANK AND CUSTOMER, OR (II) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANOTHER IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER BANK NOR CUSTOMER HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. BANK AND CUSTOMER EACH ACKNOWLEDGE THAT THIS WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE. The provisions of this Section 28 shall survive termination of this Agreement.

**29. Beneficiaries.** This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

**30. Recording of Communications.** Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be recorded and retained by either party by use of any reasonable means.

**31. Facsimile Signature.** The parties acknowledge and agree that this Agreement and any Appendix or Amended Appendices may be executed and delivered by facsimile, and that a facsimile signature shall be treated as and have the same force and effect as an original signature. Notwithstanding the foregoing, Bank may, in its sole and exclusive discretion, also require Customer to deliver this Agreement and any Appendix or Amended Appendices with an original signature for its records.

**32. Relationship.** Customer and Bank are not, and Customer and Bank's licensors are not, partners, joint venturers or agents of each other as a result of this Agreement.

**33. Section Headings.** The section headings used in this Agreement are only meant to organize this Agreement, and do not in any way limit or define Customer's or Bank's rights or obligations.

IN WITNESS WHEREOF, Customer has duly caused this Agreement, including all applicable Appendices, to be executed by its Authorized Representative.

**CITY OF SATELLITE BEACH**

(Customer)

565 Cassia Blvd.

Satellite Beach, FL 32937

(Address)

By:

(Signature of Authorized Representative)

Print Name: Courtney Barker

Title: City Manager

Governmental



## EXHIBIT TO CASH MANAGEMENT MASTER AGREEMENT:

### GOVERNMENTAL ENTITY SERVICES

This Exhibit is incorporated by reference into the parties' Cash Management Master Agreement (the "Agreement") and applies to all Cash Management Services made available by Bank to Customer, as a governmental entity. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Bank and Customer agree that, notwithstanding anything to the contrary contained in the Agreement, the following terms and provisions shall apply to the Agreement:

#### TERMS AND CONDITIONS

1. Section 26, "Governing Law," of the Agreement is hereby deleted in its entirety and replaced with the following:

**26. Governing Law.** Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction pursuant to which Customer was incorporated or otherwise organized, except where applicable federal law is controlling. In the event of a conflict between the provisions of this Agreement and any applicable law or regulation, this Agreement shall be deemed modified to the extent necessary to comply with such law or regulation.

2. The following new Section 34 is hereby added immediately after Section 33:

**34. Additional Representations and Warranties.** For purposes of this Section, "Governmental Unit" means (A) any town, city, school district or school administrative unit of any nature, water district, sewer district, sanitary district, housing authority, hospital district, municipal electric district, county or other political subdivision, government agency, bureau, department or other instrumentality, or quasi-governmental corporation or entity defined by applicable law, and (B) any state government or any agency, department, bureau, office or other instrumentality thereof.

(a) If Customer is a Governmental Unit of the type included in (A) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by the Treasurer, Finance Director, or other financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements; (ii) that this Agreement has been

duly authorized by a vote of the governing body of Customer that was duly called and noticed, at which the necessary majority voted to authorize this Agreement, as evidenced by the certification of the Secretary of the governing body and provided with this Agreement; (iii) that only persons authorized to disburse municipal funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; (iv) that if this Agreement remains in effect for more than one budget year, upon request of Bank, Customer will ratify and provide evidence of the renewal of this Agreement in subsequent years; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(b) If Customer is a Governmental Unit of the type included in (B) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by a financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements on behalf of Customer; (ii) that this Agreement has been duly authorized by a senior officer of Customer; (iii) that Customer has complied with all state laws and regulations, including any regulations or policies adopted by Customer with respect to electronic commerce in entering into and performing this Agreement and any related ACH or wire transfer agreement; (iv) that only persons authorized to disburse Customer funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(c) For a Customer of the type included in either (A) or (B) above, Customer and the individual signing below further represent, warrant and agree: (i) that upon Bank's request, Customer shall provide

evidence of those persons authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) above; (ii) that upon Bank's request, Customer will certify its compliance with (a) or (b), as applicable, on an annual basis; and (iii) that Customer will provide notice to Bank if any person authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) is no longer so authorized or his/her position of such authority is terminated for any reason.

**3. Effectiveness.** Customer agrees to all the terms and conditions of this Exhibit. The liability of Bank under this Exhibit shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Exhibit shall remain in full force and effect until such time as a different or amended Exhibit is accepted in writing by Bank or the Cash Management Master Agreement is terminated.

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## APPENDIX I

### TD eTREASURY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and governs Customer's use of the Bank Internet System (or "eTreasury"). All capitalized terms used herein without definition shall have the meanings given to them in the parties' Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

##### 1. Definitions.

"*Account(s)*" means a checking, regular statement savings, money market deposit, certificate of deposit, investment or commercial loan or line of credit account(s) Customer maintains with Bank for business or non-consumer purposes that is designated by Customer for use with the Services, as described below.

"*Account Agreement*" means any and all agreements between Customer and Bank which govern Customer Accounts (as defined above) and which were provided to Customer when Customer opened its Account(s), or any other documents governing Customer's Account(s), each as may be amended from time to time.

"*Administrator*" or "*Account Administrator*" means Customer's employee(s) or other person(s) that Customer (or any Administrator designated by Customer) designates on the Services' Setup Form(s) (or by on-line changes to such designations as described below) as being its Authorized Representative, or as authorized to act on Customer's behalf, with respect to the Services.

"*Appendix*" means this eTreasury Services Appendix, including all procedures, Setup Form(s), exhibits, schedules, documents and agreements referenced herein, each as may be amended from time to time.

"*Authorized User*" means any person Customer's Administrator designates as being authorized to access or use any of the Services on Customer's behalf.

"*Login ID*" means the electronic identification, in letters and numerals, assigned to Customer by Bank or to any additional Authorized Users designated by Customer's Account Administrator.

"*Payment*" means a transfer of funds to or from Account(s).

##### 2. Services.

2.1 This Appendix describes the terms and conditions under which Bank will provide Customer with access to and use of any of the electronic information delivery and transaction initiation services that Bank makes available using the Bank Internet System.

2.2 By accessing the Services with the Access Devices, Customer may perform any or all of the Services described in this Appendix and selected for use in the Services' Setup Form(s) and that Bank has approved for Customer's use. Bank reserves the right to reject Customer's Services' Setup Form(s), schedules and other required documents and to refuse Customer access to or use of the Services for any reason and in Bank's sole discretion. Bank may, in its sole and exclusive discretion, introduce new features of the Services from time to time but is not required to notify Customer of the availability of any such new features.

2.3 By subscribing to the Services, Customer will have access to the Services' basic features, which include but may not be limited to, in Bank's sole and exclusive discretion, the following:

**2.3.1 Previous-Day Balance Reporting.** Previous-Day Balance Reporting allows Customer to review the balances and transaction history in Customer's checking, savings, money market deposit and loan Account(s) for such period of time as described in the Services' Setup Form(s). Customer may also view images of deposit tickets, deposit items, paid checks, return deposited items and expired stopped items through this feature. This information may be viewed upon implementation of the Services, and the scope of the time periods for which transactional history and check images may be viewed (including pre-implementation periods) may vary and depend upon various factors such as when Account(s) were opened and when the Services were first implemented and set-up.

**2.3.2 Real-Time Balance Reporting.** Real-Time Balance Reporting allows Customer to review current Account balance(s) and transaction activity in real-time.

**2.3.3 Book Transfers.** Book Transfers allows Customer to make intra-bank fund transfers between Customer's checking, savings and loan Accounts. Transfers may be made as one-time or recurring, same-day or in the future. Book Transfers may also be initiated from (i) one-Account-to-one-Account, (ii) one-Account-to-many-Accounts, or (iii) from many-Accounts-to-one-Account. Recurring transfers may utilize one of several repeating frequency options (weekly, monthly, etc.), as set forth in the Services. Book Transfer templates may be created and saved for frequently executed transfers. Pending transfers and templates may be edited or deleted (cancelled) through the Services by Authorized Users at any time prior to the Business Day on which the associated transfer is scheduled to occur. Transfer amounts and the order in which such transfers occur are limited to the available balance in the Account(s) on the effective date of the transfer. For same-day transactions, Customer will need to have sufficient available funds in the Account from which funds are to be transferred to cover the amount of the transfer. For future or recurring transactions, Customer will need to have sufficient available funds on the day the transaction is to occur. The number of transfers from interest bearing checking and savings Accounts are subject to the terms of the Account Agreement and federal regulations. Transfers that Customer transmits by Bank's cut-off time as set forth on the Services' designated website or the Services' Setup Form(s) on a Business Day will be posted to the Account as of that Business Day; however, a request (whether a same-day funds transfer or a future-dated transfer) may not result in an immediate transfer of funds or immediate availability because of the time required to process the transaction. Customer is solely responsible for the review of the previous day's transaction report and the status of the transfer request within the Services to ensure that the transaction was processed. Only Book Transfers initiated through the Services will be displayed on the Services' Transfer reports tab. All transfers are subject to the Account Agreement.

**2.3.3.1 Future-Dated Book Transfer.** In conjunction with Book Transfers, a request to transfer funds between Customer's Accounts may be initiated and approved for a future date. The future transfer date may be scheduled for such date in advance as may be permitted from time to time by Bank and as set forth within the Bank Internet System. Future-dated transfers may be scheduled as a one-time request or a recurring request in a pre-determined amount, based on the instructions entered by Customer with the request. Future-dated transfers will be initiated on the Business Day requested by Customer, not on the date Customer entered the transaction using the Services.

**2.3.4 Stop Payment.** Stop payments of checks drawn on Customer's Account(s) are subject to the terms and conditions of the Account Agreement. Notwithstanding anything in the Account Agreement to the contrary, Customer may use the Services to initiate stop payment orders for an individual check or a range of checks. Bank shall have no responsibility for losses resulting from any delay in Bank's receipt of stop

payment orders transmitted by means of the Bank Internet System or for Customer not taking additional actions when a response message from the Bank Internet System indicates a response other than a successful confirmation. Customer must provide Bank with the **EXACT CHECK NUMBER OR RANGE OF CHECK NUMBERS**. When known, Customer should also provide the **EXACT AMOUNT OF THE CHECK**. If the check number is incorrect in any way or the amount of the check is inaccurate by one cent or more in the stop payment order, payment will not be stopped and Bank will not be responsible for resulting losses. All other information must be reasonably accurate. Requests entered on the current day may not be effective until one (1) Business Day after receipt, and after Bank has had a reasonable time to act on the request. Requests made on a non-Business Day or on Saturday, Sunday or federal holidays are entered on the next Business Day but may not be effective until the second (2<sup>nd</sup>) Business Day after receipt. Stop payments using the Bank Internet System are effective for three hundred sixty-five (365) Calendar Days unless renewed before the end of the 365-day period. Customer is solely responsible for confirming the status of a stop payment order. Except as otherwise provided by Compliance Laws, Customer shall not have the right to stop payment on or recall any payment order or transfer request given hereunder after it has been transmitted to Bank. Only stop payment orders initiated or recalled through the Bank Internet System will be displayed on the Bank Internet System's Stop Payments screen. Stop payment orders that are not initiated through the Bank Internet System may also be cancelled through the Bank Internet System.

**2.3.5 E-Learning.** E-Learning is a self-paced, interactive educational tool available via the Services that Customer may use to learn more about the various features or modules related to the Services, as well as how to use them.

**2.3.6 Customizable Dashboard.** Using this feature, Customer can configure and save Account balance views, as well as command one-click access to detailed information, balance and payment reports, and high-use transaction initiation features. It is Customer's responsibility to view the "Dashboard" for Bank notices when designating another section of the Bank Internet System as the desired landing page.

**2.4** In addition to the Services as described in this Appendix and/or in the Services' Setup Form(s), additional features or modules related to the Services may be offered from time to time by Bank, in its sole and exclusive discretion, including but not limited to the following:

**2.4.1 Wire Transfers.** Wire transfers and wire drawdowns are subject to the terms and conditions of the Wire Transfer Services Appendix. Once approved by Bank for use by Customer, this Service allows Customer to transfer funds electronically, typically from Customer's Account(s) to other account(s) with Bank or to account(s) at other banks. Except for future-dated transfers, domestic or foreign wire transfers entered through the

Services will be processed on the Business Day they are received, and at currency exchange rates disclosed within the Services, as applicable, provided that they are received in accordance with Bank's cut-off time(s) for foreign wires and for domestic wires, as set forth in the Wire Transfer Services Appendix.

**2.4.2 ACH Originations.** ACH originations are subject to the terms and conditions of the Automated Clearing House (ACH) Origination Appendix, the Third-Party Sender Services Appendix or the ACH Third Party Service Provider Agreement, as applicable. Once approved by Bank for use by Customer, this Service allows Customer to initiate and approve ACH transactions that Customer desires Bank to enter into the ACH network on Customer's behalf. Except for future-dated transactions, ACH transactions entered through the Services will be processed (but not settled) on the Business Day they are received, provided that they are received in accordance with Bank's cut-off time, as set forth in the Automated Clearing House (ACH) Origination Appendix or the Third-Party Sender Services Appendix, as applicable.

**2.4.3 File Transfers.** File transfers is a method for Customer and Bank to send and receive reports and files (including, but not limited to, ACH, Reconciliation, Lockbox, and BAI files) to each other through the Internet and are subject to the terms and conditions of applicable Appendices. Such reports and files may also be auto-generated and auto-delivered.

**3. Hours of Access.** Customer generally may access the Services 24 hours a day, seven (7) days a week. Customer may not be able to access the Services, however, during any special or other scheduled maintenance periods or interruption or delay due to causes beyond Bank's control. These hours of access are subject to change without notice.

#### **4. Account Designation.**

**4.1** Customer may designate any of Customer's Accounts maintained with Bank for business or non-consumer purposes for use with the Services. Generally, the taxpayer identification number for each Account must be the same, and each Account is subject to the other conditions set forth in this Appendix, except as Bank, in its sole discretion, may otherwise permit. Bank reserves the right to deny any Account designation for use with the Services in its sole discretion.

**4.2** Customer may at any time add or delete any Account that Customer has designated for use with any of the Services, or change the Services associated with any Account, by notifying Bank in writing.

#### **5. Administrator(s) and Authorized Users.**

**5.1** Customer shall designate Administrator(s) with Bank as set forth in the Services' Setup Form(s). Customer is solely responsible for designating its Administrator(s).

**5.2** The Administrator(s) may designate other Administrators and/or Authorized Users. Customer accepts as its sole responsibility the Administrator's designation of other Administrators and Authorized Users. Customer understands that the Administrator(s) will control, and Customer authorizes the Administrator(s) to control, access by other Administrators and Authorized Users of the Services through the issuance of Access Devices. The Administrator(s) may add, change or terminate Customer's Authorized User(s) from time to time and in his/her sole discretion. Bank does not control access by any of Customer's Authorized Users to any of the Services. Bank recommends that Customer manage its use of the Services and its Administrators by requiring dual control to set up new Authorized Users. Bank also recommends that Customer review and assign limits for Authorized Users that create and/or approve wire transfers and ACH transactions, as established on the Services' Setup Form(s). In the event that Bank, in its sole and exclusive discretion, assists Customer in any way with the establishment, addition or general set-up of Authorized Users, Customer understands and agrees that the Administrator(s) shall remain responsible for verifying the accuracy thereof and shall otherwise control access by any of Customer's Authorized Users to any of the Services.

**5.3** Customer will require each Administrator and each Authorized User to comply with all provisions of this Appendix and all other applicable agreements. Customer acknowledges and agrees that it is fully responsible for the failure of any Administrator or any Authorized User to so comply. Customer is responsible for any Payment, transfer and other Services and charges incurred by any Administrator and any Authorized User, even if such Administrator or Authorized User exceeds his/her authorization. Bank recommends that Customer require its Administrator(s) to review all entitlement reports available through the Services with respect to Customer's Authorized User(s).

**5.4** Whenever any Authorized User leaves Customer's employ or Customer otherwise revokes the authority of any Authorized User to access or use the Services, the Administrator(s) are solely responsible for deactivating such Authorized User's Access Devices. Customer shall notify Bank in writing whenever a sole Customer Administrator leaves Customer's employ or Customer otherwise revokes a sole Administrator's authority to access or use the Services.

#### **6. Access Devices; Security Procedures.**

**6.1** Upon successful enrollment, Customer can access the Services from Bank's designated website by using Customer's Computer or, as may be permitted by Bank from time to time in its sole discretion and in accordance with Bank's terms and conditions for such access, using mobile or other Internet-enabled system(s) or device(s), along with the Services' security procedures as described from time to time. A company ID assigned to Customer by Bank, a unique Login ID and an individual password will be used for log-in by Customer's Administrator(s) and Authorized User(s). Bank will

provide the Administrator(s) initially designated by Customer with an initial individual password to gain access to the Services. The Administrator(s) and Authorized User(s) must change his or her individual password from time to time for security purposes, as prompted by the Bank Internet System or more frequently.

6.2 Customer acknowledges that the Administrator(s) will, and Customer authorizes the Administrator(s) to, select other Administrators and Authorized Users by issuing to any person a unique Login ID and password. Customer further acknowledges that the Administrator(s) may, and Customer authorizes the Administrator(s) to, change or de-activate the unique Login ID and/or password from time to time and in his or her sole discretion.

6.3 Customer acknowledges that, in addition to the above individual passwords, access to the Services includes, as part of the Access Devices, a risk-based authentication security procedure at log-in for Customer, including Customer's Administrator and Authorized Users. This additional security procedure involves an additional credential for each user that is in addition to Login IDs and individual password security (hereinafter "Enhanced Log-in Security"). With Enhanced Log-in Security, additional information regarding each Authorized User's computer and method of website access will be collected and validated automatically with the set-up process. An electronic access identity will be created for each Authorized User by combining a number of key identification points, such as IP address, Internet service provider, PC and browser settings, time of day and geographic location. These access identities are used by Bank to authenticate Authorized Users. Further authentication may occur automatically due to the detection of unusual source occurrences in relation to that access identity. An additional security procedure incorporates use of a physical security device or token ("Token") for certain transactional functionality associated with ACH transactions and wire transfers. A Token will be issued to any Authorized User(s), for example, for use in initiating and/or approving ACH transactions and wire transfers. Notwithstanding the foregoing, Bank reserves the right to incorporate the use of Tokens for certain other functionality from time to time, in its sole discretion, including by way of example only and not by way of limitation, the use of Tokens with certain administrative functionality and for the creation of ACH and wire templates. Physical security of each Token is Customer's sole responsibility. With the Token, each Authorized User will receive a PIN number that the Authorized User must keep in a secure place. When an Authorized User leaves Customer's employ, his or her Login ID must be deleted and, if a Token had been issued to such Authorized User, Bank must be promptly notified so that Bank may deactivate such Authorized User's Token. Any additional Authorized User requiring a Token must be authorized, in writing by Customer to Bank, for Token creation or re-creation and deployment. If applicable, fees may be assessed for additional Tokens.

