

Resolution No. 14-11

RESOLUTION OF SOUTH OGDEN CITY APPROVING AND AUTHORIZING ENTERING INTO AN AGREEMENT WITH EXPRESS BILL PAY AND THE BANK OF AMERICAN FORK PROVIDING FOR ONLINE PAYMENT SERVICES ; AUTHORIZING THE CITY MANAGER TO SIGN THE NECESSARY DOCUMENTS ON BEHALF OF THE CITY TO GIVE EFFECT TO THE INTENT HEREOF; AND, PROVIDING FOR AN EFFECTIVE DATE.

SECTION I - RECITALS

WHEREAS, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

WHEREAS, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

WHEREAS, the City Council finds that it necessary to make changes to how the city manages receipt of various payments including provision of Online Payment Services; and,

WHEREAS, the City Council finds that Express Bill Pay and the Bank of American Fork have the combined ability to provide for the necessary equipment and services to meet the city's needs in support of online payment services; and,

WHEREAS, the City Council finds that City now desires to further those ends by entering into an agreement with Express Bill Pay and the Bank of American Fork to provide such online payment services; and,

WHEREAS, the City Council finds that the public convenience and necessity requires the actions contemplated,

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:

SECTION II - CONTRACT AUTHORIZED

That The **ODFI Originator Agreement, Xpress Bill Pay Gateway Administrative Service Agreement, And The Fiserv CheckFree Sign-Up Form**, Attached Hereto Collectively As **Attachment "A"** And By This Reference Fully Incorporated Herein, Is Hereby Approved And Adopted; And That The City Manager Is Authorized More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval.

SECTION III - PRIOR ORDINANCES AND RESOLUTIONS

The body and substance of any and all prior Resolutions, with their specific provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

SECTION IV - REPEALER OF CONFLICTING ENACTMENTS

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which are in conflict with this Resolution, are, to the extent of such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

SECTION V - SAVINGS CLAUSE

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not have the effect of rendering any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

SECTION VI - DATE OF EFFECT

This Resolution shall be effective on the 6th day of May, 2014, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,
STATE OF UTAH, on this 6th day of May, 2014**

SOUTH OGDEN CITY

James F. Minster
Mayor

ATTEST:

Leesa Kapetanov
City Recorder

ATTACHMENT “A”

Resolution No. 14-11

**Resolution Of South Ogden City Approving And Authorizing
Entering Into An Agreement With Express Bill Pay And The Bank Of American Fork Providing For
Online Payment Services ; Authorizing The City Manager To Sign The Necessary Documents On Behalf
Of The City To Give Effect To The Intent Hereof; And, Providing For An Effective Date.**

06 May 14



Purpose: This form should be completed by the Sponsor (Merchant) and submitted to CheckFree prior to contract and/or Implementation.

Any or all of the following Merchant representatives should complete this form:

- Remittance/Billing Representative
- Accounts Receivable/Customer Database Representative
- Bill Processing Representative

Profile

SOUTH OGDEN CITY GOING THRU XPRESS BILL PAY	
CONTACT: Brian Minster	ORGANIZATION ID#: 10315
POSITION: Information Systems Administrator	FEIN: 87-6000282
EMAIL: bminster@southogdencity.com	WEB (IF ANY): http://www.southogdencity.com/
PHONE: 801-622-2729	FAX: 801-622-2713

Remittance Addresses

3950 S Adams Ave	South Ogden, UT	84403

Billers Names (Any name or DBA printed on your remittance coupons)

South Ogden City	South Ogden	SOC
South Ogden City UT	South Ogden UT	SOC UT
South Ogden City Utilities	South Ogden Utilities	SOC Utilities
South Ogden City Water	South Ogden Water	SOC Water
South Ogden City Sewer	South Ogden Sewer	SOC Sewer

Default Remittance Address

3950 S Adams Ave	South Ogden, UT	84403
**REVERSALS – CKFR FILE TO XPRESS BILLPAY		

Account Number Information

How many characters are in the account number? **1-22 Alphanumeric**

Does anything need to be removed from the account number (e.g. dashes, spaces, etc...)? Yes No
If yes, please explain: **Decimals**

Does the account number have logic associated with it to help in identifying products, locations, etc...? Yes No
If yes, please explain: **Route Numbers**

Is the account number clearly and completely visible to the customer on the bill? Yes No

Are there edit or mod checks associated with the account number? Yes No
If yes, please attach a copy of the mod calculation.

Are the account numbers static or do they change frequently? **Static**
If they change, what action can make it change?

Signature _____ **Date** _____



Gateway and Administrative Service Agreement

This Gateway and Administrative Service Agreement is entered into this ___ day of _____, 20___, by and between **Xpress Solutions, Inc.** ("Xpress") and **South Ogden City, UT** ("Customer") upon such terms and conditions as are set forth below.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and the receipt of consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

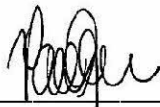
- 1.0 **Initial Term:** The Initial Term of this Agreement shall be thirty six (36) months from the date of this Agreement.
- 2.0 **Renewals:** This Agreement shall be automatically renewable for an additional twelve (12) months at the end of the Initial Term or any subsequent renewal term by the Customer upon the receipt by Xpress of the applicable Fees and under the same terms and conditions set forth herein, so long as the Customer is not and has not been in default in any term of this Agreement. If Customer is a political subdivision, the Parties agree that an automatic renewal cannot occur if Customer's governing board does not budget for payment of the Fees set forth in Section 3.0 in any given fiscal year of Customer.
- 3.0 **Fees:** Customer shall pay to Xpress a one-time set-up Fee, monthly maintenance, support, and hosting Fees, and various transaction Fees as set forth in Exhibit A (collectively the "Fees"). Xpress reserves the right to change Fees at any time so long as Customer is provided no less than 30 days advance notice of a change.
- 4.0 **Payment of Fees:** Customer authorizes Xpress to initiate an electronic ACH debit entry from Customer's bank account provided in Exhibit B on or about the 5th of each month for the amount of all Fees that accrued during the prior month for any service, support, or maintenance Fee that is due as described in Exhibit A. If there are insufficient funds in Customer's account to cover the debit, or if the debit is rejected for any reason, Xpress will contact customer for resolution which will include resubmission up to 3 times. Customer agrees to pay any returned item fees assessed by Xpress' bank for any such return. Any outstanding Fees that are not paid when due shall bear interest at the rate of 18% per annum until the outstanding balance and all accrued interest are paid in full.
- 5.0 **Services Provided:** Xpress will provide Customer with an Electronic and Internet Payment System. Xpress has developed a web interface that can be used for payment of accounts using credit cards, or electronic funds transfers (EFT). Xpress has developed an application to facilitate the processing and deposit of Lockbox payments sent directly to Xpress on behalf of Customer's account holders (the "End Users"). Xpress has developed an application to receive and repair all data errors from customer initiated online banking payments, and delivers them to Customer in an electronic format. Xpress acts as a Payment Gateway and Third Party Processor for Customer's account holders to make payments. Xpress will provide the EFT and Lockbox services directly using their established banking relationships. Customer authorizes Xpress to endorse checks and other payment items on behalf of Customer for deposit into an Xpress deposit account, and deposit funds as necessary for the clearing of payments received for Customer. Xpress will facilitate the acquisition of the necessary Merchant Service accounts for credit card. Only Merchant Service accounts and electronic funds transfer accounts that are certified by Xpress may be used.
- 6.0 **Support Services and Service Levels:** Xpress will provide technical support services, including telephone, email (seven days a week), or other technology support implemented by Xpress, from 6:00 am to 5:00 pm (MST or MDT) for customers within the continental United States. The maximum response time for service shall not exceed 5:00 pm (Customer local time) of the next business day following the request for service by Customer. This support will be limited to the actual use of the Xpress Internet Payment System.