6.4 Customer further acknowledges and agrees that all wire transfers and ACH transactions initiated through the Services incorporate "dual control" or

separation of duties. With this additional security feature, one Authorized User will be permitted to create, edit, cancel, delete and restore ACH batches or wire transfer orders under his/her unique Login ID, password and Token; a second *different* Authorized User with his/her own unique Login ID, password and Token will be required to approve, release or delete ACH batches or wire transfer orders.

6.5 Customer accepts as its sole responsibility the selection, use, protection and maintenance of confidentiality of, and access to, the Access Devices. Customer agrees to take reasonable precautions to safeguard the Access Devices and keep them confidential. Customer agrees not to reveal the Access Devices to any unauthorized person. Customer further agrees to notify Cash Management Customer Care immediately at 1-866-475-7262 if Customer believes that the confidentiality of the Access Devices has been compromised in any manner.

6.6 The Access Devices identify and authenticate Customer (including the Administrator and Authorized Users) to Bank when Customer accesses or uses the Services. Customer authorizes Bank to rely on the Access Devices to identify Customer when Customer accesses or uses any of the Services, and as signature authorization for any Payment, transfer or other use of the Services. Customer acknowledges and agrees that Bank is authorized to act on any and all communications or instructions received using the Access Devices, regardless of whether the communications or instructions are authorized. Bank owns the Access Devices, and Customer may not transfer them to any other person or entity.

6.7 Customer acknowledges and agrees that the Access Devices and other security procedures applicable to Customer's use of the Services and set forth in this Appendix, as well as such security best practices as described by Bank from time to time and made available on the Bank Internet System, are a commercially reasonable method for the purpose of verifying whether any Payment, transfer or other use of the Services was initiated by Customer. Customer also agrees that any election Customer may make to change or waive any optional security procedures recommended by Bank is at Customer's risk and that any loss resulting in whole or in part from such change or waiver will be Customer's responsibility. Customer further acknowledges and agrees that the Access Devices are not intended, and that it is commercially reasonable that the Access Devices are not intended, to detect any errors relating to or arising out of a Payment, transfer or any other use of the Services.

6.8 If Customer has reason to believe that any Access Devices have been lost, stolen or used (or may be used) or that a Payment or other use of the Services has been or may be made with any Access Devices without Customer's permission, Customer must contact its Administrator and Bank. In no event will Bank be liable for any unauthorized transaction(s) that occurs with any Access Devices.

6.9 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

**7. Debiting Customer's Account(s).** Customer authorizes Bank to charge and automatically deduct the amount of any Payment from Customer's Account(s) (or any other Account Customer maintains with Bank, if necessary), in accordance with the Cash Management Master Agreement and the Account Agreement.

## **8. Electronic Statements.**

8.1 As an eTreasury user, and subject to Bank's approval and applicable set-up and enrollment requirements, Customer may elect to stop or resume the mailing of paper statements for eligible Accounts by requesting this feature from Bank.

8.2 Only Accounts accessible via the Services may be enrolled for electronic statement delivery. Eligible Accounts are displayed on the "Statements" page of the Services. If Customer currently receives a consolidated periodic statement that includes multiple Accounts and Customer selects electronic statement delivery, all Accounts shown on the consolidated statement will be automatically enrolled for electronic statement delivery. For joint Accounts, only one Account owner need enroll for electronic statement delivery.

8.3 Customer's electronic statement will generally be available within 24 hours after the statement cut-off date. The statement cut-off date for Customer's electronic statement is the same as Customer's paper statement. Once made available as described herein, the information contained in Customer's electronic statement shall be deemed to have been delivered to Customer personally, whether actually received or not. Customer may view, print and download current statements and such period of statement history as set forth on the Bank Internet System. To view or print an electronic statement, Customer must have an appropriate version of Adobe Acrobat software installed on Customer's Computer sufficient to support access to a PDF file.

8.4 At Customer's request, Bank will send Customer a paper copy of Customer's electronic statement previously delivered through the Services at any time. Bank's standard fee then in effect and charged for paper delivery of copies of Account statements will apply. A request for a paper copy does not cause a termination of the electronic statement feature. A paper copy can be obtained until the copy is no longer required to be maintained by Bank as a record for the designated Account under applicable law or regulation.

8.5 Customer may revoke consent for the electronic statement feature for Customer's Accounts at any time by contacting Customer's Relationship Manager. Electronic posting of Customer's electronic statement on the Services' site and transmission of related email notices will continue until: (i) termination of the electronic statement feature; (ii) termination of Customer's designated Accounts with Bank; or (iii) termination of this Agreement or Customer's use of the Services.

8.6 Bank may discontinue the electronic statements feature at any time in Bank's discretion and resume mailing paper statements to Customer. Bank may also add, modify or delete any feature of the electronic statements feature in Bank's discretion. Bank will provide Customer with notice of any change or termination in the electronic statement feature in accordance with this Appendix.

## **9. Alerts.**

9.1 The Services allow Customer to voluntarily choose alert messages regarding Customer's Account(s), including but not limited to messages to alert Customer about high or low Account balance thresholds, about debit or credit transactions cleared, and payment status for ACH and wire transactions. Bank may add new alerts from time to time, or cancel existing alerts. If Customer has opted to receive an alert that is being canceled, Bank will notify Customer in accordance with the terms of this Appendix. Each alert has different options available, and Customer will be asked to select from among these options upon activation of Customer's alerts service.

### **9.2 Voluntary Alerts.**

9.2.1 Electronic alerts will be sent to the email address Customer has provided as Customer's primary email address for the Services or via the Services' secure messaging service. If Customer's email address changes, Customer is responsible for informing Bank of the change. Customer can also choose to have alerts sent to a secondary email address. Changes to Customer's primary and secondary email addresses will apply to all of Customer's alerts.

9.2.2 Customer understands and agrees that Customer's alerts may be delayed or prevented by a variety of factors. Bank will use commercially reasonable efforts to provide alerts in a timely manner with accurate information. Bank neither guarantees the delivery nor the accuracy of the contents of any alert. Customer also agrees that Bank shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by Customer or any third party in reliance on an alert. Customer agrees that Bank is not responsible for any costs or fees incurred as a result of alerts sent to email addresses or phone numbers connected with mobile or similar devices.

9.2.3 Alerts are not encrypted and will never include Customer's Access Devices or full Account number(s). However, alerts may include Customer's name and some information about Customer's Accounts, depending upon which alert(s) Customer selects. Anyone with access to Customer's email address will be able to view the contents of these alerts.

9.2.4 Customer may, at its option, customize the subject line of Customer's alerts for easier identification by Customer. Customer acknowledges and agrees that Customer should not include full Account number(s) or other sensitive Customer or Account information in any customized subject line.

**10. Use of Financial Management (FM) Software.** Use of the Services may be supplemented by use of certain FM software. Compatibility and functionality of the FM software with the Services may vary depending upon the FM software Customer is using, and Bank makes no representations or guarantees regarding use of the Services with Customer's FM software. Bank will provide Customer with reasonable assistance, when requested, to enable Customer's use of the Services with FM software. Bank is not responsible for any problems related to the FM software itself, Customer's Computer or Customer's ability to connect using the FM software as described in this Appendix. Customer acknowledges and agrees that the FM software versions supported by Bank for purposes of use with the Services shall be in accordance with the sunset policy of the FM software provider.

**11. Security.** Customer agrees not to disclose any proprietary information regarding the Services to any third party (except to Customer's Administrator(s) and Authorized User(s)). Customer also agrees to comply with any operating, security and recognition procedures Bank may establish from time to time with respect to the Services. Customer will be denied access to the Services if Customer fails to comply with any of these procedures. Customer acknowledges that there can be no guarantee of secure transmissions over the Internet and that the Services' security procedures are reasonable. Customer is responsible for reviewing the transaction reports Bank provides on-line and in Customer's monthly statements to detect unauthorized or suspicious transactions. In addition to any other provision hereof regarding authorization of

transactions using the Services, all transactions will be deemed to be authorized by Customer and to be correctly executed thirty (30) Calendar Days after Bank first provides Customer with a statement or online transaction report showing that transaction, unless Customer has provided written notice that the transaction was unauthorized or erroneously executed within that period. In order to minimize risk of loss, Customer agrees to cause its Administrator or designated Authorized User(s) to review the transaction audit log available with the Services to detect unauthorized or erroneous transactions not less frequently than once every five (5) Calendar Days.

**12. Terminating this Appendix; Liability.**

12.1 This Appendix may be terminated in accordance with the terms and conditions of the Cash Management Master Agreement.

12.2 The provisions of this Appendix relating to Customer's and Bank's liability and the disclaimer of warranties set forth in the Cash Management Master Agreement and incorporated herein by reference shall survive the termination of this Appendix.

**13. Changes to the Services and this Appendix.** Bank may change the Services and this Appendix (including any amendments hereto) in accordance with the terms and conditions of the Cash Management Master Agreement.

**14. Notices.** Notices required by this Appendix shall be provided in accordance with the terms and conditions of the Cash Management Master Agreement.

**15. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX II

### TD ACH ORIGINATION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and the parties' Bank Internet System Agreement, as applicable. This Appendix applies to all automated clearing house ("ACH") Services made available to Customer, in Customer's capacity as an Originator, by Bank, as an Originating Depository Financial Institution ("ODFI"). All capitalized terms used herein without definition shall have the meanings given to them in either the Cash Management Master Agreement or the *NACHA Rules* (as defined below), as applicable. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

**1. Services.** The ACH network is a funds transfer system which provides for the interbank clearing of electronic credit and debit Entries for participating financial institutions. The ACH system is governed by the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines* (collectively the "*NACHA Rules*").

#### **2. Customer Obligations.**

**2.1** Customer will comply and shall cause its employees, officers, directors, agents and its Authorized Representative(s) and Administrator(s) to comply with (i) the *NACHA Rules* as amended from time to time and (ii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued, from time to time, by Bank, NACHA or any federal or state regulatory authorities. The duties of Customer set forth in this Appendix in no way limit the requirement that Customer comply with the *NACHA Rules*. Customer specifically adopts and makes to Bank all representations and warranties of an Originator under the *NACHA Rules*, including that Customer will not initiate Entries in violation of the laws of the United States. Customer has access to a copy of the *NACHA Rules* and acknowledges receipt of a copy. (The *NACHA Rules* may be obtained at NACHA's website at [www.NACHA.org](http://www.NACHA.org) or by contacting NACHA directly at 703-561-1100.) Customer agrees to subscribe to receive revisions to the *NACHA Rules* directly from NACHA.

**2.2** Customer will maintain a checking Account ("Settlement Account") at Bank with available balances sufficient to offset any Entries submitted and against which any rejected or returned Entries may be credited or debited. Bank reserves the right, in its sole and exclusive discretion and at any time, to require ACH pre-funding of credit Entries requested by Customer, in accordance with the terms and conditions of any agreement between Bank and

Customer relating to pre-funding of such Entries, including as otherwise set forth in this Appendix.

**2.3** Customer agrees from time to time, upon Bank's request and in accordance with this Appendix and the parties' Cash Management Master Agreement, to promptly provide Bank with information pertaining to Customer's financial condition as Bank may request, including without limitation, the name(s) of other financial institutions that Customer is using to originate Entries.

**2.4** Nothing in this Appendix or any course of dealing between Customer and Bank (i) constitutes a commitment or obligation of Bank to lend money to Customer, (ii) obligates Bank to extend any credit to Customer, to make a loan to Customer or otherwise to advance funds to Customer to pay for any payment order contrary to Bank's published availability schedules and the settlement timing as reflected herein, and in such other documents and materials as may be provided to Customer by Bank with regard to the Services from time to time, (iii) constitutes a modification of this Appendix, the *NACHA Rules*, or the Security Procedures, or (iv) otherwise constitutes an agreement between Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

**2.5** Customer is responsible for all tariffs, duties or taxes (excluding U.S. federal, state and local taxation of the income of Bank) that may be imposed by any government or governmental agency in connection with any payment order executed pursuant to this Appendix, including without limitation any international tariffs, duties or taxes related to international ACH Entries as further described in Section 6 below.

**2.6** Customer shall be liable for all fines including without limitation any international fines related to international ACH Entries as further described in Section 6 below, that may be incurred by Bank that are attributable to

Customer's failure to comply with (i) the *NACHA Rules*, or (ii) the laws, regulations and orders administered by the U.S., including without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

### 3. Risk Exposure Limits.

3.1 Bank will establish for Customer, in Bank's sole and exclusive discretion, a transactional "Credit Exposure Limit" and a "Debit Exposure Limit" ("Exposure Limit(s)"). Each Exposure Limit will be established as an aggregate limit over multiple Settlement Dates with other not-yet-settled transactions issued by Customer through any ACH application with Bank. The Exposure Limits are based on Customer's financial condition and anticipated or historical level(s) of Entry instructions with Bank. Bank will notify Customer of Customer's Exposure Limits prior to implementation of the Services.

3.2 Customer shall promptly notify Bank if Customer anticipates a significant increase or decrease in the dollar amount of any of its ACH transactions. Bank may, from time to time, in its sole discretion, change the amount of Customer's Exposure Limits. Bank may, on an annual or more frequent basis, in Bank's sole discretion, review Customer's Exposure Limits and make any adjustments to Customer's Exposure Limits that Bank may deem appropriate.

3.3 Bank monitors all Exposure Limits for every customer that originates ACH transactions. Bank may reject or suspend processing of any Entry instructions if such Entry exceeds Customer's Exposure Limit(s). Bank shall use commercially reasonable efforts to notify Customer of such rejection or suspension. Bank may, in its sole and exclusive discretion, but shall have no obligation, to elect to process occasional Entry instructions that would exceed Customer's Exposure Limit(s), subject to there being sufficient available funds in the Settlement Account for the total amount of all credit Entries submitted to Bank for processing. In such event, Bank will reduce available funds in the Settlement Account equal to the total amount of the ACH credit Entries on the Business Day that Bank begins processing Customer's ACH file, and Customer's Settlement Account will be debited at the end of the effective Settlement Date of the file.

### 4. File Transmission Methods; Addenda.

4.1 Customer may elect, in accordance with the Services' Setup Form(s), to transmit a NACHA-formatted file to Bank via the following methods, or via such other methods as Bank may permit from time to time in its sole and exclusive discretion:

4.1.1 **Bank Internet System Transmission.** Customer may transmit a NACHA-formatted file to Bank via the service described in the Bank Internet System Appendix. Customer agrees to the terms of

the Bank Internet System Appendix and its related security procedures when initiating Entries as described therein.

4.1.2 **Direct Electronic Transmission.** Customer may transmit a NACHA-formatted file directly to Bank, as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Connectivity between Bank and Customer must be established and successfully tested prior to live transactions.

4.2 **Electronic Data Interchange ("EDI").** EDI consists of the electronic movement of data between Customer and Bank in a structured, computer-retrievable data format that permits information to be transferred between a computer program at Customer's location and a computer program at Bank's location without re-keying. Customer and Bank may transmit between each other an ACH file that contains ACH Addenda which conform to the *NACHA Rules* via EDI, and as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Bank will process and forward Addenda information along with financial transactions through the ACH network. Bank will, upon Customer's request, forward Addenda information to Customer within two (2) Business Days of Bank's receipt of such information.

### 5. Transmittal of Entries by Customer.

5.1 Customer will send file(s) of credit and debit Entries to Bank (i) with computer readable information; (ii) with an ACH file and format consistent with current NACHA file and Bank specifications; and (iii) on the medium as agreed by the parties and in accordance with the security procedures associated with that transmission medium. Customer agrees to initiate Entries described herein in accordance with the requirements of, and in compliance with its responsibilities, representations and warranties as an Originator under, the *NACHA Rules*.

5.2 With respect to any credit and debit Entries initiated and transmitted by Customer that involve consumers, Customer will comply with, each as may be amended from time to time: (i) all authorization, disclosure and other requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, including, without limitation, any applicable requirements of Regulation E of the Board of Governors of the Federal Reserve System (or any successor entity who administers Regulation E) (hereinafter "Regulation E") and the Federal Electronic Funds Transfer Act.

5.3 Customer acknowledges the right of a consumer Receiver of an unauthorized debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from Receiver's account by such Receiver sending a written notice to Receiver's Depository Financial Institution within fifteen (15) Calendar Days after the Receiver's Depository Financial Institution sends or makes available to the Receiver

information pertaining to that debit Entry. Customer also acknowledges the right of a corporate Receiver of a debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from such Receiver's account by such Receiver sending a notice to Receiver's Receiving Depository Financial Institution ("RDFI") within two (2) Business Days following the Settlement Date of the original Entry. Customer indemnifies Bank against any such claim for a refund by any Receiver.

5.4 In accordance with this Appendix, Customer may use the Services to initiate and transmit credit and debit Entries with certain Standard Entry Class ("SEC") Codes. Authorized SEC Codes include PPD, PPD+, CCD, CCD+ and CTX. All other SEC Codes may be used with proper designation on the Services' Setup Form(s) and in accordance with additional instructions from and requirements by Bank, as applicable.

5.4.1 Bank may suspend or terminate Customer's use of one or more SEC Codes at any time in Bank's sole and exclusive discretion.

## 6. International ACH Transactions ("IAT Entries").

6.1 An IAT Entry is a debit or credit Entry that is part of a payment transaction involving a Financial Agency outside of the territorial borders of the United States, which is processed through the domestic ACH network, pursuant to the *NACHA Rules*, including the rules pertaining to International ACH Transactions. The *NACHA Rules* establish SEC Code "IAT" for all International ACH Transactions. Customer agrees to be bound by the *NACHA Rules* and all other applicable OFAC and FinCEN rules and regulations associated with IAT Entries. Customer acknowledges that IAT Entries require additional mandatory information, according to new formatting requirements, in the computer record for such Entries within an ACH batch file. Customer expressly agrees to identify and properly initiate all IAT Entries.

6.2 Customer acknowledges and agrees that the processing, settlement and/or availability of such Entries may be delayed or suspended in the event that Bank determines that enhanced scrutiny or verification of such Entries is necessary under the *NACHA Rules* and/or applicable U.S. law. Customer acknowledges that Bank shall have no liability for such delay. Customer further acknowledges and agrees that IAT Entries may be subject to laws, regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Before initiating an IAT Entry, Customer agrees to understand and accept the rules and requirements of the national payment system of the receiving foreign country. Customer assumes the risk of rejection of its Entries according to the rules of the national payment system of the receiving foreign country. Customer expressly acknowledges and agrees that Outbound IAT Entries, once transmitted, are irrevocable and are subject to the national

payments system of the receiving foreign country; furthermore, the time frames for return of an Entry are determined by the payment system rules of the foreign country and may exceed the sixty (60) day return window defined by the U.S. ACH system and the *NACHA Rules*. To the extent not otherwise prohibited by law, in connection with IAT Entries, Customer assumes the risk of all fluctuations in foreign exchange rates or availability.

## 7. Security Procedures.

7.1 Customer and Bank shall comply with the security procedures set forth or incorporated by reference in this Appendix, the Cash Management Master Agreement, the Bank Internet System Appendix, Data Transmission Services Appendix and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s) (collectively the "Security Procedures"), with respect to Entries transmitted by Customer to Bank. Customer acknowledges and agrees the Security Procedures are a commercially reasonable method for the purpose of verifying the authenticity of Entries (or any request for cancellation or amendment thereof). Customer further acknowledges that the purpose of the Security Procedures is not to detect an error in the transmission or content of an Entry. No security procedures have been agreed upon between Bank and Customer for the detection of any such error.