- 7.0 Software or Hardware: Customer will not receive any hardware or software from Xpress under this Agreement except as specified in Exhibit A. Customer will use its own computers and agrees to have Internet services through an Internet Service Provider. Customer agrees that the computers it uses will have sufficient memory and capacity to run at least Internet Explorer 7 or Mozilla Fire Fox 10.0.
- 8.0 Billing Information. Customer warrants that it will provide Xpress with relevant Billing Information for End Users. Customer agrees to indemnify and hold Xpress harmless from any claim or liability relating to any inaccuracy in Billing Information provided to Xpress.
- 9.0 Record Keeping. Customer agrees to keep full and accurate records of its utilization of Xpress services and of the transactions giving rise to Billing Information for at least three (3) years after the date of the relevant transaction. Customer understands that Xpress will be required to participate in certain audits in connection with the credit card and electronic funds transfer services provided by Xpress. Customer agrees to cooperate with Xpress in the performance of such audits, including providing information required in the course of such audits.
- 10.0 Compliance. Customer warrants that all products and services offered, sold, or provided by Customer are offered, sold, or provided in compliance with all applicable laws and regulations. Customer agrees to comply with Xpress's Acceptable Use Policy as required by the Payment Card Industry Data Security Standard (PCI DSS) as provided in Exhibit C. Xpress will meet or exceed all applicable compliance requirements as required by current and future Payment Card Industry (PCI) rules of operation as well as the Operating Rules of the National Automated Clearing House Association (NACHA).
- 11.0 Termination. This agreement may be terminated by either party upon not less than 30 days written notice to the other party specifying the effective date thereof. In the event this Agreement is terminated by Customer through no fault of Xpress, Xpress shall be paid for all services performed up to the date of termination.
- 12.0 Litigation/Attorney Fees: The parties agree that any dispute between them requiring litigation—whether or not arising under this Agreement—shall only be commenced and determined within the State of Utah. Each party will be responsible for their own costs incurred for any litigation.
- 13.0 General Provisions. This Agreement and the exhibits hereto constitute the entire understanding and agreement among the parties with respect to the subject matter hereof, and there are no other agreements or understandings among the parties other than those contained herein. In the event any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect the validity of the remainder of this Agreement.
- 14.0 Indemnification. Xpress agrees to indemnify and hold the Customer, its officers, employees, representatives and agents harmless from any loss, claims, causes of action or demands, including attorneys' fees and costs of defense arising out of negligent or improper performance by Xpress of its obligations or work pursuant to this Agreement. Customer agrees to indemnify and hold Xpress, its officers, employees, representatives and agents harmless from any loss, claims, causes of action or demands, including attorneys' fees and costs of defense arising out of negligent or improper performance by Customer of its obligations or work pursuant to this Agreement.
- 15.0 Immigration Laws: Xpress shall comply with all applicable federal and state immigration laws that relate to its employees. A breach of this paragraph shall be deemed a material breach of this agreement that shall entitle Customer to terminate this Agreement. Customer may inspect Xpress' records to ensure compliance.

By signing below, Customer and Xpress shall be legally bound and agree to the terms of this Agreement and all of its Attachments.

Accepted by:

Xpress Solutions Inc.