7.2 Customer is strictly responsible for establishing, implementing, maintaining and (as appropriate) updating its own security procedures (a) to safeguard against unauthorized transmissions, and (b) relating to the initiation, processing and storage of Entries. As required by the *NACHA Rules* with respect to the protection of ACH information (non-public information, including financial information of Receivers and Customer's customers, used to create, or contained within, an ACH Entry and any related addenda record), Customer shall ensure that its security policies, procedures and systems:

- Protect the confidentiality and integrity of the protected information,
- Protect against anticipated threats or hazards to the security or integrity of protected information until its destruction, and
- Protect against unauthorized use of protected information that could result in substantial harm to the Receiver/customer.

Customer warrants to Bank that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and Customer agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions Bank provides in connection with the Security Procedures. If Customer believes or suspects that any such information or instructions have been known or accessed by an unauthorized person, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Cash Management Customer Care, 6000 Atrium Way, Mt. Laurel, New Jersey,

08054. The occurrence of unauthorized access will not affect any transfers Bank makes in good faith prior to, and within a reasonable time period after, its receipt of such notification.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

## **8. Compliance with Security Procedures.**

8.1 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Customer, it will be deemed effective as Customer's Entry (or request), and Customer shall be obligated to pay Bank the amount of such Entry (or request) even though the Entry (or request) was not authorized by Customer, provided Bank acted in compliance with the Security Procedures. To the extent that signature comparison is to be used as part of any applicable Security Procedures, Bank shall be deemed to have complied with that part of such Security Procedures if it compares the signature accompanying a file of Entries (or request) with the signature of an Authorized Representative of Customer and, on the basis of such comparison, believes the signature to be that of such Authorized Representative.

8.2 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Customer, Customer shall be obligated to pay the amount of the Entry as provided herein, whether or not Bank complied with the Security Procedures and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with the Security Procedures.

**9. Recording and Use of Communications.** Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Appendix may be electronically recorded and retained by either party by use of any reasonable means.

## **10. Processing, Transmittal and Settlement of Entries by Bank.**

10.1 Bank will process, transmit and settle for credit and debit Entries initiated by Customer as provided in the *NACHA Rules* as in effect from time to time, and pursuant to this Appendix. Bank will transmit such Entries as an ODFI to the ACH Operator by the deadline of the ACH Operator, provided such Entries are received by Bank prior to 8:00 p.m. Eastern Time ("ET") and the ACH Operator is open for business on such Business Day. Entries received after 8:00 p.m. ET will be deemed received the following Business Day.

An Entry must have an Effective Entry Date of at least two (2) Business Days but no more than such period of time after the Business Day such Entry is received by Bank as the Services permit. Such Entries may also recur as frequently as quarterly. If the Settlement Date falls on a non-Business Day, final settlement will occur on the next Business Day. Customer may submit a NACHA-formatted file up to the time limit in advance of the Effective Entry Date as the Services permit. Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the delivery of late Entries.

10.2 If the file of Entries is received other than in specified NACHA and Bank format, Customer will be required to provide Bank with a corrected file. If a corrected file of Entries is received later than 8:00 p.m. ET on the delivery date, Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the processing of late Entries.

10.3 For purposes of this Appendix, Entries shall be deemed received by Bank, in the case of electronic file transmission, when the transmission is completed as set forth in Bank's Appendix for Data Transmission Services and/or the Services' Setup Form(s).

10.4 If any of the requirements of this Section 10 are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline on which the ACH Operator is open for business.

**11. On-Us Entries.** Except as otherwise provided herein, in the case of an Entry received for credit or debit to an account maintained by Bank (an "On-Us Entry"), Bank will credit or debit the Receiver's account in the amount of such Entry on the Settlement Date, provided the requirements set forth herein are otherwise met. If those requirements are not met, Bank will use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry on the next Banking Day following the date the Entry was received by Bank. Bank will have the right to reject an On-Us Entry as described in Section 12, *Returned or Rejected Entries*. In the case of an On-Us Entry, Bank will have all rights of an RDFI including, without limitation, the rights set forth in *NACHA Rules*.

## **12. Returned or Rejected Entries.**

12.1 In the event any Entry is returned or rejected by the ACH Operator or any RDFI or Intermediary Depository Financial Institution for any reason whatsoever, it shall be the responsibility of Customer to remake and resubmit such Entry or otherwise resolve the returned Entry in accordance with the *NACHA Rules*.

12.2 Bank shall remake such Entry in any case where rejection by the ACH Operator was due to mishandling of such Entry by Bank and sufficient data is available to Bank to permit it to remake such Entry. In all other instances, Bank's responsibility will be to receive rejected or returned Entries from the ACH Operator, perform necessary processing, control and settlement functions, and to

forward such Entries to Customer. Except for an Entry retransmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Appendix with respect to the original Entry.

12.3 Bank may reject any Entry which does not comply with the requirements of Section 5, *Transmittal of Entries by Customer*, or Section 7, *Security Procedures*. Bank may also reject any Entry which contains a future Settlement Date that exceeds the limits set forth within the Services. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the *NACHA Rules*. Bank may reject any Entry if Customer has failed to comply with its Settlement Account balance obligations under Section 2, *Customer Obligations*. If Customer has authorized an ACH file containing individual payment orders and the applicable Account has insufficient funds, Bank reserves the right to reject the entire file. Notices of rejection shall be effective when given. Bank shall have no liability to Customer by reasons of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. Bank may monitor Customer's rejected or returned Entries. Bank reserves the right, in its sole and exclusive discretion, to require Customer to establish a reserve Account in the event that an excessive number of Customer's debit Entries are rejected or returned.

**13. Cancellation or Amendment by Customer.** Customer shall have no right to cancel or amend any Entry or file after its receipt by Bank. However, if such request complies with the Security Procedures applicable to the cancellation of data, Bank shall use reasonable efforts to act on a request by Customer for cancellation of an Entry prior to transmitting it to the ACH Operator, or in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account, but Bank shall have no liability if such cancellation is not effected. Customer shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

**14. Reversing Entries/Files.** If Customer discovers that any Entry or file Customer has initiated was in error, it may use the Services to correct the Entry or file by initiating a reversal or adjustment, or Customer may notify Bank of such error and Bank will utilize reasonable efforts on behalf of Customer, consistent with the *NACHA Rules*, to correct the Entry or file by initiating a reversal or adjustment of such Entry or file. In all such cases, it shall be the responsibility of Customer to notify the affected Receiver that an Entry or file has been made which is at variance with the authorization or is otherwise erroneous. Customer indemnifies Bank against any claim by any Receiver that a reversing Entry or file requested by Customer is wrongful. Customer understands and acknowledges that certain RDFIs may not or cannot comply with such reversal and that, in such an event, Bank will debit Customer's Settlement Account in the amount of the provisional credit applied to the Settlement Account for such Entry or file.

**15. Notice of Returned Entries.** Bank will use reasonable efforts to notify Customer by phone or electronic transmission of the receipt of a returned Entry from the ACH Operator no later than one (1) Business Day after the Business Day of such receipt. Except for an Entry re-transmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to re-transmit a returned Entry to the ACH Operator if Bank complied with the terms of this Appendix with respect to the original Entry.

**16. Notifications of Change.** Bank will use reasonable efforts to notify Customer of each Notification of Change ("NOC") or Corrected Notification of Change ("Corrected NOC") received by Bank related to Entries transmitted by Customer within two (2) Business Days after receipt thereof. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Business Days of Customer's receipt of the NOC or Corrected NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

**17. Pre-Notification and Rejection of Pre-Notification.** Bank recommends that, as permitted by the *NACHA Rules* or applicable law, Customer send pre-notifications at least three (3) Business Days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. Customer may also initiate a new pre-notification (i) when any changes are made to an account number, financial institution, or individual identification number or (ii) as otherwise stated in the *NACHA Rules*. If Customer receives notice that any such pre-notification has been rejected by an RDFI, Customer will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules*. If Customer receives notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, Customer will not initiate any Entry to such customer(s) until it has provided the RDFI with such authorization within the time limits provided in the *NACHA Rules*. Customer understands and acknowledges that once a pre-notification has been initiated using the Services, Customer will be restricted from initiating any Entry to such customer(s) for three (3) Business Days.

**18. Participant Authorization for Entries.**

18.1 To the extent required by the *NACHA Rules* or applicable law, Customer will obtain all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds Transfer Act, and sanctions enforced by OFAC. Customer shall obtain and maintain current information regarding OFAC enforced sanctions. (This information may be

obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC or by visiting the OFAC website at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac).) Each Entry will be made according to such authorization and shall comply with the *NACHA Rules*. No Entry will be initiated by Customer after such authorization has been revoked or the arrangement between Customer and such Receiver or other party has terminated.

18.2 Customer shall retain all consents and authorizations for the period required by the *NACHA Rules*. Customer will furnish to Receiver, or to Bank upon its request, an original or a copy of an authorization as required under or for any purpose required by the *NACHA Rules*. No investigation or verification procedure undertaken by Bank shall be deemed to limit or waive Customer's obligations under this Section.

**19. Re-initiation of Entries.** Customer may not re-initiate Entries except as prescribed by the *NACHA Rules*.

**20. Payment by Customer for Entries; Payment by Bank for Entries.**

20.1 Except as may otherwise be agreed by Bank in its sole and exclusive discretion, Customer shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Appendix at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine.

20.2 Customer shall promptly pay Bank the amount of each debit Entry returned by an RDFI pursuant to this Appendix.

20.3 Bank will pay Customer the amount of each debit Entry transmitted by Bank pursuant to this Appendix at such time on the Settlement Date with respect to such debit Entry as Bank, in its discretion, may determine, and the amount of each On-U's Entry at such time on the Effective Entry Date as Bank, in its discretion, may determine.

20.4 Bank will use reasonable efforts to promptly pay Customer the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Appendix.

20.5 Customer acknowledges and agrees that any failure of Customer to make payment to Bank as described in this Section may constitute an event of default under any other agreement for credit that Customer or any of Customer's Affiliates has with Bank or any Affiliate of Bank. Customer further acknowledges and agrees to execute and deliver any further documents and instruments as Bank may require to effectuate the cross-default contemplated hereby.

**21. Third-Party Service Provider; Third-Party Sender.** Subject to Bank's prior approval and in its sole and exclusive discretion, Customer may appoint a third party to act as Customer's agent to process Entries on Customer's behalf and for purposes of the services

provided hereunder ("Third-Party Service Provider"), as set forth in the Services' Setup Form(s). All data received by Bank from Third-Party Service Provider, including Entries and instructions (and corrections or adjustments thereto), are hereby authorized by Customer. All acts and omissions of Third-Party Service Provider shall be the acts, omissions and responsibility of Customer and shall be governed by the provisions of this Appendix. Customer agrees, jointly and severally with Third-Party Service Provider, to indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank relating to or arising out of the acts or omissions of Third-Party Service Provider on behalf of Customer. Customer and Third-Party Service Provider shall execute any such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Third-Party Service Provider of any services on Customer's behalf, including without limitation Bank's Third-Party Service Provider Agreement, as the same may be modified by Bank from time to time. Notice of any termination of Third-Party Service Provider's authority to transmit data and instructions to Bank on Customer's behalf shall be given to Bank in writing. The effective date of such termination shall be ten (10) Business Days after Bank receives written notice of such termination. Customer agrees that Bank retains the right to reject any Third-Party Service Provider and any Entries initiated by Customer's Third-Party Service Provider in its sole discretion.

21.1 Also subject to Bank's prior approval and in its sole and exclusive discretion, Customer may be permitted to use the services provided hereunder to process Entries on behalf of Customer's clients, who may or may not be customers of Bank (defined as a "Third-Party Sender" under the *NACHA Rules*), as well as on Customer's own behalf. Customer shall execute any such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Customer of any ACH services in the capacity of a Third-Party Sender. Customer agrees that Bank retains the right to reject any request by Customer to engage in Third-Party Sender activities as well as any Entries initiated by Customer in such capacity, in Bank's sole discretion.

**22. Customer Representations and Agreements; Indemnity.** In addition to Customer representations, agreements and warranties otherwise described in this Appendix, Customer further represents and warrants to Bank and agrees, with respect to each and every Entry transmitted by Customer or any Third-Party Service Provider on Customer's behalf, that:

(i) Each person shown as the Receiver of an Entry received by Bank from Customer has authorized

the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry;

(ii) Such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein;

(iii) Entries transmitted to Bank by Customer are limited as set forth in Sections 3 and 5;

(iv) Customer shall perform its obligations under this Appendix in accordance with the laws of the United States and all other applicable laws, regulations and orders, including, but not limited to, the transaction screening and sanctions laws, regulations and orders administered by OFAC; laws, regulations and orders administered by FinCEN; and any state laws, regulations or orders applicable to the providers of ACH payment services;

(v) Customer shall be bound by and comply with the provisions of the *NACHA Rules* (among other provisions of the *NACHA Rules*) that make payments of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry;

(vi) Customer specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount of the Entry;

(vii) with respect to each International ACH Transaction ("IAT") that Customer may be permitted by Bank to initiate, Customer shall (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as an IAT in accordance with the *NACHA Rules*, (b) provide data necessary to accompany the transaction in compliance with the Bank Secrecy Act's "Travel Rule," (c) screen the IAT prior to transmitting any file(s) of Entries to the Bank in accordance with the requirements of OFAC and comply with OFAC sanctions, and (d) otherwise comply with and be subject to all other requirements of U.S. law, the *NACHA Rules*, OFAC and FinCEN, as well as the laws and payment system rules of a non-U.S. receiving destination;

(viii) with respect to each Internet-initiated/mobile ("WEB") (as defined under the *NACHA Rules*) ACH Entry that Customer may be permitted by Bank to initiate, (a) Customer employs (1) commercially reasonable detection systems to minimize risk of fraud related to Internet-initiated payments, (2) commercially reasonable procedures to verify validity of routing numbers, (3) commercially reasonable methods of authentication to verify the identity of the Receiver, and (4) commercially reasonable security technology that at a minimum is equivalent to 128-bit encryption technology, and (b) where required by the *NACHA Rules* and/or Bank, Customer conducts annual audits as to its security practices and procedures that include, at a minimum, verification of

adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use and (3) network security to ensure secure capture, storage, and distribution, and will provide proof of such audits to Bank upon request;

(ix) with respect to each Telephone-Initiated ("TEL") Entry that Customer may be permitted by Bank to initiate, Customer has (a) employed commercially reasonable procedures to verify the identity of the Receiver, and (b) utilized commercially reasonable procedures to verify that routing numbers are valid;

(x) with respect to each Accounts Receivable ("ARC") Entry that Customer may be permitted by Bank to initiate, (a) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (b) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, (d) Customer has established reasonable procedures under which the Receiver may notify Customer that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's account and that Customer will allow the Receiver to opt-out of check conversion activity, and (e) the source document to which each ARC Entry relates may not be presented or returned such that any person will be required to make payment based on the source document unless the ARC Entry is returned;

(xi) with respect to each Back Office Conversion ("BOC") Entry that Customer may be permitted by Bank to initiate, (a) Customer has employed commercially reasonable procedures to verify the identity of the Receiver, (b) Customer has established and maintains a working telephone number for Receiver inquiries regarding the transaction that is answered during normal business hours and that such number is displayed on the notice required by the *NACHA Rules* for BOC Entries, (c) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (d) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries, and (f) the source document to which each BOC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the BOC Entry is returned;

(xii) with respect to each Point-of-Purchase ("POP") Entry that Customer may be permitted by Bank to

initiate, the source document provided to Customer for use in obtaining the Receiver's routing number, account number, and check serial number for the initiation of the POP Entry (a) is returned voided to the Receiver after use by Customer and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xiii) with respect to each Returned Check ("RCK") Entry that Customer may be permitted by Bank to initiate, (a) all signatures on the item are authentic and authorized, (b) the item has not been altered, (c) the item is not subject to a defense or claim, (d) the Entry accurately reflects the item, (e) the item will not be presented unless the related Entry has been returned by the RDFI, (f) the information encoded after issue in magnetic ink on the item is correct, and (g) any restrictive endorsement placed on the item is void or ineffective.

Customer shall indemnify and hold Bank harmless from any loss, liability or expense (including reasonable attorneys' fees and costs) resulting from or arising out of any breach of the foregoing warranties, representations or agreements. Customer shall also indemnify and hold Bank harmless from any claim of any person that Bank is responsible for any acts or omissions of Customer regarding any Entry received from Customer, or those of any other person related thereto, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI.

**23. Inconsistency of Name and Account Number.** Customer acknowledges and agrees that if an Entry describes a Receiver inconsistently by name and account number, then (i) payment of such Entry transmitted to an RDFI may be made by the RDFI (or by Bank for an On-US Entry) on the basis of the account number, even if it identifies a person different from the named Receiver and (ii) Customer's obligation to pay the amount of Entry to Bank is not excused in such circumstances. Similarly, if an Entry describes an RDFI inconsistently by name and routing number, payment of such Entry may be made based on the routing number, and Customer shall be liable to pay that Entry.

**24. Banks Unable to Accept ACH Transactions.** If Customer submits an Entry to Bank relating to an RDFI which is not a participant in an ACH network or submits an Entry which has a same-day settlement, then (i) Bank may reject such Entry and use reasonable efforts to notify Customer of such rejection or (ii) if Bank does not reject such Entry, upon receiving a return transaction related to the Entry from the ACH Operator, Bank may offset the Settlement Account and notify Customer of such transaction.

**25. Notices, Instructions, Etc.**

25.1 Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter.

25.2 Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been provided in accordance with the provisions of the parties' Cash Management Master Agreement.

**26. Data Retention.** Customer shall retain data on file adequate to permit remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein and shall provide such data to Bank upon request. Without limiting the generality of the foregoing provision, Customer specifically agrees to be bound by and comply with all applicable provisions of the *NACHA Rules* regarding the retention of documents or any record, including, without limitation, Customer's responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*.

**27. Data Breaches.**

27.1 Customer agrees that it will adopt and implement commercially reasonable policies, procedures and systems to provide security as to the information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft, or unauthorized access to data or information ("Data Breaches"), including but not limited to, Consumer-Level ACH Data.

27.2 Customer agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions.

27.3 Customer will provide timely and accurate notification to Bank by calling 1-866-475-7262 with regard to any Data Breaches when known or reasonably suspected by Customer, including but not limited to, Data Breaches to Consumer-Level ACH Data, and will take all reasonable measures, including, without limitation, retaining computer forensic experts, to determine the scope of any data or transactions affected by any Data Breaches, providing all such determinations to Bank.

**28. Audit.** Bank has the right to periodically audit Customer's compliance with the *NACHA Rules*, U.S. law and Bank policies, including, but not limited to, this Appendix.