BY:  _____
(Authorized Signature)

Paul Grincer
(Print or Type Name)

TITLE: Operations Manager

DATE: 03/18/2014

Accepted by:

South Ogden City

BY: _____
(Authorized Signature)

(Print or Type Name)

TITLE: _____

DATE: _____

EXHIBIT A

FEES

Non Recurring Fees

1. Initial Setup Configuration and Development	\$ 1,000.00
Online Payment Module	
Auto Pay Module	
Card Swipe Module	
2. Training (One Full Day's Training)	\$ 500.00

Recurring Fees

3. Gateway Fees:	
Credit Card Processing (per transaction)	\$ 0.30
EFT Online Payments (per transaction)	\$ 0.40
EFT Returned Items	
(Invalid account number or unable to locate account)	\$ 5.00
(NSF or Closed Account)	\$ 10.00
(Customer Stop Payment)	\$ 25.00
Bank Bill Pay (per transaction)	\$ 0.20
Lock Box Service (per transaction)	* \$ 0.48
Check Conversion (per transaction)	* \$ 0.30
800 Operator Assisted Payment (per call)	* \$ 1.95
800 IVR Assisted Payments (per call)	* \$ 1.95
XBP Deposit Account Withdrawals	
(6 free per month then \$3.25)	
4. Monthly Support & Hosting	\$ 0.015
(\$0.015 per billing statement hosted. Minimum \$75.00)	per bill
5. Monthly Account Keeping Fee	\$ 19.00
(Waived if you keep a \$25,000.00 minimum balance in your Xpress Deposit Account)	

Additional Fees (if needed)

6. Credit Card Swipes	\$75.00 per unit
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** if service is activated*

EXHIBIT B
CUSTOMER ACCOUNT INFORMATION

Please provide the following information regarding Customer's bank account to which the debit entries will be directed for the payment of the Fees:

Name on Account: _____

Account Type: _____

Routing Number: _____

Account Number: _____

Bank Name: _____

EXHIBIT C

ACCEPTABLE USE POLICY

Introduction

The Acceptable Use Policy (AUP) was created by Xpress Solutions and its subsidiaries (the "Company") to protect its network, including, without limitation, the products and services which the Company offers and the related Internet Data Center Services (as defined in the Master Services Agreement) it provides (collectively, the "Xpress Solutions Network"). The Company reserves the right, in its sole discretion, to interpret and apply this AUP. The Company reserves the right to modify this AUP at any time, effective upon posting at www.xpressbillpay.com/aup.asp.

Purpose/Scope

The purpose of this AUP is to help protect the Company's network, each of the Company's clients and third-party users of the Internet, generally from harassing, deceptive, irresponsible and/or illegal activities.

The scope of this policy is all the Company's clients.

Policy

This AUP governs the usage of the Company's network by any person (regardless of whether that person is a Customer). Each person utilizing the Company network in any manner is responsible for complying with this AUP, and for providing assistance to the Company in furtherance of the objectives hereof, as the Company may request from time to time. The Company's Clients will be held solely responsible for the actions (or inactions) of any of their customers, downstream users, or third-party agents that use the Company's Network.

1.1 Prohibited Actions

It shall be prohibited by this AUP to utilize the Company network in any manner which, in the sole discretion of the Company, is (A) illegal, disruptive, harassing or deceptive, or (B) a risk to the Company's network, its stability or security, or (C) inconsistent with this AUP and/or the Company's Rules and Regulations and/or any rules or policies of upstream Company network service providers. Set forth below, is a non-exclusive list of certain actions, omissions, etc., which are expressly prohibited under this AUP:

- Transmitting, distributing or storing any material in violation of applicable law, code or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret, protective order, contract, or other intellectual property right used without proper authorization. Also prohibited is material that is obscene, libelous, defamatory, constitutes an illegal threat, and/or violates export control laws
- Sending unsolicited bulk email messages and/or other advertising material to individuals who did not specifically request such material. This includes, but is not limited to, messages sent as email, "Spam," ICQ traffic, instant message traffic, GSM/GPRS data, or posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). The Company's accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this AUP or the policy of the other provider. The Company reserves the right, in its sole discretion, to determine whether commercial email on the Company's Network complies with this AUP.
- Utilizing the Company's network (or any relay, proxy or other network element in conjunction with the Company network) to (A) forge the signature, IP address or other identifying mark or code of any other person, (B) impersonate or assume the identity or any other person, or (C) engage in any other activity (including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the user, including system identification information.

- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "hacking" or "cracking"). This includes providing, or assisting in the provision of names, passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code.
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment, violate policies or violate law. If a user is restricted or terminated from the Company's network, it is prohibited for a customer to make such services available to such user in an indirect manner.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of the Company or any of the Company's clients or end-users by any means or device. This includes any deliberate or other attempt or activity to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Company's network or the network of a third-party;
- Knowingly engaging in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to users whether on the Company's network or on another provider's network.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send e-mail spam, initiation of ping, flooding, mail-bombing, denial of service attacks, and piracy of software.
- Using the Company's network in any manner which interferes with the use of the Company's network by other customers or authorized users.
- Utilize the Company's network in any manner that might subject the Company to unfavorable regulatory action, subject the Company to any liability for any reason, or adversely affect the Company's public image, reputation or goodwill, including, without limitation, sending or distributing obscene, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by the Company in its sole discretion.
- Using the Company's network to host, access, promote or otherwise distribute any child pornography or obscenity.
- Causing or allowing the Company's network and/or the customer, its IP space or other elements of identification to be placed on so-called "SPAM Block Lists," "Spam Early Warning Systems," or other directories of spam or unsolicited bulk email originators and/or network abusers. It shall be incumbent upon each of the Company's Clients to monitor and modify their usage, and that of their users and customers, to insure compliance with this AUP generally, and also of this provision specifically.

1.2 Enforcement

The Company reserves the right, with or without notice, to restrict, block, modify or terminate services to any Client or user upon the threat or occurrence of a violation to the AUP. The Company reserves the right to cooperate with any court, law enforcement agency, investigator or network service provider in the investigation of threats to the integrity, stability, reliability and/or legality of the products and services offered by the Company and of any violations to the AUP.

1.3 Client Duties

Each Client is obligated to assist the Company in the investigation of any threatened, alleged or actual violation of this AUP. The Client shall cooperate with designees of the Company in this regard. Clients of the Company are responsible for immediately reporting to the Company any issue which could compromise the stability, service or security of any user or system connected to the Company's network.

1.4 Client Password Policy

The Company's clients are required to follow the payment industry's user identification (User ID) and password best practices to protect the Company's sensitive credit card data. Client User IDs and passwords must meet the following requirements:

- User IDs must be unique to an individual and forever connected with a single user to whom it has been assigned.
- User must never share their IDs and/or passwords.
- Users must choose easily remembered passwords that are, at the same time, difficult for unauthorized parties to guess.
- Passwords are required to have a minimum of seven (7) characters.
- Passwords must meet strong password requirements. Passwords will contain both alphabetic and numeric characters. Passwords will also utilize upper and lower case letters and symbols.

1.5 Reports and Complaints

Any reports or complaints about the use or misuse of the Company's products or services should be directed to:

Keith Jenkins, CEO
Xpress Solutions, Inc.
387 S 520 W, Suite 110
Lindon, UT 84042
800-768-7295
kljenkins@xpressbillpay.com

1.6 Digital Millennium Copyright Act

Xpress Solutions, Inc maintains a separate policy on the handling of complaints under the Digital Millennium Copyright Act, which is incorporated into this AUP hereby and which may viewed at www.xpressbillpay.com/copyright.

1.7 Handling Charges

The Company reserves the right to assess a handling fee, at its usual emergency project labor rate, to respond to abuse complaints incurred by the Company relating to a client and/or to handle, address, clean up and/or correct damage done to the operation of the Company's Network and business operations supported thereby. The fees will be billed in one (1) hour minimum increments. The Company hereby agrees to waive such fee for the first instance per customer of any such complaint, but shall impose the fee from and after the second such complaint.

ODFI ORIGINATOR AGREEMENT

This ODFI Originator Agreement (this "Agreement"), dated as of _____, 20__, is between **South Ogden City**, a Utah Municipal Corporation ("Company"), and **Bank of American Fork**, a Utah state chartered bank ("Bank").