**29. Records.** All electronic or other files, Entries, Security Procedures and related records used by Bank for transactions contemplated by this Appendix shall be and remain Bank's property. Bank may, in its sole discretion, or as otherwise required by applicable law, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit or otherwise limit Customer's obligation to comply with

applicable Florida public records law with respect to any such records.

**30. Termination.** The parties may terminate this Appendix in accordance with the terms and conditions of the parties' Cash Management Master Agreement. In addition, if Customer breaches the *NACHA Rules* or causes Bank to breach the *NACHA Rules*, this Appendix may be terminated or suspended by Bank upon ten (10) Business Days' notice, or such shorter period as may be provided in the parties' Cash Management Master Agreement. Any termination of this Appendix shall not affect any of Bank's rights and Customer's obligations with respect to Entries initiated by Customer prior to termination, the payment obligations of Customer with respect to services performed by Bank prior to termination or any other obligations or provisions that survive termination of this Appendix, including without limitation Sections 2, 5, 10, 12, 13, 14, 18, 20, 21, 22, 26, 31, 32 and 33.

**31. Cooperation in Loss Recovery Efforts.** In the event of any damages for which Customer or Bank may be liable to the other or to a third party relative to the Services, both parties shall undertake reasonable efforts to cooperate with the other, as permitted by applicable law, in performing loss recovery efforts and in connection with any

actions that Customer or Bank may be obligated to defend or elects to pursue against a third party.

**32. Governing Law.** In addition to the terms and conditions of the parties' Cash Management Master Agreement, the parties agree that if any payment order governed by this Appendix is part of a funds transfer subject to the federal Electronic Funds Transfer Act, then all actions and disputes as between Customer, or any Third-Party Service Provider acting on Customer's behalf, and Bank shall be governed by Article 4-A of the Uniform Commercial Code, as varied by this Appendix.

**33. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the services described herein and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX III

### TD WIRE TRANSFER SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement, and the parties' Bank Internet System Agreement, and applies to all TD Wire Transfer Services ("Services") made available to Customer by Bank via the Bank Internet System. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement or the Bank Internet System Agreement, as applicable. To the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, or with the terms and conditions of the Bank Internet System Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

##### 1. Description of the Services.

1.1 The Services described in this Appendix provide Customer with the capability to transfer funds from specific Account(s) to other accounts (the "Recipient Account(s)") as directed via the Bank Internet System. The Recipient Account(s) may be Customer accounts or third-party accounts, and may be with Bank or with domestic or foreign third-party financial institutions. Customer may use the Services to initiate one-time wire transfers, or to create templates for wire transfers made on a repetitive basis which involve the same Customer Account and Recipient Account ("Repetitive Transfer(s)"). All wire transfers must be initiated by an Authorized Representative of Customer.

1.2 Prior to Customer's use of the Services, Customer must first agree to and transmit all instructions in accordance with all of the terms, conditions and security procedures associated with the Bank Internet System, as further set forth in the Cash Management Master Agreement.

##### 2. Execution of Wire Transfers.

2.1 By submitting a wire transfer, Customer authorizes Bank to withdraw the amount of any requested wire transfer which Customer may authorize and instruct via the Bank Internet System, plus any applicable fees and charges, from Customer's designated Account. Subject to the terms of this Appendix, Bank will accept and execute a wire transfer received from Customer that has been authenticated by Bank and that is in conformity with the Security Procedure (as further described below), cut-off times and other requirements as described in this Appendix and associated Bank setup form(s) and other documentation.

2.2 All wire transfers to accounts at other depository institutions are transmitted using the Fedwire funds transfer system owned and operated by the Federal Reserve Bank, or a similar wire transfer system used primarily for funds transfers between financial institutions. Notwithstanding the foregoing or anything to the contrary in this Appendix, Bank may use any means of transmission, funds transfer system, clearing house, intermediary or

correspondent bank that Bank reasonably selects to transfer funds from time to time.

2.3 Each wire transfer must include the following information in addition to any information which Bank may require for proper identification and security purposes: (i) account number from which the funds are to be withdrawn, (ii) amount to be transferred, (iii) Customer's address, (iv) name and ABA routing number of the payee's bank, and (v) account name, address and account number of the payee. In the event a wire transfer describes an account number for the payee that is in a name other than the designated payee, Bank may execute the wire transfer to the account number so designated notwithstanding such inconsistency.

2.4 Templates created by Customer for Repetitive Transfers are the sole and exclusive responsibility of Customer. Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed a Repetitive Transfer, including without limitation, any loss due to Customer error in creating the Repetitive Transfer template.

##### 3. Time of Execution.

3.1 Bank will execute each authenticated wire transfer that is in conformity with all security procedures, cut-off times and other requirements set forth herein. Bank may require additional authentication of any wire transfer request. Bank reserves the right to reject a wire transfer request that cannot be properly authenticated. Cut-off times may be established and changed by Bank from time to time. Instructions for wire transfers received after such cut-off times may be treated by Bank for all purposes as having been received on the following Business Day.

3.2 Except for future-dated wire transfers, domestic wire transfers (U.S.-based receivers) initiated and approved by Bank's cut-off time on a Business Day will be processed that same day if that day is also a Business Day for Bank's correspondent facility and the recipient bank; wire transfers initiated and approved after Bank's cut-off time for domestic wire transfers will be processed the next Business Day if that day is also a Business Day for Bank's correspondent facility and the recipient bank. Future-dated domestic wire transfers will be initiated on the effective

date requested by Customer, not on the date Customer entered the transaction using the Services.

3.3 Bank may handle wire transfers received from Customer in any order convenient to Bank, regardless of the order in which they are received.

#### 4. International Wires.

4.1 International wire transfers (non-U.S. receivers) of foreign currency initiated and approved by Bank's cut-off time for international wire transfers of foreign currency on a Business Day, and an international wire transfer of U.S. currency initiated and approved by Bank's cut-off time for international wire transfers of U.S. currency on a Business Day will be processed within the industry standard delivery time (in most, but not all cases, two (2) Business Days). Foreign wire transfers may be subject to delays based on time-zone issues; the remote location of the recipient bank; cultural differences with respect to holidays and times of observation, etc.; and incorrect or incomplete information being supplied by Customer.

4.2 Bank shall send Customer's authorized and authenticated wire transfers to foreign banks through any bank which is a member of Bank's correspondent network. Neither Bank nor any of Bank's correspondents shall be liable for any errors, delays or defaults in the transfer of any messages in connection with such a foreign wire transfer by any means of transmission. If the wire transfer is of currency other than that of the country to which it is being transferred, it shall be payable in the currency of the country of the recipient financial institution, unless the payee arranges otherwise. If the wire transfer is received by Bank prior to any cut-off time established from time to time, the currency exchange shall be made at the rate quoted by Bank at the time of the wire transfer.

4.3 Bank makes no guarantee or representation as to the availability of funds at the foreign destination. Bank makes no express or implied warranty as to the time or date the wire transfer will arrive at the receiving bank, the amount of any fees to be charged by the receiving bank or the time or date the beneficiary will receive credit for funds.

4.4 Customer understands and acknowledges that if the named beneficiary does not match the account at the receiving bank, there is a risk the beneficiary may not receive the wired funds. If the transfer is not received or credited in a timely manner, Bank will follow normal and customary procedures to complete the wire transfer, determine the location of the wired funds and/or return the funds to Customer. If Bank is unable to determine that the funds have been credited to the beneficiary's account or have the funds returned, Customer assumes all financial liability or risk of loss for the amount of the wire transfer.

4.5 International wire transfers are subject to any and all applicable regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Bank has no obligation to accept any international wire transfer(s) directed to or through persons,

entities or countries restricted by government regulation or prior Bank experience with particular countries. To the extent not otherwise prohibited by law, in connection with any international wire transfer(s) involving a transfer to or from any country outside of the U.S., Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed the international wire transfer(s), including without limitation, any loss due to failure of a foreign bank or intermediary to deliver the funds to a beneficiary.

5. **Cancellation and Amendment of a Wire.** An Authorized Representative may request that Bank attempt to cancel or amend a wire transfer previously received from Customer. If a cancellation or amendment request is received by Bank before the wire transfer is executed and with sufficient time to afford Bank an opportunity to act upon Customer's request, Bank may, on its own initiative but without obligation, make a good faith effort to act upon such request. In the event Customer's cancellation or amendment request is received after execution of Customer's wire transfer request, Bank will attempt to have the wire transfer returned. Notwithstanding the foregoing, Bank shall have no liability for the failure to effect a cancellation or amendment, and Bank makes no representation or warranty regarding Bank's ability to amend or cancel a wire transfer. Customer agrees to indemnify Bank against any loss, liability or expense which Bank incurs as a result of the request to cancel or amend a wire transfer and the actions Bank takes pursuant to such request.

6. **Notice of Rejection or Return.** Bank shall have no liability for wire transfers sent by Bank as directed by Customer which cannot be completed or which are returned due to incorrect information furnished by Customer. Customer is required to fully complete beneficiary name, and address, as beneficiary bank may elect to return an otherwise valid wire transfer for incomplete beneficiary information. Bank may reject or impose conditions that must be satisfied before it will accept Customer's instructions for any wire transfer, in its sole discretion, including without limitation Customer's violation of this Appendix, Customer's failure to maintain a sufficient Account balance, or Bank's belief that the wire transfer may not have in fact been authorized. A wire transfer may also be rejected by an intermediary or beneficiary bank other than Bank, or by operation of law. If a wire transfer is rejected by Bank, Bank will notify Customer by telephone, by electronic means, by facsimile or by mail, depending on the method of origination. Upon rejection or return, Bank shall have no further obligation to act upon a wire transfer, nor shall Bank have any liability to Customer due to rejection by another person in the wire transfer process, or the fact that notice was not given or was not given at an earlier time, or within any specified time of receipt, acceptance, execution or payment of any wire transfer.

#### 7. Security Procedure.

7.1 Customer agrees that the security procedures used by Customer and set forth or incorporated by reference in this Appendix and/or associated documents, including but not limited to the Bank Internet System Appendix, are a commercially reasonable method of

providing security against unauthorized wire transfers and for all other instructions from Customer to Bank (hereinafter the "Security Procedure"). Any wire transfer by Customer shall bind Customer, whether or not authorized, if transmitted in Customer's name and accepted by Bank in compliance with the Security Procedure. Customer also agrees that any election Customer may make to change or refuse the Security Procedure is at Customer's risk and that any loss resulting in whole or in part from such change or refusal will be Customer's responsibility.

7.2 Bank may, from time to time, modify the Security Procedure. Except as expressly provided otherwise in this Appendix or in the parties' Cash Management Master Agreement, any such changes generally will be effective immediately upon notice to Customer as described in the parties' Cash Management Master Agreement. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

7.4 Customer hereby acknowledges that the Security Procedure is neither designed nor intended to detect errors in the content or verify the contents of a wire transfer by Customer. Accordingly, any errors contained in wire transfers from Customer shall be Customer's responsibility, and Customer shall be obligated to pay or repay (as the case may be) the amount of any such wire transfer. No security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer.

7.5 Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized wire transfers. Customer covenants that no employee or other individual will be allowed to initiate wire transfers in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedure and any Access Devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank and/or Customer. If Customer believes or suspects that any such Access Devices, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Cash Management Customer Care, 6000 Atrium Way, Mt. Laurel, New Jersey, 08054. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period thereafter.

**8. Inconsistency of Receiving Beneficiary Name and Account Number.** Customer acknowledges and

agrees that, in accordance with Article 4A of the Uniform Commercial Code, Bank shall be entitled to rely upon the numbers supplied by Customer to identify banks, beneficiaries and other parties to the wire transfer, even if those numbers disagree or are inconsistent with the names of those parties as provided by Customer.

**9. Payment; Authorization to Charge Account.** Customer agrees to pay Bank the amount of each wire transfer received from Customer on the Business Day Bank executes said wire transfer or at such other time as Bank may determine. Bank will validate that sufficient funds are available in Customer's Account prior to a wire transfer being executed. Generally, if sufficient funds are not available in Customer's Account, the wire transfer will not be executed by Bank. Bank may, without prior notice or demand, obtain payment of the amount of each wire transfer by debiting the Account designated. In the event there are not sufficient funds available in the Account, Bank also reserves the right to debit any other Account that Customer maintains with Bank.

**10. Wire Confirmation; Account Reconciliation.** Customer may confirm the execution of a wire transfer via the Bank Internet System. Completed wire transfers will also be reflected in Customer's periodic Account statement. Customer acknowledges and agrees that Bank is not obligated to provide Customer with a separate advice or notice for each completed wire transfer. If Customer requests that Bank provide a special notice and Bank agrees to do so, Bank reserves the right to impose a Service Fee for such notice in accordance with the Cash Management Master Agreement.

**11. Service Providers.** Bank may use a service provider to perform, as Bank's agent, all or any portion of Bank's obligations under this Appendix. Customer may be required to direct wire transfers and other requests to said provider.

**12. Bank Reliance; Authentication.**

12.1 Bank shall be entitled to rely in good faith on communications it receives as being given or sent by an Authorized Representative and as being genuine and correct. Bank shall not be liable to Customer for the consequences of such reliance.

12.2 **BANK MAY TAKE SUCH ADDITIONAL STEPS AND IMPLEMENT SUCH PROCEDURES AS IT MAY DEEM APPROPRIATE TO VERIFY THE AUTHENTICITY OF ANY WIRE TRANSFER. BANK MAY DELAY THE EXECUTION OF ANY WIRE TRANSFER PENDING COMPLETION OF A CALL-BACK, OR RECEIPT OF ANOTHER FORM OF VERIFICATION WHICH IS SATISFACTORY TO BANK. IF BANK IS UNABLE TO OBTAIN SATISFACTORY VERIFICATION, BANK, IN ITS SOLE DISCRETION, MAY REFUSE TO EXECUTE ANY WIRE TRANSFER.** In no event shall Bank be liable for any delay in executing a wire transfer or for failure to execute a wire transfer due to the absence of satisfactory verification.

12.3 Bank may electronically record any telephone conversations between Bank personnel and Customer.

12.4 Wire transfer transactions are subject to all the foregoing and all regulations governing electronic transactions, including but not limited to Article 4A of the Uniform Commercial Code.

**13. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank

under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.



## APPENDIX IX

### TD ACCOUNT RECONCILEMENT SERVICES - FULL

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Account Reconciliation Services – Full (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

**1. Services.** The Services described in this Appendix will assist Customer in reconciling and managing the check and deposit activity in Customer's designated checking Account(s) ("Authorized Accounts"). Use of the Services does not affect any of Customer's obligations, which are described in Bank's Business Deposit Account Agreement, to discover and report unauthorized or missing signatures and endorsements, or alterations on checks drawn on Customer's Accounts.

#### **2. Submission of Data.**

**2.1** Customer shall have checks prepared in accordance with Bank specifications, and will supply Bank with twenty-five (25) voided checks to be used for testing. The checks will be tested to ensure the paper stock is of a minimum weight and is encoded with Bank's ABA (routing and transit) number, account number and check number to ensure the readability of the MICR line on Bank's equipment.

**2.2** Customer shall send a file to Bank containing information regarding checks that have been issued by Customer ("Check Issue File") in the format and medium, by the scheduled day(s) and to the place(s) specified by Bank and agreed to by Customer as set forth in the Services' Setup Form(s). The Check Issue File shall include check issue date, check issue amount, payee, stop payments, and voided or cancelled checks, if applicable.

**2.3** Prior to implementation of the Services, Customer shall submit to Bank a current, reconciled list of all outstanding checks issued on each Authorized Account one (1) week prior to the implementation of the Services hereunder. Depending on the frequency with which Customer issues checks, Bank reserves the right to require Customer to submit one or more additional lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to Bank prior to the implementation of the Services hereunder.

**2.4** Customer will send to Bank a test file in the format and medium as identified in the Services' Setup Form(s) to ensure the readability of the Check Issue File on Bank's equipment.

**2.5** Customer agrees to receive its paid check data ("Paid Check Data") from Bank in the specified format and medium, on the scheduled day(s) and at the place(s) specified by Bank and as set forth in the Services' Setup Form(s).

**2.6** Prior to receiving a file from Bank containing Customer's Paid Check Data, Customer will be provided a test file by Bank to ensure the readability of the Paid Check Data, on Customer's equipment. Customer agrees to report any test file failures.

**2.7** Bank shall compare each of Customer's paid checks by check number and amount against each Check Issue File received by Bank. Bank does not, and shall not be obligated to, compare any other data (such as payee names) on a presented check with a Check Issue File, even if a Check Issue File contains such other data. Bank may satisfy its obligation hereunder by comparing check numbers and amounts received in substitute checks and/or electronic presentment of checks.

**3. Statement of Transactions.** Within five (5) Business Days following the scheduled date for reconciliation, as set forth in the Services' Setup Form(s), or receipt of the final Check Issue File for the current reconciliation period as set forth in the Services' Setup Form(s), Bank will forward to the address provided by Customer a fully reconciled report including a listing in check number sequence of all outstanding paid, issued, voided, stopped and cancelled items from the statement schedule. Customer shall review the listing and report any errors as set forth in the Cash Management Master Agreement between Bank and Customer.

**4. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. Bank's liability under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Full

Reconciliation Services Appendix is accepted in writing by \_\_\_\_\_ terminated.  
Bank or the Cash Management Master Agreement is

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## APPENDIX XII

### TD CHECK IMAGING SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Check Imaging Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

**1. Services.** The Services are designed to provide Customer with images of Customer's paid checks and a file in Portable Document Format ("PDF") of the Account statement associated with those checks on an optical compact disc ("CD"). On a predetermined schedule, or upon Customer's Account statement cycle, a CD which contains front-and-back images of all Customer checks paid during that period will be mailed to Customer. The CD contains an associated index that is used for the retrieval of the paid check images. Application software, sublicensed to Customer by Bank and installed on Customer's Computer ("Computer Software"), is used to scan the CD and produce images that match the index search criteria entered by Customer. Bank will include images of any substitute checks and/or reconstituted electronic images on the CD. Bank may also provide Customer with images of Customer's deposited checks (front and back) and deposit tickets as part of the Services, subject to Bank's prior approval.

**2. Software; Hardware.** In addition to but not in lieu of the terms and conditions contained in the parties' Cash Management Master Agreement regarding software and Customer's Computer, the following shall also apply:

2.1 The Computer Software will be included with each CD mailed to Customer. Customer may be provided with additional Computer Software, or with software to be placed on Customer's network ("Network Software"). Service is contingent upon the successful installation of the Computer Software and any Network Software (collectively, the "Services' Software") by Customer.

2.2 A user manual will be provided to Customer which outlines the hardware and Services' Software requirements, as well as specific Customer instructions for use of the Services. Customer shall be solely responsible, at Customer's expense, for obtaining any and all requisite hardware and software, in addition to the Services' Software, for proper utilization of the CD and for repairing, servicing, and maintaining any and all such hardware.

2.3 Customer understands and acknowledges that the Services' Software is not the property of Customer. Customer acknowledges that

Customer has, and shall have, no right, title, or interest in or to the Services' Software, except the perpetual license and right to use the Services' Software for the purposes described herein. Customer further acknowledges that Customer has, and shall have, no right to copy, transfer, alter, modify, reverse compile, reproduce in any manner or convey in any manner, any part or all of the Services' Software.