RECITALS

A. Company wishes to initiate debit Entries (with such debit Entries to include Accounts Receivable Entries ("ARC Entries")) and credit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement, the Third-Party Sender Agreement (identified below) and the rules of the National Automated Clearing House Association (the "Rules"), and Bank is willing to act as an Originating Depository Bank with respect to such Entries.

B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entry" shall have the meaning provided in the Rules and shall also mean the data received from Company from which Bank initiates each Entry.

AGREEMENT

1. Transmittal of Entries By Company.

(a) Through Xpress Solutions Inc., a Utah limited liability company d/b/a Xpress Bill Pay, as a third-party sender (the "Third-Party Sender"), Company shall transmit credit and debit Entries to Bank in compliance with the formatting and other requirements set forth in the ODFI / Third-Party Sender Agreement between Third-Party Sender and Bank (the "Third-Party Sender Agreement") (or as otherwise determined or directed by Bank in its sole discretion).

(b) Company agrees that its ability to originate entries under this Agreement is subject to exposure limits in accordance with the Rules and as set forth in the Third-Party Sender Agreement (or as otherwise determined by Bank in its sole discretion).

(c) Nothing in the agreements between Originator and Third-Party Sender shall limit or affect the obligations and responsibilities of Company as an Originator to Bank under this Agreement and the Rules.

2. Security Procedures.

(a) Bank shall comply with the security procedures requirements described in the Third-Party Agreement (together with such other procedures as Bank may provide or determine). Company acknowledges that the sole purpose of such security procedures is an attempt to determine verification of authenticity and not to detect an error in the transmission or content of an Entry. No security or other procedures for the detection of any such error has been agreed upon between Bank and Company, and Bank assumes no such responsibility.

(b) Company, in its agreement with Third-Party Sender, is solely responsible to establish and maintain the procedures to safeguard against unauthorized or erroneous transmissions. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers by Bank prior to receipt of such notification and within a reasonable time period thereafter to respond and to put in place measures to prevent unauthorized transfers.

3. Compliance With Security Procedures.

(a) If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Third-Party Sender, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Bank the amount of such Entry (or any return with respect thereto) even though the Entry (or request) was not authorized by Company or

Third-Party Sender, provided Bank accepted the Entry in good faith and acted in substantial compliance with the Third-Party Agreement.

(b) If an Entry (or request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Third-Party Sender, Company shall pay Bank the amount of the Entry (or any return with respect thereto), whether or not Bank complied with the Third-Party Agreement with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such provisions.

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

5. Processing, Transmittal And Settlement By Bank.

(a) Except as provided in Section 6 and Section 7, Bank shall (i) process Entries received from Third-Party Sender to conform with the file specifications set forth in the Rules and the Third-Party Sender Agreement, (ii) transmit such Entries as an Originating Depository Bank to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.

(b) Bank shall transmit such Entries to the ACH Operator as set forth in the Third-Party Sender Agreement.

(c) If any of the requirements is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline which is a Business Day and a day on which the ACH Operator is open for business.

6. On-Us Entries. Except as provided in Section 7, in the case of an Entry received for credit or debit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 5 are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

7. Rejection of Entries. Bank may reject any Entry which does not comply with the requirements of Section 1, Section 2, or the Third-Party Sender Agreement or which contains an Effective Entry Date more than two (2) days after the Business Day such Entry is received by Bank. Bank may reject an Entry for any reason for which an Entry may be returned under the Rules. Bank may reject any Entry if Third-Party Sender has failed to comply with its obligations under the Third-Party Sender Agreement. Bank may reject any Entry if Third-Party Sender does not adhere to security procedures as described in the Third-Party Sender Agreement or as otherwise determined by Bank.

8. Cancellation or Amendment By Company. Company shall have no right to cancel or amend any Entry submitted by Third-Party Sender to Bank.

9. Notice of Returned Entries; Notice of Change. Bank shall notify Third-Party Sender by phone, electronic transmission, including email, or by other writing 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. Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry.

Bank shall provide Third-Party Sender all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Bank relating to Entries transmitted by Company.

10. Unconditional Payment by Company for Entries: Payment by ODFI for Entries.

(a) Company shall unconditionally and promptly pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Agreement at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine.

(b) Company shall unconditionally and promptly pay Bank the amount of, and shall otherwise indemnify and hold Bank harmless with respect to, each debit Entry returned (for whatever reason, except due to Bank's gross negligence or willful misconduct), including without limitation an ARC Entry return, by an RDFI that was transmitted by Bank pursuant to this Agreement.

11. The Account. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the settlement account of the Third-Party Sender identified in the Third-Party Sender Agreement (the "Account"). Company agrees that Bank may debit any account maintained by Company with Bank or that Bank may set off against any amount it owes to Company, in order to obtain payment of Company's obligations under this Agreement. Upon request of Bank, Company agrees to promptly provide to Bank such information pertaining to Company's financial condition as Bank may reasonably request.

12. Account Reconciliation. Entries transmitted by Bank or credited to a Receiver's account maintained with Bank will be reflected on Third-Party Sender's periodic statement issued by Bank with respect to the Account pursuant to the agreement between Bank and Company. Third-Party Sender has the responsibility of determining the accuracy of all such statements pursuant to the terms of the Third-Party Sender Agreement and the Account agreement. Bank has no obligation to provide any such information to Company.

13. Company Representations And Agreements: Indemnity.

(a) With respect to each and every Entry transmitted by Company, Company represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company 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, (b) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein, (c) Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the 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, and (d) Company shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company 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 credited and Company shall not be deemed to have paid the Receiver the amount of the Entry.

(b) With respect to each and every ARC Entry, Company represents and warrants that the Company has provided the requisite notice to the Receiver prior to the receipt of Receiver's check stating that the check will be used as the basis for the origination of an ARC Entry, stating substantially the following:

When you provide a check as payment, you authorize us to use the information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your check as a check transaction.

(c) Such notice also gives the Receiver the right to give a notice to Company opting out of the use of the check to generate an ARC Entry.

(d) With respect to each and every Entry transmitted as an ARC, Company represents the amount of the Entry, the routing number, the account number, and the check serial number are in

accordance with source check. In addition, Company represents to Bank that with respect to each ARC Entry:

- (i) the Entry was not transmitted to an account of a Receiver who did not receive prior notice of the check conversion or who opted out of check conversion;
- (ii) the source check was not presented for payment;
- (iii) the check used for the debit Entry is in proper form;
- (iv) the check has the necessary MICR line for an ARC Entry;
- (v) the check is for an amount no greater than \$25,000;
- (vi) the check is not a third-party check or a draft;
- (vii) the check has not been remotely created;
- (viii) the check has not been provided by a credit card or home equity line lender for purposes of accessing credit;
- (ix) the check is not drawn on an investment company;
- (x) the check is not an obligation of a financial institution (e.g. a travelers check, cashier's check, money order, etc.); and
- (xi) the check is not payable in a currency other than United States currency.

(e) Company shall indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, and agreements.

14. Bank Responsibilities; Liability; Limitations on Liability; Indemnity.

(a) In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Agreement and by Third-Party Sender pursuant to this Third-Party Sender Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the services expressly provided for in the Third-Party Sender Agreement, and shall be liable only for its gross negligence or willful misconduct in performing those services. Bank shall not be responsible for Company's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Company) or those of any other person, including, without limitation, Third-Party Sender, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Company agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of Company or any other person described in this Section 14(a).