2.4 Bank shall have the right to modify, correct, enhance or issue replacement Services' Software from time to time at its sole discretion. Customer shall immediately update the Services' Software with any requisite changes upon notice thereof from Bank.

#### 3. CD Issuance.

3.1 Bank will use reasonable efforts to produce and mail a CD to Customer within five (5) Business Days after the end of the Account statement cycle (the "Cycle Cut-Off Period"). Bank will use reasonable efforts to produce a replacement CD within five (5) Business Days of receipt of notice from Customer should the CD be lost or deficient.

3.2 **Maximum Time Period for Replacement.** Customer acknowledges and understands that Bank may not be able to produce or replace a CD after one hundred twenty (120) days have elapsed from the end of the respective Cycle Cut-Off Period.

**4. No Warranty.** In addition to but not in lieu of the terms and conditions contained in the parties' Cash Management Master Agreement regarding disclaimer of warranties, BANK FURTHER DISCLAIMS ANY IMPLIED WARRANTY OF DURABILITY OF THE IMAGES OF CHECKS IMAGED IN CONNECTION WITH THE SERVICES.

**5. Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended

Appendix is accepted in writing by Bank or the Cash Management Master Agreement is terminated.

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## APPENDIX XXI

### TD DATA TRANSMISSION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to TD Data Transmission Services made available to Customer by Bank or Bank's third-party service provider. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

#### TERMS AND CONDITIONS

**1. Services.** The Data Transmission Services (the "Services") provide Customer with the ability to exchange information files with Bank's (or its third-party service provider's) information systems for a variety of needs and functions. This Service allows Customer to send and/or receive its Bank files using File Transfer Protocol ("FTP"), Hypertext Transfer Protocol Secure ("Secure Web"), Secure File Transfer Protocol ("SFTP"), SWIFT Transmission, or via such other method as the parties may agree upon from time to time, as may be set forth in a Services' Setup Form(s), and as further described below.

**2. FTP Transmission.**

2.1 This method of data transmission permits Customer to deliver and/or receive encrypted files to a Bank-maintained FTP server. Bank will create a drop-box directory on the server where Customer may upload and deliver data files. To send data to Bank, Customer will either push the data files to Bank's directory, or Customer will give Bank a unique user name, password and Customer service address, and Bank will deliver the file. For data Bank sends Customer, Customer will pull the data files from its outbound directory on the server.

2.2 The technical requirements for FTP over the Internet include an Internet connection, FTP client capabilities, and Pretty Good Privacy ("PGP") or equivalent software for file encryption and decryption.

2.3 Files for transmission by FTP must be encrypted using PGP Version 4.0 or higher. PGP provides encryption technology including encryption, decryption, key management, encrypted email, digital signatures, key generation, certified keys and key revocation. Bank will generate a public key/private key pair for Customer. The public part of the key will be sent to Customer via Customer's assigned mailbox on Bank's transmission platform. The private part of the key will be securely kept within Bank. Customer will also generate a key pair for files that it sends to Bank. The public part of this key pair will be sent to Bank, also via the mailbox, while only Customer will know the private key.

2.4 To begin transmission by FTP, Bank will establish Customer's access to Bank's FTP server. Bank will provide Customer with the domain name required for the FTP connection. Customer will be provided a User ID and password that is unique to Customer and will be required each time Customer wishes to connect to Bank's transmission platform to send or receive files. PGP public keys for encryption will be exchanged. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via FTP transmission.

**3. Secure Web Transmission.**

3.1 This method of data transmission permits Customer to deliver and/or receive files using an Internet connection, User ID and password. Bank will provide Customer with the domain name of a website that will display a web page with Customer's root directory. Customer can upload data files to this directory by clicking the Browse button and selecting the file from Customer's local network. Data files sent by Bank will be displayed in Customer's outbound directory and may be downloaded by Customer to its local network.

3.2 The technical requirements for Secure Web include an Internet connection and browser supporting 128-bit Secure Sockets Layer ("SSL") encryption.

3.3 Files for transmission through Secure Web are encrypted using SSL. SSL is an open protocol for securing data communication across computer networks that provides a secure channel for data transmission through its encryption capabilities. SSL allows for the transfer of digitally-signed certificates for authentication procedures and provides message integrity to protect against data being altered en route. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via Secure Web.

**4. Secure FTP (SFTP) Transmission.**

4.1 This method of data transmission permits Customer to deliver to and/or receive files from a Bank-maintained SFTP server. Files transfers through SFTP communications are encrypted using Secure Shell (“SSH”). SSH is an open protocol for securing data communication across computer networks providing a secure channel for data transmission. The encryption used by SSH is intended to provide confidentiality and integrity of data over an unsecured network, such as the Internet. SSH uses public-key cryptography to authenticate the remote computer and allow the remote computer to authenticate the user, if necessary.

4.2 Customer has the option to push files to Bank’s SFTP server or have Bank pull Customer’s files. For Customer push, Bank will create a drop-box directory on the SFTP server and provide Customer with a user name, password, and URL/domain name. Customer must provide an external IP address of the location sending files so that Customer’s IP address can be added to access control lists within Bank’s firewalls. For Bank to pull Customer’s files, Bank will need a user name, password, URL/domain name, and directory from Customer so that Bank can pull files from Customer’s SFTP servers. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms prior to Customer’s use of the Services.

4.3 Customer also has the option for Bank to push Customer files (recommended by Bank) or Customer can pull the files from Bank’s SFTP server. For Bank to push Customer’s file, Bank needs Customer’s URL/domain name, unique user name, password, and directory. For Customer to pull files from Bank’s SFTP server, Customer must provide the external IP address of the location pulling the files so that Customer’s IP address can be added to access control lists within Bank’s firewalls. If Customer chooses to pull files from Bank’s SFTP server, then files must be PGP encrypted, since files will reside on an SFTP server within Bank’s DMZ. Bank will need Customer’s public PGP key so that Bank can encrypt files. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing (if necessary) on transmitted files prior to Customer’s use of the Services.

4.4 Customer will need an FTP client capable of using the SSH (Secure Shell) Protocol. If Customer decides to pull files from Bank, Customer will need an application/utility capable of creating a PGP key pair and decrypting PGP files.

## **5. SWIFT Transmission.**

5.1 This method of transmission provides Customer with the ability to use Society of Worldwide Interbank Financial Telecommunications operating as S.W.I.F.T. SCRL, Limited Liability Cooperative Society (“SWIFT”) as described in this Section to (1) transmit SWIFT messages and documents to Bank and to receive SWIFT messages and documents from Bank and other financial institutions, including via SWIFTNET FileAct, which is a file transfer service that allows the transmission of messages and documents over the SWIFT network, and (2) transmit and receive SWIFT Instructions (as further described below) from Bank and other financial institutions in connection with certain Cash Management Services as agreed by the parties from time to time (hereinafter collectively the “SWIFT Services”). Bank is a participating depository financial institution in SWIFT.

5.2 SWIFT Rules. The “SWIFT Rules” are the documents and other publications as amended by SWIFT from time to time that Customer may access at [www.swift.com](http://www.swift.com), whether in paper or electronic format, providing specific terms and conditions and other details relating to the provision and use of the SWIFT Services, including without limitation the SWIFT Contractual Arrangements; the SWIFT General Terms and Conditions; the SWIFT Service Bureau Policy and the SWIFT Data Retrieval Policy; the SWIFT MA-CUG, SCORE and TRCO Service Descriptions and any other SWIFT Service Descriptions applicable to the SWIFT Services; and the SWIFT On-line Support Service information. This Appendix, the SWIFT Services provided hereunder and the rights and obligations of the parties hereto shall be subject to the SWIFT Rules, as they may be amended from time to time. The parties agree to comply with the SWIFT Rules and to be aware of and comply with changes or updates to the SWIFT Rules.

5.3 SWIFT Instructions. Bank may honor and act upon any authenticated SWIFT message, communication or instruction, including any Payment Order (hereinafter a “SWIFT Instruction”) received in Customer’s name or under any SWIFT BIC code associated with Customer, which BIC code(s) shall be identified in the Services’ Setup Form(s). SWIFT Instructions made in accordance with this Appendix and the SWIFT Rules shall be deemed to have been given by an individual authorized to act on behalf of Customer. Bank will act in reliance on the accuracy and completeness of the SWIFT Instruction received by Bank in Customer’s name or via the SWIFT BIC code associated with Customer.

### **5.4 Secure Communications Channel.**

5.4.1 SWIFT offers SWIFT messaging services as a secure communications channel. SWIFT has established procedures and requirements for controlling access to SWIFT messaging services (each, an “Access Control”) that may include, without limitation, access codes, message authentication codes, secure card readers, digital signatures, and hardware security modules. In addition, SWIFT authenticates certain messages based on SWIFT message type prior to accepting them for routing as SWIFT Instructions (each, an “Authenticated Message”). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys (“BKE”), entered into a relationship management application (“RMA”) agreement, or taken other steps to secure the transmission of SWIFT Instructions between them as SWIFT requires from time to time (each, an “Authentication Procedure”). Collectively, the Access Controls and Authentication Procedures shall be referred to herein as the “SWIFT Security Procedures.”

5.4.2 Bank and Customer rely on SWIFT's Access Controls and, in the case of an Authenticated Message, the Authentication Procedures, if any, that SWIFT requires to secure the transmission of Customer's SWIFT Instructions. Bank does not undertake and will have no obligation to Customer to separately authenticate any SWIFT Instruction that Bank receives in Customer's name or under Customer's SWIFT BIC code, whether or not the Customer actually issued the SWIFT Instruction. Bank may, at Bank's sole election and option, contact Customer with respect to any SWIFT Instruction that Bank receives in Customer's name or under Customer's SWIFT BIC code, but Bank's election to contact Customer with respect to one or more SWIFT Instruction will not obligate Bank to contact Customer with respect to subsequent SWIFT Instructions that Bank receives in Customer's name or under Customer's SWIFT BIC code.

5.5 Customer Representations and Warranties. Customer represents and warrants with respect to itself and the BIC Code(s) identified in the Services' Setup Form(s) that it:

- is registered with SWIFT as either a "Member Administered Closed User Group" and/or "Closed User Group" and/or "SCORE (Standardized Corporate Environment)" member;
- is in compliance with applicable SWIFT Rules;
- is not in violation of any federal, state or local laws with respect to the SWIFT Services;
- is a duly incorporated and validly existing legal entity;
- is in good standing financially and in compliance with all laws and regulations applicable to Customer; and
- is subject to regular audits in accordance with internationally recognized accounting standards by independent auditors.

5.6 Customer Direction and Indemnity.

5.6.1 In the event that the BIC Code(s) identified by Customer in the Services' Setup Form(s) are owned by a parent company or other affiliate of Customer (collectively the "Customer's SWIFT Addresses"), Bank is prepared to act on a SWIFT Instruction from Customer's SWIFT Addresses only upon receipt of the indemnity provided in this Section 5. This indemnity shall be in addition to and not in lieu of an additional indemnity provided by Customer in the Cash Management Master Agreement.

5.6.2 Bank is authorized to accept and honor any files and/or SWIFT Instructions sent from any of the SWIFT Addresses without making any inquiry as to the validity or sufficiency of the SWIFT Instructions and to consider the SWIFT Instructions of like force and effect as written orders made in accordance with the signing authorities held by Bank from time to time for the operation of Customer's Account(s) with Bank.

5.6.3 Without limiting the scope of Section 5.6.2, Bank is authorized to disclose information about Customer, its Accounts and banking relationship with Bank, including any changes to such information, in response to and as directed in the SWIFT Instructions as required to process the same.

5.6.4 Bank shall not be liable for any loss or damage incurred by Customer, or any third party arising from or in any way related to Bank acting upon or refusing to act upon any SWIFT Instructions, unless due to the gross negligence or willful misconduct of Bank. Notwithstanding the foregoing, in no event shall Bank be liable for any indirect, special or inconsequential damages incurred by Customer or any third party arising from or in any way related to Bank acting upon or refusing to act upon any SWIFT Instructions.

5.6.5 Customer hereby agrees to indemnify and hold Bank harmless from and against any losses, liabilities, claims, damages, fees, or expenses whatsoever that Bank may suffer, incur or be under or that may be brought against Bank, pursuant to, in connection with, or in any way related to Bank acting upon, delaying in acting upon or refusing to act upon any SWIFT Instructions.

5.7 Termination of SWIFT Services. In addition to but not in lieu of the provisions of the Cash Management Master Agreement, the SWIFT Services shall terminate automatically in the event that either party loses user status as defined in the SWIFT General Terms and Conditions of the By-laws.

## **6. Security Procedures.**

6.1 Customer agrees that the security procedures set forth or incorporated by reference in this Appendix (including without limitation the SWIFT Security Procedures), the Cash Management Master Agreement and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s), are a commercially reasonable method of providing security against unauthorized access to or interception of transmissions between Customer and Bank (hereinafter collectively the "Security Procedures"). Any transmission by Customer shall be deemed authorized if transmitted in accordance with the Security Procedures. Bank may, from time to time, modify the Security Procedures. Such modifications shall become effective upon receipt of notice by

Customer or such later date as may be stated in the Bank's notice to Customer. If Customer fails to object to such change, it shall be deemed to agree to such change.

6.2 With respect to SWIFT in particular, Customer further acknowledges that the SWIFT Security Procedures are the only security procedures offered for SWIFT Instructions that Customer transmits through the SWIFT Services. Customer has solely determined that the SWIFT Security Procedures best meet Customer's requirements with regard to the size, type and frequency of the SWIFT Instructions issued by Customer to Bank using the SWIFT Services and that the SWIFT Security Procedures are a commercially reasonable method of providing security against unauthorized access to or interception of transmissions between Customer and Bank. Customer acknowledges that it is bound by the terms and conditions of each SWIFT Instruction, including any request to cancel or amend a SWIFT Instruction, whether or not authorized by Customer, that Bank receives in Customer's name or under Customer's SWIFT BIC code through the Services and in accordance with the SWIFT Security Procedures.

6.3 Nothing in this Appendix shall be deemed a representation or warranty by Bank that FTP, Secure Web, SFTP or SWIFT communications are secure. Rather, after review of the alternatives, Customer has selected a communication method that it believes best suits its needs.

6.4 Bank and/or SWIFT (as applicable) may, from time to time, propose different, additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank and/or SWIFT believes immediate action is required for the security of Bank, SWIFT or Customer funds or data, Bank and/or SWIFT may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

6.5 Customer hereby acknowledges that the Security Procedures are neither designed nor intended to detect errors in the content or verify the contents of a transmission between the parties. Accordingly, any errors contained in a transmission from Customer shall be Customer's responsibility. Except as otherwise expressly provided in the parties' Cash Management Master Agreement or other Appendix between the parties, no security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer.

6.6 Customer is strictly responsible for establishing and maintaining procedures to safeguard against, detect and mitigate unauthorized access to or interception of transmissions. Customer covenants that no employee or other individual under Customer's control will be allowed to initiate transmissions in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank, SWIFT and/or Customer. If Customer believes or suspects that any such password, code, security device, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately followed by written confirmation as provided in the Services' Setup Form(s).

6.7 Customer shall retain data files for five (5) Business Days following the date of their transmittal by Customer as provided herein, and shall provide such data files to Bank upon request.

7. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to Data Transmission Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the parties' Cash Management Master Agreement is terminated.



**ATTACHMENT TO  
APPENDIX II – ACH ORIGINATION SERVICES AND  
APPENDIX XVIII – ACH THIRD PARTY SENDER SERVICES**

**ACH CREDIT PRE-FUNDING / DELAYED DEBIT SETTLEMENT**

**Customer:** CITY OF SATELLITE BEACH

**Date of Attachment:** 01/29/2016

This Attachment supplements either (a) Appendix II - Automated Clearing House Origination Services or (b) Appendix XVIII – Automated Clearing House Third Party Sender Services, which has been entered into the parties (hereinafter, the “Appendix”), and applies to all Automated Clearing House Services made available by Bank to Customer. All capitalized terms used herein without definition shall have the meanings given to them in the Appendix. Bank and Customer agree that, notwithstanding anything to the contrary contained in the applicable Appendix, the following terms and provisions shall apply to the applicable Appendix:

**TERMS AND CONDITIONS**

**1.  Settlement of Credit Entries (applicable if box checked here and selection made in Section 1.1 below).**

1.1 Bank requires, as a condition of initiating any ACH Entry, that Customer irrevocably provides available funds in the Settlement Account for the total amount of all ACH credit Entries submitted to Bank for processing, in accordance with the selection below (hereinafter, Customer’s “Funding Obligation”):

**Pre-Funding.** Customer shall satisfy its Funding Obligation by irrevocably providing available funds in the Settlement Account for the total amount of all credit Entries submitted to Bank for processing two (2) Business Days prior to the Effective Date of the transactions. Bank will place a hold on funds in the Settlement Account equal to the total amount of the ACH credit Entries on the Business Day that Bank begins processing Customer’s ACH file, and Customer’s Settlement Account will be debited at the end of the Business Day, simultaneously with removal of the hold on funds in the Settlement Account.

**Good Funds.** Customer shall satisfy its Funding Obligation by irrevocably providing available

funds in the Settlement Account for the total amount of all credit Entries submitted to Bank prior to the time Bank processes the credit Entries. Customer’s Settlement Account will be automatically debited prior to the file being processed. (*WebExpress Initiation Only.*)

1.2 Customer may satisfy its Funding Obligation by maintaining a sufficient balance of available funds in the Settlement Account. Customer authorizes Bank to deduct from Customer’s Settlement Account the amount necessary to satisfy Customer’s Funding Obligation.

1.3 Bank is under no obligation to contact Customer if insufficient funds exist in Customer’s Settlement Account. However, if contacted, Customer agrees to immediately deposit collected funds into the Settlement Account in the form of a cash deposit, wire transfer, intra-bank fund transfer or loan advance to cover the Funding Obligation. Should Bank elect to release a file against insufficient collected funds, it is under no obligation to release subsequent files for which insufficient collected funds may exist.

1.4 If Customer fails or refuses to satisfy its Funding Obligation, Bank may, at its sole discretion, refuse to process credit Entries submitted by Customer to Bank. If such credit Entries are not processed, Bank will delete the ACH file. Customer may only re-initiate the file if Customer first satisfies the Funding Obligation.

**2.  Settlement of Debit Entries (applicable if box is checked).**

2.1 Customer agrees to the settlement of debit Entries in accordance with the following:

**Delayed Settlement.** Bank reserves the right to delay crediting Customer’s Settlement

Account with available funds up to two (2) Business Days after the Settlement Date of the debit Entry.

2.2 In the event a debit Entry is rejected or returned by an RDFI in accordance with the *NACHA Rules* and after Bank has permitted Customer to withdraw immediately available funds in the amount thereof, Customer will, immediately upon Bank's demand, reimburse Bank with available funds in the amount thereof.

2.3 Customer acknowledges and agrees that, in accordance with the *NACHA Rules*, consumer debit Entries, such as PPD and PPD+, may be returned up to sixty (60) Calendar Days after Settlement Date, and that others, such as International ACH Transactions (IAT), may exceed the sixty (60) day

return window defined by the U.S. ACH system and the *NACHA Rules*.

3. **Effectiveness.** Customer agrees to all the terms and conditions of this Attachment. The liability of Bank under this Attachment shall in all cases be subject to the provisions of the Cash Management Master Agreement and the Appendix, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Attachment replaces and supersedes all prior agreements on file with respect to the terms described herein and shall remain in full force and effect until termination or such time as a different or amended Attachment is accepted in writing by Bank or the Cash Management Master Agreement or Appendix is terminated.

IN WITNESS WHEREOF, Customer and Bank have duly caused this Attachment to be executed by an Authorized Representative.

**CITY OF SATELLITE BEACH**  
(Customer)

**TD BANK, N.A.**

565 Cassia Blvd.  
\_\_\_\_\_  
Satellite Beach, FL 32937  
\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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



## CITY COUNCIL AGENDA ITEM

# #9

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### DISCUSS/TAKE ACTION ON STAFF PROPOSAL TO APPLY ANY SAVINGS FROM ROAD RESURFACING PROJECTS TO ADDITIONAL PROJECTS

To: City Manager Courtney Barker  
From: Public Works Director Allen Potter  
Meeting Date: 4/6/2016  
Department: Public Works

**Recommended Action:** Approve use of savings from the Road Resurfacing Program for additional road resurfacing projects.

**Background:** The 2015 Road Resurfacing Program was awarded to Jobear Contracting, Inc. at the City Council's meeting on October 7, 2015. The award amount was \$878,673.68 and included the milling and resurfacing of approximately 25,682 linear feet of existing roadway. This includes the following roads:

Magellan Avenue	Atlantic Drive	Madrid Court	400 block of Desoto Parkway
Palm Drive	Verbenia Drive	Canal Court	Ocean Spray Avenue
Hibiscus Drive	Ocean Drive	Seville Court	
Poinsetta Drive	Kale Street	Barcelona Court	
Palmetto Avenue	Sherwood Avenue	Sunrise Avenue	

Also included in the contract was 3,700 feet of Miami gutter repair, 135 feet of sidewalk repair and 720 feet of stormwater treatment swales.

**Summary:** Based on recent project updates received from the Contractor and City Engineer, there may be cost savings that could be applied to other similar roadway improvements. While the Contractor is currently mobilized and working in the City, using these savings to expand the current scope of work to the City Hall/Civic Center driveways or other roadways in the City would be more cost effective than waiting until a future year road resurfacing budget is allocated. Staff is requesting authorization to perform additional road resurfacing work, if sufficient cost savings are identified.

**Budget Impacts:** N/A

**Attachments:**

- Accounting Spreadsheet for Road Resurfacing Projects

Item #	Description	Original Contract				Qty. Thru Pay Request #3	March Pay Request #4 Qty.	Est. Qty to Complete	Est. Final Quantity	Est. Final Cost	Difference	Explanation
		Qty	Unit	Unit Price	Ext. Price							
1	Mobilization (< 3% of total bid for Part B)	1	LS	\$ 26,255.00	\$ 26,255.00	0.6	0.15	0.25	1	\$ 26,255.00	\$ -	
2	Maintenance of Traffic	1	LS	\$ 5,495.00	\$ 5,495.00	0.4	0.2	0.4	1	\$ 5,495.00	\$ -	
3	Soil/Erosion Control											
	a) Inlet Protection	40	EA	\$ 63.50	\$ 2,540.00	9	0	31	40	\$ 2,540.00	\$ -	
	b) SWPPP and NPDES Permit	1	LS	\$ 3,175.00	\$ 3,175.00	0.45	0.15	0.4	1	\$ 3,175.00	\$ -	
4	Survey Layout	1	LS	\$ 3,175.00	\$ 3,175.00	0.3	0.1	0.6	1	\$ 3,175.00	\$ -	
5	Stormwater											
	a) Inlet Top, Remove and Replace	6	EA	\$ 855.33	\$ 5,131.98	3	1	0	4	\$ 3,421.32	\$ (1,710.66)	Less quantity actually required
	b) Sodded Swale	720	LF	\$ 12.70	\$ 9,144.00	687	0	33	720	\$ 9,144.00	\$ -	
	c) Replace/New Inlet Top	9	EA	\$ 4,630.50	\$ 41,674.50	3	0	0	3	\$ 13,891.50	\$ (27,783.00)	City desired to finish remaining work outside of contract
6	Utility Relocation/Adjustment											
	a) Replace/Adjust Water Valve Box	40	EA	\$ 279.40	\$ 11,176.00	19	5	16	40	\$ 11,176.00	\$ -	
	b) Replace/Adjust Sewer Manhole Ring/Cover	70	EA	\$ 142.85	\$ 9,999.50	14	12	44	70	\$ 9,999.50	\$ -	
7	Concrete											
	a) 4" Thick Concrete (Sidewalks)	135	SY	\$ 63.18	\$ 8,529.30	256	0	0	256	\$ 16,174.08	\$ 7,644.78	Additional sidewalk required for ADA compliance
	b) 6" Thick Conc D/Ws"	35	SY	\$ 74.90	\$ 2,621.50	0	28	0	28	\$ 2,097.20	\$ (524.30)	Less quantity actually required
	b) Modified Type "E" Curb and Gutter (Miami)	3,740	LF	\$ 31.75	\$ 118,745.00	986	625	1239	2850	\$ 90,487.50	\$ (28,257.50)	Less quantity of damaged curb selected for replacement (Subject to Change)
	c) Type F Curb	620	LF	\$ 35.10	\$ 21,762.00	713	121	0	834	\$ 29,273.40	\$ 7,511.40	Additional curb required at Rosada/Sunrise to lessen ponding
	d) 3' Wide Valley Gutter	290	LF	\$ 46.49	\$ 13,482.10	0	148	0	148	\$ 6,880.52	\$ (6,601.58)	Less curb required at Rosada/Sunrise
	e) Miami Curb Back Flume	12	EA	\$ 224.00	\$ 2,688.00	11	0	0	11	\$ 2,464.00	\$ (224.00)	Less quantity actually required
	f) Curb Ramp (Not Including Detectable Surface)	5	EA	\$ 156.80	\$ 784.00	6	0	0	6	\$ 940.80	\$ 156.80	Additional ramp required
7	Roadway											
	a) Mill Existing Asphalt, Type A (1/2" - 1 1/4" Deep)	16,000	SY	\$ 2.80	\$ 44,800.00	3722	740	15998	20460	\$ 57,288.00	\$ 12,488.00	Additional type A milling required (Subject to change)
	b) Mill Existing Asphalt, Type B (1/2" - 2" Deep)	20,870	SY	\$ 2.80	\$ 58,436.00	10244	3341	3105	16690	\$ 46,732.00	\$ (11,704.00)	Less type B milling required (Subject to change)
	c) Type SP 9.5 Traffic Level C Asphalt	4,050	TN	\$ 109.20	\$ 442,260.00	1865	807	1380	4052	\$ 442,478.40	\$ 218.40	Additional asphalt required (Subject to change)
8	Signage/Marking											
	a) 24" Wide White Thermoplastic Stop Bar	600	LF	\$ 3.60	\$ 2,160.00	0	0	600	600	\$ 2,160.00	\$ -	
	b) 5' Wide White Thermoplastic Special Emphasis Crosswalk	80	LF	\$ 7.30	\$ 584.00	0	0	80	80	\$ 584.00	\$ -	
	c) 6" Wide Double Yellow Thermoplastic Centerline	140	LF	\$ 9.52	\$ 1,332.80	0	0	140	140	\$ 1,332.80	\$ -	
	d) 6" Wide White Thermoplastic Edgeline	200	LF	\$ 0.90	\$ 180.00	0	0	200	200	\$ 180.00	\$ -	
	e) White Thermoplastic Arrow/Sharrows	2	EA	\$ 420.00	\$ 840.00	0	0	2	2	\$ 840.00	\$ -	
	f) Detectable Surface	60	SF	\$ 24.65	\$ 1,479.00	162	0	0	162	\$ 3,993.30	\$ 2,514.30	Additional detectable surface required for ADA compliance
	g) Relocate Existing Sign	10	EA	\$ 56.00	\$ 560.00	0	0	10	10	\$ 560.00	\$ -	
	h) Case II Red Reflectors and Bollard Post	40	EA	\$ 588.00	\$ 23,520.00	0	0	40	40	\$ 23,520.00	\$ -	
9	Miscellaneous/Closeout											
	a) Monthly Progress As-builts	1	LS	\$ 9,800.00	\$ 9,800.00	0	0	0.5	0.5	\$ 4,900.00	\$ (4,900.00)	Less progress as-builts required.
	b) Final As-builts	1	LS	\$ 1,344.00	\$ 1,344.00	0	0	1	1	\$ 1,344.00	\$ -	
	c) Testing Allowance	1	LS	\$ 5,000.00	\$ 5,000.00	0.322946	0	0.677054	1	\$ 5,000.00	\$ -	
		<b>Totals</b>								<b>\$ 827,502.32</b>	<b>\$ (51,171.36)</b>	<b>Estimated Contract Underrun</b>
										\$ 14,007.00		Additional Work (City Hall Driveways)
										\$ (37,164.36)		Final Estimated Underrun with Additional Work

**Additional Work (City Hall Driveways)**

A	a) Mill Existing Asphalt, Type A (1/2" - 1 1/4" Deep)	990	SY	\$ 2.80	\$ 2,772.00
B	c) Type SP 9.5 Traffic Level C Asphalt	88	TN	\$ 109.20	\$ 9,555.00
C	e) White Thermoplastic Arrow/Sharrows	4	EA	\$ 420.00	\$ 1,680.00
		<b>Total</b>			<b>\$ 14,007.00</b>



## CITY COUNCIL AGENDA ITEM

# #10

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### DISCUSS/TAKE ACTION ON THE 2015 ROAD RESURFACING PROGRAM – CHANGE ORDER #1

To: City Manager Courtney Barker  
From: Public Works Director Allen Potter  
Meeting Date: 4/6/2016  
Department: Public Works

**Recommended Action:** Approve the 2015 Road Resurfacing Program Change Order No. 1.

**Summary:** A limited Notice to Proceed (NTP) was issued on November 16, 2015. Limitations were placed on work activities due to the holiday periods. The NTP acknowledged the potential for these limitations to affect the contract time and that granting of additional time would be considered if needed. Jobear Contracting, Inc. has worked in earnest since the holiday periods, but additional time is necessary to complete the contract work. Additionally, work requested by the City, if approved by City Council, will require a time extension of approximately nine (9) days.

The project did not reach substantial completion by the original contract date of March 15, 2016. However, the contractor expects to achieve final completion of the project by the original contract date of April 30, 2016. Therefore, the substantial completion deadline of March 15, 2016 is proposed to be modified to coincide with the final completion deadline of April 30, 2016. This will include additional work requested by the City.

**Budget Impacts:** N/A

**Attachments:**

- 2015 Road Resurfacing Program – Change Order No. 1

BRAD T. BLAIS, P.E.  
DAVID A. KING, P.E.  
ANDREW M. GIANNINI, P.E.  
KEVIN A. LEE, P.E.

Quentin L. Hampton Associates, Inc.  
*Consulting Engineers*  
P.O. DRAWER 290247  
PORT ORANGE, FLORIDA 32129-0247

TELEPHONE: (386) 761-6810  
FAX: (386) 761-3977  
EMAIL: qha@qha.com

April 1, 2016

Allen Potter  
Director Public Works  
City of Satellite Beach  
530 Cinnamon Drive  
Satellite Beach, FL 32937

Email: [apotter@satellitebeach.org](mailto:apotter@satellitebeach.org)  
Hard Copy Mailed Only on Request

**RE: 2015 Roadway Resurfacing Program – Change Order #1 and Additional Work**

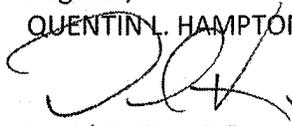
Dear Allen,

Enclosed for the City's review and execution is Change Order #1 to this contract. This change order addresses the additional time required to complete the original contract work and additional work to resurface the City Hall driveways, if approved. The majority of this additional time is due to impacts to the Contractor's schedule due to the limitations placed on the work between the November 16, 2015 Notice to Proceed and January 4, 2016 so to lessen the construction impact to residents during the holidays. Some weather delays were also realized. The additional work for the City Hall driveways will take no more than 9 days to complete. Together, we are recommending a 46 day extension to the substantial completion and a 16 day extension to the final completion, making both deadlines as April 30, 2016.

Also enclosed is the current project accounting which includes quantities of work through the end of March and projected quantities to finish the original scope for work. The resulting estimated quantities result in an estimated \$51,171.36 underrun in the original contract work. The additional work which will include milling and resurfacing of both City Hall driveways between the Cassia ditch bridges and the parking lot is expected to cost \$14,007, leaving a \$37,164.36 estimated net underrun. Please note that the final curb, milling and asphalt quantities are subject to change. The net underrun should be sufficient to cover any variations that may occur in these items and still result in a final underrun. A final reconciliation change order capturing the final underrun will be prepared once all work is complete.

We understand that this change order and additional work will be considered by City Council at their April 6 Council meeting. We can attend if needed to answer any questions that may arise. Contact our office if you have any questions or need any further information.

Regards,  
QUENTIN L. HAMPTON ASSOCIATES, INC.

  
David A. King, P.E.  
Vice-President

DAK:bf

CHANGE ORDER

PROJECT: **2015 Road Resurfacing Program**

CHANGE ORDER NO.: **1**

CONTRACTOR: **Jobear Contracting, Inc.**

EFFECTIVE DATE: \_\_\_\_\_

The following changes are hereby made to the Contract Documents:

<p style="text-align: center;"><b>CHANGE IN CONTRACT PRICE:</b></p> <p>Original Contract Price:</p> <p><u>\$878,673.68</u></p>	<p style="text-align: center;"><b>CHANGE IN CONTRACT TIME:</b></p> <p>Original Contract Times:</p> <p>Substantial Completion: <u>120 days/March 15, 2016</u>                  Final Completion: <u>+30 days/April 14, 2016</u></p>
<p>Net changes from previous Change Orders No. <u>0</u> to No. <u>0</u>.</p> <p><u>\$0</u></p>	<p>Changes in contract time from previous Change Orders No. <u>0</u> to No. <u>0</u>.</p> <p><u>0</u> Days</p>
<p>Contract Price prior to this Change Order:</p> <p><u>\$878,673.68</u></p>	<p>Contract Completion Date prior to this Change Order:</p> <p>Substantial Completion: <u>120 days/March 15, 2016</u>                  Final Completion: <u>+30 days/April 14, 2016</u></p>
<p>Net Increase (decrease) of this Change Order:</p> <p><u>\$0.00</u></p>	<p>Changes in contract time requested this Change Order:</p> <p><u>46</u> Days (substantial), <u>16</u> Days (final)</p>
<p>Contract Price with all approved Change Orders:</p> <p><u>\$878,673.68</u></p>	<p>Contract Times with all approved Change Orders:</p> <p>Original Contract Times:</p> <p>Substantial Completion: <u>166 days/April 30, 2016</u>                  Final Completion: <u>166 days/April 30, 2016</u></p>

**CHANGES ORDERED:**

I. GENERAL: This change order is necessary to cover changes in the work to be performed under this Contract. The General Conditions, Supplementary Conditions, Specifications and all parts of the Project Manual listed in Article 1, Definitions, of the General Conditions apply to and govern all work under this change order.

II. REQUIRED CHANGES:

The Contract price is unchanged.

The Contract time is hereby increased by 46 days for substantial completion and 16 days for final completion.

III. JUSTIFICATION:

A limited Notice to Proceed (NTP) was issued on November 16, 2015. Limitations were placed on work activities due to the holiday periods. The NTP acknowledged the potential for these limitations to affect the contract time and that granting of additional time would be considered if needed. The Contractor has worked in earnest since the holiday periods, but additional time is necessary to complete the contract work. Additionally, the work has been impacted by more than one week of inclement weather conditions. Lastly, the Owner desires to add the milling and resurfacing of the City Hall driveways to the Contract Scope of Work. The additional work will require additional time to complete.

A 46 day extension in the substantial completion and 16 day extension in the final completion deadlines will be sufficient to address these items.