(b) To the extent that Company incurs losses caused solely by Bank's willful misconduct or grossly negligent conduct in performing the services provided herein, Bank shall be liable only for Company's actual damages; Bank shall not be liable for any consequential, special, incidental, punitive or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, civil strife, war, emergency conditions or other

circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds Rate at the Federal Reserve Bank of San Francisco for the period involved. At Bank's option, payment of such interest may be made by crediting the Account.

(e) Bank does not warrant to Company that the Bank's ACH services and related system (whether mechanical, computerized or otherwise) will be free from error or that it will meet the specific requirements of Company. Company shall assume complete responsibility for any Company decisions or actions taken based on information obtained as part of the Banking ACH services or from use of the related system. In the event of a breach of warranty, Bank's sole obligation and liability shall be to take commercially reasonable efforts to protect Company against loss and to provide competent services as expected from a financial institution consistent with industry standards to correct any errors identified in the System and to re-perform any services which fail in a material respect to meet the limited warranties provided herein. Notwithstanding the foregoing, Bank makes no warranties, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.

15. Inconsistency of Name And Account Number. Company acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI may be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by Third-Party Sender, even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Bank (or any return with respect thereto) is not excused in such circumstances.

16. Amendments. From time to time Bank may amend any of the terms and conditions contained in this Agreement and the Third-Party Sender Agreement. Such amendments shall become effective upon thirty (30) days after receipt of notice by Company or such later date as may be stated in Bank's notice to Company.

17. Notices, Instructions, Etc.

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

(b) Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine, and any such communication shall be deemed to have been signed by such person.

(c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, postage prepaid, or by express carrier, and, if to Bank, addressed to:

Bank of American Fork
P.O. Box 307
American Fork, Utah 84003
Attn: Janet Lopez

and, if to Company, addressed to:

South Ogden City
3950 S Adams Ave
South Ogden, UT, 84403
Attn: Brian Minster

unless another address is substituted by notice delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

18. Data Retention.

(a) Company shall retain all information about its digitizing of checks and related items and source documents for thirty (30) days following the date of their transmittal to Third-Party Sender, and shall provide such data to Bank upon its request. Without limiting the generality of the foregoing provision, Company specifically agrees to be bound by and comply with all applicable provisions of the Rules regarding the retention of documents or any record, including, without limitation, Company's responsibilities to retain all items, source documents, and records of authorization in accordance with the Rules.

(b) Company will retain each check used to originate debit Entries for a reasonable period of time, but in no event fewer than ninety (90) days after such check has been digitized and transmitted to Third-Party and no more than one hundred eighty (180) days after such date. Company will use commercially reasonable methods to destroy such checks including without limitation prior storage in a locked, secure location and cross-shredding.

19. Tapes and Records. All magnetic tapes, Entries, security procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Company's request. Any expenses incurred by Bank in making such information available to Company shall be paid by Company.

20. Evidence of Authorization. Company shall obtain all consents and customer authorizations required under the Rules and Section 13 of this Agreement and shall retain such consents and authorizations for two (2) years after they expire.

21. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

22. Termination. Bank reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Bank's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that survive termination of this Agreement.

23. Entire Agreement. This Agreement, together with the Third-Party Sender Agreement, is the complete and exclusive statement of the agreement between Bank and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Bank and Company with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Bank and Company will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between the Bank and Company, regardless of whatever practices and procedures Bank and Company may use.

24. Non-Assignment. Company may not assign this Agreement or any of the rights or duties hereunder to any person without Bank's prior written consent.

25. Waiver. Bank may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Bank's rights with respect to any other transaction or modify the terms of this Agreement.

26. Binding Agreement; Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Bank or Company hereunder.

27. Headings. Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

28. Severability. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

29. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. Company consents to the nonexclusive jurisdiction of the state and federal courts of the State of Utah to consider any matter or lawsuit with respect to the enforcement of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Bank of American Fork

South Ogden City

By _____

By _____

Name _____

Name _____

Title _____

Title _____