IV. PAYMENT: N/A

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Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:

Quentin L. Hampton Associates, Inc.  
(Engineer)

By: David King P.E.  
Name Typed (Date)

\_\_\_\_\_  
(Authorized Signature)

ACCEPTED BY:

Jobear Contracting, Inc.  
(Contractor)

By: John Huy  
Name Typed (Date)

\_\_\_\_\_  
(Authorized Signature)

APPROVED BY:

\_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Name Typed (Date)

\_\_\_\_\_  
(Authorized Signature)

END OF SECTION

Item #	Description	Original Contract				Qty. Thru Pay Request #3	March Pay Request #4 Qty.	Est. Qty to Complete	Est. Final Quantity	Est. Final Cost	Difference	Explanation
		Qty	Unit	Unit Price	Ext. Price							
1	Mobilization (< 3% of total bid for Part B)	1	LS	\$ 26,255.00	\$ 26,255.00	0.6	0.15	0.25	1	\$ 26,255.00	\$ -	
2	Maintenance of Traffic	1	LS	\$ 5,495.00	\$ 5,495.00	0.4	0.2	0.4	1	\$ 5,495.00	\$ -	
3	Soil/Erosion Control											
	a) Inlet Protection	40	EA	\$ 63.50	\$ 2,540.00	9	0	31	40	\$ 2,540.00	\$ -	
	b) SWPPP and NPDES Permit	1	LS	\$ 3,175.00	\$ 3,175.00	0.45	0.15	0.4	1	\$ 3,175.00	\$ -	
4	Survey Layout	1	LS	\$ 3,175.00	\$ 3,175.00	0.3	0.1	0.6	1	\$ 3,175.00	\$ -	
5	Stormwater											
	a) Inlet Top, Remove and Replace	6	EA	\$ 855.33	\$ 5,131.98	3	1	0	4	\$ 3,421.32	\$ (1,710.66)	Less quantity actually required
	b) Sodded Swale	720	LF	\$ 12.70	\$ 9,144.00	687	0	33	720	\$ 9,144.00	\$ -	
	c) Replace/New Inlet Top	9	EA	\$ 4,630.50	\$ 41,674.50	3	0	0	3	\$ 13,891.50	\$ (27,783.00)	City desired to finish remaining work outside of contract
6	Utility Relocation/Adjustment											
	a) Replace/Adjust Water Valve Box	40	EA	\$ 279.40	\$ 11,176.00	19	5	16	40	\$ 11,176.00	\$ -	
	b) Replace/Adjust Sewer Manhole Ring/Cover	70	EA	\$ 142.85	\$ 9,999.50	14	12	44	70	\$ 9,999.50	\$ -	
7	Concrete											
	a) 4" Thick Concrete (Sidewalks)	135	SY	\$ 63.18	\$ 8,529.30	256	0	0	256	\$ 16,174.08	\$ 7,644.78	Additional sidewalk required for ADA compliance
	b) 6" Thick Conc D/Ws"	35	SY	\$ 74.90	\$ 2,621.50	0	28	0	28	\$ 2,097.20	\$ (524.30)	Less quantity actually required
	b) Modified Type "E" Curb and Gutter (Miami)	3,740	LF	\$ 31.75	\$ 118,745.00	986	625	1239	2850	\$ 90,467.50	\$ (28,257.50)	Less quantity of damaged curb selected for replacement (Subject to Change)
	c) Type F Curb	620	LF	\$ 35.10	\$ 21,762.00	713	121	0	834	\$ 29,273.40	\$ 7,511.40	Additional curb required at Rosada/Sunrise to lessen ponding
	d) 3' Wide Valley Gutter	290	LF	\$ 46.49	\$ 13,482.10	0	148	0	148	\$ 6,880.52	\$ (6,601.58)	Less curb required at Rosada/Sunrise
	e) Miami Curb Back Flume	12	EA	\$ 224.00	\$ 2,688.00	11	0	0	11	\$ 2,464.00	\$ (224.00)	Less quantity actually required
	f) Curb Ramp (Not Including Detectable Surface)	5	EA	\$ 156.80	\$ 784.00	6	0	0	6	\$ 940.80	\$ 156.80	Additional ramp required
7	Roadway											
	a) Mill Existing Asphalt, Type A (1/2" - 1 1/4" Deep)	16,000	SY	\$ 2.80	\$ 44,800.00	3722	740	15998	20460	\$ 57,288.00	\$ 12,488.00	Additional type A milling required (Subject to change)
	b) Mill Existing Asphalt, Type B (1/2" - 2" Deep)	20,870	SY	\$ 2.80	\$ 58,436.00	10244	3341	3105	16690	\$ 46,732.00	\$ (11,704.00)	Less type B milling required (Subject to change)
	c) Type SP 9.5 Traffic Level C Asphalt	4,050	TN	\$ 109.20	\$ 442,260.00	1865	807	1380	4052	\$ 442,478.40	\$ 218.40	Additional asphalt required (Subject to change)
8	Signage/Marking											
	a) 24" Wide White Thermoplastic Stop Bar	600	LF	\$ 3.60	\$ 2,160.00	0	0	600	600	\$ 2,160.00	\$ -	
	b) 5' Wide White Thermoplastic Special Emphasis Crosswalk	80	LF	\$ 7.30	\$ 584.00	0	0	80	80	\$ 584.00	\$ -	
	c) 6" Wide Double Yellow Thermoplastic Centerline	140	LF	\$ 9.52	\$ 1,332.80	0	0	140	140	\$ 1,332.80	\$ -	
	d) 6" Wide White Thermoplastic Edgeline	200	LF	\$ 0.90	\$ 180.00	0	0	200	200	\$ 180.00	\$ -	
	e) White Thermoplastic Arrow/Sharrows	2	EA	\$ 420.00	\$ 840.00	0	0	2	2	\$ 840.00	\$ -	
	f) Detectable Surface	60	SF	\$ 24.65	\$ 1,479.00	162	0	0	162	\$ 3,993.30	\$ 2,514.30	Additional detectable surface required for ADA compliance
	g) Relocate Existing Sign	10	EA	\$ 56.00	\$ 560.00	0	0	10	10	\$ 560.00	\$ -	
	h) Case II Red Reflectors and Bollard Post	40	EA	\$ 588.00	\$ 23,520.00	0	0	40	40	\$ 23,520.00	\$ -	
9	Miscellaneous/Closeout											
	a) Monthly Progress As-builts	1	LS	\$ 9,800.00	\$ 9,800.00	0	0	0.5	0.5	\$ 4,900.00	\$ (4,900.00)	Less progress as-builts required.
	b) Final As-builts	1	LS	\$ 1,344.00	\$ 1,344.00	0	0	1	1	\$ 1,344.00	\$ -	
	c) Testing Allowance	1	LS	\$ 5,000.00	\$ 5,000.00	0.322946	0	0.677054	1	\$ 5,000.00	\$ -	
				<b>Totals</b>	<b>\$ 878,673.68</b>					<b>\$ 827,502.32</b>	<b>\$ (51,171.36)</b>	<b>Estimated Contract Underrun</b>
											\$ 14,007.00	Additional Work (City Hall Driveways)
											<b>\$ (37,164.36)</b>	<b>Final Estimated Underrun with Additional Work</b>

**Additional Work (City Hall Driveways)**

A	a) Mill Existing Asphalt, Type A (1/2" - 1 1/4" Deep)	990	SY	\$ 2.80	\$ 2,772.00
B	c) Type SP 9.5 Traffic Level C Asphalt	88	TN	\$ 109.20	\$ 9,555.00
C	e) White Thermoplastic Arrow/Sharrows	4	EA	\$ 420.00	\$ 1,680.00
				<b>Total</b>	<b>\$ 14,007.00</b>



## CITY COUNCIL AGENDA ITEM

# #11

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### DISCUSS/TAKE ACTION TO PIGGYBACK OFF OF AN AGREEMENT WITH THE BREVARD COUNTY ENGINEERING CONSULTANT ATKINS NORTH AMERICA INC., TO PERFORM A MUCK REMOVAL ASSESSMENT (PHASE I) OF CITY CANALS

To: City Council  
From: City Manager Courtney Barker  
Meeting Date: 4/6/2016  
Department: Support Services

**Recommended Action:** Approval to piggyback off of the bid and services of Brevard County Engineering Consultant Atkins North America Inc., to perform a Muck Removal Assessment (Phase I) of Canals within the City of Satellite Beach; and approve a budget amendment in the amount of \$25,360.

**Summary:** The cities of Indian Harbour Beach and Satellite Beach are collectively seeking an assessment of the quantity of muck in canals within each of the cities' limits along the southern portion of the Grand Canal (northern limit of the City of Satellite Beach) to the southernmost canal within the City of Indian Harbour Beach on the eastern shore of the Banana River. The cities recognize and are considering the potential opportunity to conduct muck dredging through the use of the State legislative appropriations allotted to Brevard County as part of the muck removal initiative within the Indian River Lagoon.

As such, staff is requesting to piggyback the bid and services process of Brevard County under their continuing services contract with Atkins North America Inc., to perform the first phase of this project. This Phase I task order for the City of Satellite Beach's portion of the project includes a bathymetric survey to determine the extent and volume of muck in 3.4 miles of canals and meetings to present and review the bathymetric survey and volume of muck. The goal is to become shovel ready should State funding become available. The cost for Phase I of this project is \$25,360.

Additionally, it is necessary to approve a budget amendment of \$25,360 to appropriate the funds necessary to complete this task.

The City of Indian Harbour Beach approved their portion of the project on March 22, 2016.

**Budget Impacts:** \$25,360 to come from Unrestricted Reserves

**Attachments:**

- Atkins North America Inc. - Scope of Services

## City of Satellite Beach Muck Removal Assessment - Phase 1 Services Scope of Work

### Summary

The cities of Satellite Beach and Indian Harbour Beach are collectively seeking an assessment of the quantity muck in canals within each of the cities' limits along the southern portion of Grand Canal (northern limit of the City of Satellite Beach) to the southernmost canal within the City of Indian Harbour Beach on the eastern shore of the Banana River. The cities recognize and are considering the potential opportunity to conduct muck dredging through use of the State legislative appropriations allotted to Brevard County as part of the muck removal initiative within the Indian River Lagoon.

This task order for the City of Satellite Beach (City) includes a bathymetric survey to determine the extent and volume of muck in 3.4 miles of canals and meetings to present and review the bathymetric survey and volume of muck.

### A. PROPOSED SCOPE OF WORK

Under this task order assignment, Atkins will perform the following tasks:

#### **1. Professional Bathymetric Surveys:**

Morgan & Eklund, Inc. (subcontractor) will provide professional surveying services to establish horizontal and vertical control for the assessment area, perform a bathymetric and sediment thickness survey of the Grand Canal system within the City limits. The survey team will utilize a 26' survey vessel equipped with an automated bathymetric charting system consisting of an Odom MB-1 Multibeam system for horizontal and vertical positioning. The muck thicknesses will be determined using probes. Professional surveying services will include the following:

- 1. Bathymetric Survey of Canal System and Muck Probes**
  - Establish/verify horizontal control in project area
  - Bathymetric survey along 3.4 miles of waterway/canals (See attached layout exhibit)
  - Five muck probes per cross-section (approximately 900 probes)
- 2. Data reduction, Drafting of Plan View Contour Map with Cross-sections and isopach drawing showing color-banded muck depths**

**Sub-Task Cost:** \$18,210.00

**Schedule:** The bathymetric surveys and muck probes will be completed within 14 days of the NTP. Deliverables will be completed within 30 days of completion of the bathymetric survey.

**Deliverable(s):** Contour map, cross-sections, and color-banded muck depths for bathymetric survey and muck probes.

# ATKINS

## 2. Muck Volumes

Upon receipt of deliverables from Morgan & Eklund, Inc, Atkins will quantify the muck volumes in each of the 14 canals surveyed including the portion of Grand Canal within the City limits.

Disclaimer:

- The muck volumes quantified as part of this task do not necessarily represent the quantity of muck within a dredge template. Additional design work will be required to account for dredge equipment limitations and necessary offsets from existing structures/natural resources in and adjacent to canals.

**Task Cost:** \$4,310.00

**Schedule:** Deliverables will be completed within 21 days of receipt of the Task 1 deliverables from Morgan & Eklund, Inc.

**Deliverable(s):** Muck volume summary table

## 3. Meetings and Coordination

Atkins will prepare for, travel to and attend one (1) meeting with City staff to review and discuss the results of Tasks 1 and 2. Atkins will prepare meeting minutes for meeting with City staff. Additionally, at the discretion of City staff, Atkins will attend one (1) City Council meeting to present and discuss the results of Tasks 1 and 2.

**Task Cost:** \$2,840.00

**Schedule:** Atkins will schedule a meeting with City staff within 7 days of submittal of Task 2 deliverable. If requested by City staff, Atkins staff will attend City Council meeting within 30 days of submittal of Task 2 deliverable but not before meeting with City staff.

**Deliverable(s):** Meeting minutes for meeting with City staff.

## **B. CONTRACT SCHEDULE**

*See Exhibit 1 for classifications of assigned personnel.*

### 1. Professional Bathymetric Surveys:

- Field work completed within 14 days of NTP. Deliverables within 30 days of completion of field work.

### 2. Muck Volumes:

- Deliverables within 21 days of receipt of Task 1 deliverables from Morgan & Eklund, Inc.

### 3. Meetings and Coordination:

- Schedule a meeting with City staff within 7 days of submittal of Task 2 deliverable. If requested by City staff, Atkins staff will attend City Council meeting within 30 days of submittal of Task 2 deliverable but not before meeting with City staff.

# ATKINS

## **C. COMPENSATION**

*See Exhibit 1 for project team, hours, and expenses.*

1. Professional Bathymetric Surveys	\$18,210.00
2. Muck Volumes	\$4,310.00
3. Meetings and Coordination	<u>\$2,840.00</u>
TOTAL	\$25,360.00

This task assignment is a Not-to-Exceed amount and includes all costs associated with the deliverables and tasks. Rates for personnel working on this task are based on the hourly rates established for Contract 260070-14-002 with Brevard County Natural Resources Management Offices. At no time will the cost for this task extend beyond the total in this task order form without an addendum.

## **Invoicing**

Each invoice submitted by Atkins will include a list of the specific work performed as a part of this task assignment, and invoiced by each task.

## **D. QUALITY ASSURANCE / QUALITY CONTROL**

Atkins has a formal, defined technical review and quality assurance/quality control process. Draft products will be reviewed by a senior scientist/principal technical professional and comments will be resolved with the product authors.

## **E. DELIVERABLES**

All work products associated with this task become the property of and will be transmitted to the City of Satellite Beach in a pre-approved, digital format.

1. Professional Bathymetric Surveys
  - Bathymetric Survey – Contour maps, cross-sections, color-banded muck depths
2. Muck Volumes
  - Muck volume summary table
3. Meetings and Coordination
  - Meeting minutes

## **F. FIGURES AND EXHIBITS**

- Figure 1: Survey Canals (figure provided by Morgan & Eklund, Inc.)  
Exhibit 1: City of Satellite Beach Muck Removal Assessment Phase I – Project Team Hours and Costs (Labor Classification, Hours, and Expenses)  
Exhibit 2: City of Satellite Beach Muck Removal Assessment Phase I – Expenses

# ATKINS

## AUTHORIZATION

IN WITNESS WHEREOF, the parties have made and executed this Work Order effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Witnesses:**

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_

**City of Satellite Beach**

- By: \_\_\_\_\_
- Name: \_\_\_\_\_  
Print/Type
- Title: \_\_\_\_\_
- Date: \_\_\_\_\_

**Witnesses:**

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_

**Atkins North America, Inc.**

- By: \_\_\_\_\_
- Name: \_\_\_\_\_  
Print/Type
- Title: \_\_\_\_\_
- Date: \_\_\_\_\_

EXHIBIT 1  
MUCK REMOVAL ASSESSMENT PHASE I  
PROJECT TEAM HOURS AND COSTS

Task Description	Labor Classification	Principal/Sr Professional	Project Manager	Engineer III	Engineer I	Sr. CADD Analyst			Total Hours	Total Costs
	Labor Rate	\$175.00	\$140.00	\$125.00	\$85.00	\$95.00				
<b>1.0 Professional Bathymetric Surveys</b>										
Bathymetric Survey and Muck Probes				4	2				6	\$670.00
Data Reduction, Plan View Maps and Cross-sections		1		4	2				7	\$845.00
								Labor Totals	13	\$1,515.00
Expenses										<u>\$16,695.00</u>
								Task Totals		\$18,210.00
<b>2.0 Muck Volumes</b>										
Quantify muck volumes		2		8	8	24			42	\$4,310.00
								Task Totals	42	\$4,310.00
Expenses										<u>\$0.00</u>
								Task Totals		\$4,310.00
<b>3.0 Meetings and Coordination</b>										
Prepare for and attend one meeting with City staff			2	8					10	\$1,280.00
Prepare for and attend one City Council meeting			4	8					12	\$1,560.00
								Task Totals	22	\$2,840.00
Expenses										<u>\$0.00</u>
								Task Totals		\$2,840.00
								Labor Totals	77	\$8,665.00
								Expenses Totals		<u>\$16,695.00</u>
								Total		\$25,360.00

EXHIBIT 2  
MUCK REMOVAL ASSESSMENT PHASE I  
EXPENSES

Task Description	Travel/Mile	Lodging (nite)	Meals while Traveling (per person)	Boat	Pace Lab	Geotech	Survey	Miscellaneous	Totals
	\$0.55	\$100.00	\$50.00	\$350.00				As Requested	
<b>1.0 Professional Bathymetric Surveys</b>									
Bathymetric Surveys							\$6,980.00		\$6,980.00
Muck Probes							\$6,985.00		\$6,985.00
Data Reduction, Plan View Map and Cross-sections							\$2,730.00		\$2,730.00
								Task Total	\$16,695.00
<b>2.0 Muck Volumes</b>									
Quantify muck volumes									\$0.00
								Task Total	\$0.00
<b>3.0 Project Design / Engineering</b>									
Prepare for and attend one meeting with City staff									\$0.00
Prepare for and attend one City Council meeting									\$0.00
								Task Total	\$0.00

Expenses Total      \$16,695.00

H:\Soil\proj\5618-02\dwg\SATELLITE SOUTH EXHIBIT.dwg loc Fri, 26 Feb 2016 - 3:22pm



**MORGAN & EKLUND, INC.**

**PROFESSIONAL SURVEY CONSULTANTS**

8745 US HIGHWAY #1  
 P.O. BOX 1420  
 WABASSO, FL 32970  
 PHONE: (772) 388-5364  
 FAX: (772) 388-3165

1158 SW 1ST WAY  
 DEERFIELD BEACH, FL 33441  
 PHONE: (954) 421-6882  
 FAX: (954) 421-0425

LB #4298

PROPOSED HYDROGRAPHIC SURVEY EXHIBIT  
 SATELLITE BEACH CANALS  
 BREVARD COUNTY, FLORIDA  
 - FOR -  
 ATKINS NORTH AMERICA

COMMISSION NO.  
 -  
 SCALE  
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 2/25/16

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 LFP

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 JRM

FIELD BOOK  
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DATE OF SURVEY  
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SHEET 1 of 1

# 12

4-6-16

**RESOLUTION NO. 967**

**A RESOLUTION OF THE CITY OF SATELLITE BEACH,  
BREVARD COUNTY, FLORIDA, RELATING TO WATER  
CONSERVATION; MAKING FINDINGS; DECLARING  
APRIL 2016, AS WATER CONSERVATION MONTH;  
PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION;  
AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, water is a basic and essential need of every living creature; and

**WHEREAS**, clean and sustainable water resources are vital to Florida's environment, economy and quality of life; and

**WHEREAS**, more than 90 percent of Florida's drinking water is supplied by underlying aquifers, and our quality of life and the economy depend upon a reliable, clean and available supply of water and a healthy environment; and

**WHEREAS**, the St. Johns River Water Management District is working with the State of Florida, other water management districts, local governments and water supply utilities to increase awareness about the importance of water conservation and to increase efforts to conserve water; and

**WHEREAS**, the St. Johns River Water Management District has always encouraged and supported water conservation through its water supply planning processes, coordination of educational programs and special events, cooperative funding programs, technical assistance and regulatory programs; and

**WHEREAS**, all water users including residential, commercial, industrial, agricultural, institutional, hospitality, private citizens and others can make positive contributions to reduce water use and protect Florida's water resources; and

**WHEREAS**, the St. Johns River Water Management District, in collaboration and coordination with local governments, utilities, businesses, agriculture, environmental organizations and other parties with an interest in water use are developing a comprehensive and long-term water conservation program to instill a lasting culture of conservation in our communities; and

**WHEREAS**, the Governor and Cabinet of the State of Florida have designated April as Florida's Water Conservation Month to encourage Floridians to conserve the state's precious water resources; and

**WHEREAS**, the City of Satellite Beach joins the St. Johns River Water Management District in encouraging and supporting water conservation.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Satellite Beach, Brevard County, Florida, as follows:

**SECTION 1.** Each of the foregoing recitals are hereby incorporated in this Resolution.

**SECTION 2.** The City of Satellite Beach does hereby designate April 2016, as Water Conservation Month. The City hereby urges citizens to engage in water conservation for the benefit of all Floridians, and calls upon each resident, visitor, and business to help protect our precious resource by practicing water conservation measures and becoming more aware of the need to conserve water.

**SECTION 3.** This Resolution shall be distributed to the St. Johns River Water Management District and the Florida Today newspaper.

**SECTION 4.** This Resolution shall become effective immediately upon its adoption.

**SECTION 5.** This Resolution was adopted at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
MARK BRIMER, VICE-MAYOR

ATTEST:

\_\_\_\_\_  
LEONOR OLEXA, CMC, CITY CLERK

#13  
4-6-16

**AGENDA**

**CITY COUNCIL**  
**PROPOSED SPECIAL MEETING**

**SATELLITE BEACH COUNCIL CHAMBER**  
**565 CASSIA BOULEVARD, SATELLITE BEACH, FL 32937**

**APRIL 20, 2016**  
**6:00 P.M.**

- 1. CALL TO ORDER BY MAYOR CATINO**
- 2. DISCUSS/TAKE ACTION ON THE CHARTER REVIEW COMMITTEE RECOMMENDATIONS TO CITY COUNCIL FOR 2016 CHARTER AMENDMENTS**

Pursuant to Section 286-0105, FSS, if an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a verbatim transcript of the proceedings may be required and the individual may need to insure that a verbatim transcript of the proceedings is made. In accordance with the Americans with Disabilities Act and Section 286.26, FSS. Persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's office.

# **AGENDA**

## **CITY COUNCIL PROPOSED REGULAR MEETING**

**SATELLITE BEACH COUNCIL CHAMBER  
565 CASSIA BOULEVARD, SATELLITE BEACH, FL 32937**

**APRIL 20, 2016  
7:00 P.M.**

- 1. CALL TO ORDER BY VICE-MAYOR BRIMER**
- 2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE LED BY COUNCILWOMAN GOTT**
- 3. CITIZEN COMMENTS**
- 4. CITY COUNCIL COMMENTS**
- 5. CITY MANAGER REPORT**
- 6. DISCUSS/TAKE ACTION ON AN AGREEMENT BETWEEN THE CITY OF SATELLITE BEACH AND SURFLINE WEBCAM**
- 7. DISCUSS/TAKE ACTION ON AUDIT REPORT FOR FY 14/15 BY CARR, RIGGS & INGRAM (TIME CERTAIN 7:30 P.M.)**
- 8. DISCUSS/TAKE ACTION ON ORDINANCE NO. 1118, AN ORDINANCE OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, AMENDING THE FY 2015-2016 BUDGET ORDINANCE NO. 1110; PROVIDING AN EFFECTIVE DATE (FIRST READING)**
- 9. DISCUSS/TAKE ACTION ON AN AWARD OF SOLID WASTE SERVICES (RFP NO. 15/16-03)**

Pursuant to Section 286-0105, FSS, if an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a verbatim transcript of the proceedings may be required and the individual may need to insure that a verbatim transcript of the proceedings is made. In accordance with the Americans with Disabilities Act and Section 286.26, FSS. Persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's office.

- 10. DISCUSS/TAKE ACTION ON UPDATING THE CITY'S 401(A) EMPLOYEE PENSION PLAN TO COMPLY WITH THE INTERNAL REVENUE SERVICE REQUIREMENTS**
- 11. DISCUSS/TAKE ACTION ON A DRUG-FREE WORKPLACE POLICY**
- 12. DISCUSS/TAKE ACTION ON RECREATION DEPARTMENT POSITION CHANGES**
- 13. AGENDA ITEMS FOR NEXT REGULAR COUNCIL MEETING**
- 14. APPOINTMENT TO BOARDS**
- 15. ADOPTION OF MINUTES:**



## CITY COUNCIL AGENDA ITEM

# #14

### APPOINTMENT TO BOARDS

To: City Manager Courtney Barker  
From: City Clerk Leonor Olexa  
Meeting Date: 4/6/2016  
Department: City Clerk's Office

**Recommended Action:** Council to consider Board reappointments/adjustments and a new appointment.

**Summary:** At the March 2, 2016 City Council meeting, City Manager Barker identified a member on the Sustainability Board who has not been attending the meetings regularly. Board Member Scott Waymire has missed 8 out of the last 12 meetings. Attached is the Board Attendance Record for the Sustainability Board. Section 2, page 2-2 of the City Boards Handbook addresses attendance, excused absences, and removal of a board member. Council will need to determine what action is appropriate regarding Board Member Waymire's attendance. With the transition of new staff within departments over the last year, I have re-emphasized the importance of using the Board Attendance Record form and providing it to the Chair of the board for determining excused or unexcused absences to all recording secretaries. With that said, I have confidence in staff that this process will be followed and will result in improved future reporting.

Due to a family event of Board Member Barbara Stasko, the Library Board at their March 8, 2016 meeting discussed the need to change board member appointments, and requested to change primary member Barbara Stasko to an alternate member position and change alternate member Hope Ascher to a primary member position. Board Member Stasko has indicated that she has served on the Board for several years and once her term comes up for consideration, would prefer not to be reappointed.

Below is a list of Board reappointments, a new appointment, and vacancies:

#### **Board/Committee Reappointments:**

- Nancy Woodman – Beautification Board – Primary Member (05/07/19)
- Barbara Stasko – Library Board – Primary Member (current term will expire 05/05/16)
- Hope Ascher – Library Board – Alternate Member (current term will expire 08/05/16)

#### **New Appointment:**

- Stephen Nieroda - Planning and Zoning Advisory Board – Alternate Member (04/06/19)

**Current Board Vacancies:**

- **Beautification Board:** one (1) primary and two (2) alternate member positions
- **Board of Adjustment:** one (1) alternate member position
- **Planning and Zoning Advisory Board:** one (1) alternate member position
- **Recreation Board:** two (2) primary and one (1) alternate member positions
- **Samsons Island Working Board:** one (1) alternate member position

**Budget Impacts:** N/A

**Attachments:**

- City Boards Handbook, page 2-2
- Sustainability Board Attendance Log
- Beautification Board Attendance Log
- Library Board Attendance Log

**Term of Office.** The term of office for board members shall be three years. Members are limited to two terms, unless no other qualified individual has applied for the board, or the City Council deems that the member's expertise is still needed on the board.

**Representing the Board.** No board member may act or speak in the name of the board unless specifically authorized to do so by a majority vote of the board.

**Attendance.** Regular in-person attendance is required of all board members, including alternates. Attendance shall be recorded at each meeting in the minutes and on the **Board Attendance Record** form.

**Excused Absences.** An excused absence occurs when a board member is unable to attend a regular meeting due to unavoidable and essential business or personal matters, personal or immediate-family illness, or an immediate-family emergency or bereavement. For any absence, whenever it is possible to do so, prior to the meeting the member shall notify the Recording Secretary of the anticipated absence and the Chair shall determine whether the absence is excused.

**Removal.** At the discretion of the City Council, any board member may be removed for cause (malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or felony or misdemeanor conviction, per **FS 112.501**). Neglect of duty shall include excessive unexcused absences, which shall be defined as unexcused absence from 2 out of 3 consecutive regular meetings.

The Recording Secretary shall notify the City Clerk of such individuals. Before notifying the City Council and before removal is initiated, the City Clerk shall contact the individual to determine if s/he is interested in remaining on the board with assurance of regular attendance or desires to resign or be removed. If s/he desires to remain on the board and has another unexcused absence, that seat shall be automatically vacated.

**Special Removal Requirements.** In accordance with **Section 112.501, Florida Statutes**, the City Council may remove any member of boards created by general law or City Charter (Pension Plan Boards, Comprehensive Planning Advisory Board, and Planning and Zoning Advisory Board) only by resolution specifying the facts which are the basis for removal, after reasonable notice and an opportunity to be heard are given to the board member.

**Section 162.05(3)(e), Florida Statutes**, requires the **Code Enforcement Board** to declare a member's office vacant if that member has excessive unexcused absences as defined above.

**Vacancies.** For the first regular City Council meeting of each month, the City Clerk shall include in the Council packet a list of upcoming board vacancies scheduled to occur in the following month (if any), along with copies of applications to serve on those boards. The City Council shall fill vacancies in unexpired terms in the same manner as initial appointments. The term of such appointment shall be the remainder of the unexpired term.

## **MEETINGS**

**Generally.** In addition to regularly-scheduled meetings, other meetings (including rescheduled or continued meetings) may be called by the Chair or a majority of a board.

**Open Meetings.** Florida's Sunshine Law (**FS Chapter 286**) requires all board meetings to be open to the public and have reasonable ADA accommodation. **Minutes** of each meeting must be prepared and open to public inspection. Neither audio nor video recordings are required but, if made, they must be retained as part of the public record in accordance with the retention schedules of the Florida Department of State.

## Sustainability Board

Last Name	First Name	06/29/15	07/02/15	07/09/15	07/14/15	07/30/15	08/26/15	09/01/15	09/09/15	09/23/15	10/28/15	12/09/15	01/27/16	02/24/16	03/23/16
Chestine (Chair)	Jeff	P	P		P	P	P	*	P	P	U	P	P	P	P
Fergus (Vice-Chair)	John	P	P		P	P	P	*	P	P	P	E	P	P	P
Gibson	Mindy													P	P
Mathews	Eugene	P	P		P	P	P	*	P	U	P	P	P	U	P
Pause	Josh	P	P		P	P	P	*	P	P	P	P	P	E	P
Vigliotti	David	P	E		E	P	P	*	P	P	P	P	P	P	E
Waymire	Scott	P	P		P	U	U	*	U	P	U	U	U	U	U

**Attendance =**

6 5 0 5 5 5 0 5 5 4 4 5 4 5

**# Members =**

6 6 0 6 6 6 6 6 6 6 6 6 7 7

<p><b>P = Present</b>  <b>E = Excused Absence</b>  <b>U = Unexcused Absence</b>  <b>* = No quorum</b>  <b>Gray = Cancelled</b></p>
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## Beautification Board

Last Name	First Name	05/01/15	06/05/15	07/04/15	08/07/15	09/04/15	10/02/15	11/06/15	12/04/15	01/08/16	02/05/16	03/04/16	04/01/16
LeRoux (Chair)	Kay	P	P		P	P	P	P	P	P	P	P	
Kraemer (Vice-Chair)	Judie	P	P		P	P	P	P	E	P	P	P	
Mayer	Bill	P	P		P	P	P	P	P	P	P	P	
Woodman	Nancy	P	P		P	U	P	P	P	P	P	P	

<b>Attendance =</b>	4	4	0	4	3	4	4	3	4	4	4	4	0
<b># Members =</b>	4	4	0	4	4	4	4	4	4	4	4	4	0

<b>P = Present</b> <b>E = Excused Absence</b> <b>U = Unexcused Absence</b> <b>* = No quorum</b> <b>Gray = Cancelled</b>
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## Library Board

Last Name	First Name	05/12/15	07/14/15	09/08/15	11/10/15	01/12/16	03/08/16
Guinn (Chair)	Dorothy	P		P	P	P	P
Robitschek (Vice-Chair)	Carol	P		P	P	P	P
Late	Carol	E		P	P	P	P
Reynolds-Mixon	Sharon	P		E	U	P	P
Spletter	Brenda	P		P	E	P	P
Stasko	Barbara	P		E	E	U	U
Watson	Lucia	P		P	P	P	P
Ascher (Alt)	Hope	P		P	P	P	P
Patton (Alt)	Pat	P		E	P	P	P

<b>Attendance =</b>	8	0	6	6	8	8
<b># Members =</b>	9	0	9	9	9	9

<b>P = Present</b> <b>E = Excused Absence</b> <b>U = Unexcused Absence</b> <b>* = No quorum</b> <b>Gray = Cancelled</b>
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**CITY COUNCIL REGULAR MEETING  
UNAPPROVED MINUTES  
MARCH 16, 2016**

Pursuant to Public Notice, Mayor Frank Catino convened a regular meeting of the City Council on Wednesday, March 16, 2016, at 7:00 p.m., in the Council Chamber. Those present were Mayor Frank Catino, Vice-Mayor Mark Brimer, Councilman Dominick Montanaro, Councilman Steve Osmer, City Attorney James Beadle, City Manager Courtney Barker, and City Clerk Leonor Olexa. Councilwoman Lorraine Gott was absent.

Mayor Catino led a moment of silence and the Pledge of Allegiance.

**(TIME: 7:02) PRESENTATION OF PROCLAMATION RECOGNIZING APRIL 2-3, 2016, AS "RELAY FOR LIFE PAINT THE TOWN PURPLE DAYS"**

Mayor Catino read the proclamation and presented it to Relay for Life Event Chairman/Fire Chief Don Hughes.

**(TIME: 7:06) CITIZEN COMMENTS**

No public comments.

**(TIME: 7:06) CITY COUNCIL COMMENTS**

Councilman Osmer attended the Keep Brevard Beautiful Beach Cleanup and recognized the efforts of coordinator Ethan Shoda in making the volunteer beach cleanup efforts a success.

Councilman Montanaro attended the Space Coast League of Cities meeting where Dr. Duane DeFreese spoke on a coalition of municipalities/counties/St. Johns River Water Management District/Environmental Protection Agency that will work to address issues that the Indian River Lagoon is facing.

Mayor Catino attended the Satellite Beach Lion's Club meeting and stated they will be having a barbeque cookout on March 29<sup>th</sup> at Pelican Beach Park.

**(TIME: 7:09) CITY MANAGER REPORT**

City Manager Barker reported on the following upcoming events: Beautification Board plant sale, Project Graduation Casino Night, Flashlight Easter Egg Hunt, and Breakfast with the Easter Bunny. She also reported on FPL's rate decrease, thank-you letters received for the Fire Department, the Public Works Department, and the Police Department's School Resource Officer Paul Creatura, and thanked City staff for their fundraising efforts for the City's Relay for Life team (\$2,672 to-date).

Public Works Director Allen Potter presented an update on the City's infrastructure projects, specifically Road Resurfacing, Roosevelt Avenue, and Shell Street.

Council discussed the schedule for future Town Hall Meetings to begin in May; agreed to use the same locations as last year; suggested reporting on completed/ongoing infrastructure improvement projects; and to gain feedback from the community.

**(TIME: 7:29) DISCUSS/TAKE ACTION ON THE RECREATION DEPARTMENT'S PURCHASE OF SKATE PARK RAMPS**

Recreation Director Kerry Stoms stated that the Skate Park is scheduled to be renovated in the near future. The existing wooden ramps are in need of repair, are moveable and once repaired,

will continue to be used after the renovations are complete. Staff recommends repairing the wooden ramps.

Mayor Catino asked for citizen comments; there were no comments.

**ACTION:** Councilman Montanaro MOVED, SECOND by Vice-Mayor Brimer, to approve the repair of the Skate Park wooden ramps in an amount not to exceed \$4,000, to come from the Skate Park Trust Fund. VOTE: ALL YES. MOTION CARRIED.

Council agreed to adjust the sequence of the agenda items.

**(TIME: 7:32) PRESENTATION BY BREVARD COUNTY AGRICULTURE AGENT JOE WALTER ON CHICKENS**

Brevard County Agriculture Agent Joseph Walter presented information on the pros and cons of raising backyard chickens. He provided comparison of other various animals regarding noise, cleanliness, and diseases. He recommended the following items for consideration if Council is planning on an ordinance: prohibit male chickens; require minimum space for housing, feeders, and water, rodent control box, metal feed containers; and implement a trial basis for a year to see if this would be something the community wants.

**(Time: 7:51)** The following Satellite Beach residents addressed Council: Gabe Feindt, John Fergus, Sarah LeVine Shaw, Dianne Douglass, Mindy Gibson, and Christina Conant. The following non-resident addressed Council: Erika Maier.

Council discussed the following: input received from citizens on land values, rodent control, using metal food storage containers, impacts of other animals, questioned the success of other municipalities who have adopted a chicken ordinance, considered the impact on residents who desire an upscale community, discussed the connection to the sustainability plan, and recommend staff bring back an ordinance for consideration and requested Mr. Walter to be at a future meeting for further discussion.

**(TIME: 8:15) DISCUSS/TAKE ACTION ON THE APPROVAL OF THE AGREEMENT WITH THE FLORIDA INSTITUTE OF TECHNOLOGY TO CREATE A SUSTAINABILITY PLAN**

City Manager Barker stated that at the September 15, 2015 Council meeting, Council approved the Sustainability Action Plan, which included a budget of up to \$15,000 to hire interns from FIT to work on the sustainability assessment. Staff is requesting to expand the scope of the project to hire an intern from FIT to prepare the Plan.

Mayor Catino asked for citizen comments; there were no comments.

**ACTION:** Councilman Montanaro MOVED, SECOND by Councilman Osmer, to approve the Agreement with the Florida Institute of Technology to create a Sustainability Plan for the City, with a \$5,000 budget to come from the Recycling Fund. VOTE: ALL YES. MOTION CARRIED.

**(TIME: 8:17) AGENDA ITEMS FOR NEXT REGULAR COUNCIL MEETING**

Council discussed agenda items for the next regular Council meeting.

**(TIME: 8:17) ADOPTION OF MINUTES: MARCH 2, 2016, WORKSHOP MEETING AND  
MARCH 2, 2016, REGULAR MEETING**

**ACTION:** Councilman Montanaro MOVED, SECOND by Councilman Osmer, to approve the minutes as submitted. VOTE: ALL YES. MOTION CARRIED.

Mayor Catino adjourned the meeting at 8:18 p.m.

Leonor Olexa, CMC  
City Clerk

March '16

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27	28	29	30	31		

City of Satellite Beach

# April 2016

May '16

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					<b>1</b> CANCELLED Beautification	<b>2</b>
<b>3</b>	<b>4</b> CANCELLED BOA	<b>5</b>	<b>6</b> 6:00 p.m. CRA 6:45 p.m. CC Workshop 7:00 p.m. City Council	<b>7</b>	<b>8</b>	<b>9</b>
<b>10</b>	<b>11</b> 4:30 p.m. South Beaches Coalition	<b>12</b> 6:15 p.m. Recreation	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
<b>17</b>	<b>18</b> CANCELLED PZAB	<b>19</b> 6:00 p.m. Samsons	<b>20</b> 6:00 p.m. CC Workshop 7:00 p.m. City Council	<b>21</b> 7:00 p.m. CRAAB	<b>22</b>	<b>23</b>
<b>24</b>	<b>25</b> CANCELLED CPAB	<b>26</b> 7:00 p.m. CEB	<b>27</b> 7:00 p.m. Sustainability Board	<b>28</b>	<b>29</b>	<b>30</b>

**April '16**

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24	25	26	27	28	29	30

City of Satellite Beach

# May 2016

**June '16**

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26	27	28	29	30		

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>1</b>	<b>2</b> 7:00 p.m. BOA	<b>3</b>	<b>4</b> 6:00 p.m. CRA 7:00 p.m. City Council	<b>5</b>	<b>6</b> 9:00 a.m. Beautification	<b>7</b>
<b>8</b>	<b>9</b> 4:30 p.m. South Beaches Coalition	<b>10</b> 6:00 p.m. Library 6:15 p.m. Recreation	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
<b>15</b>	<b>16</b> 7:00 p.m. PZAB	<b>17</b> 6:00 p.m. Samsons	<b>18</b> 7:00 p.m. City Council	<b>19</b> 7:00 p.m. CRAAB	<b>20</b>	<b>21</b>
<b>22</b>	<b>23</b> 7:00 p.m. CPAB	<b>24</b> 7:00 p.m. CEB	<b>25</b> 7:00 p.m. Sustainability Board	<b>26</b> 2:00 p.m. Pension Boards	<b>27</b>	<b>28</b>
<b>29</b>	<b>30</b> Memorial Day HOLIDAY	<b>31</b>				