

**THE CITY OF CLEVELAND
BOLIVAR COUNTY
STATE OF MISSISSIPPI**

**MINUTES OF SPECIAL MEETING HELD
ON MONDAY, FEBRUARY 17, 2020**

This special meeting of the Mayor and Board of Aldermen of The City of Cleveland, Mississippi, was duly and legally begun and held in the Board Room in the City Hall at 8:30 o'clock a.m. on Monday, February 17, 2020, pursuant to the following order of the Mayor and Board, which was posted according to law.

**Notice of Special Call Meeting of the
Mayor and Board of Aldermen of the City of Cleveland
February 17, 2020**

Pursuant to Mississippi Code Annotated §21-3-21, Mayor Billy Nowell calls a special meeting of the Mayor and Board of Aldermen of the City of Cleveland to discuss the following matter:

1. Americana Music Triangle - Tricia Walker;
2. Discussion of accident involving a Police vehicle and a citizen vehicle;
3. Approve revision of a Police Department Policy -
DUI and Intoxilyzer Procedures - Policy 4.29;
4. Approve revision of a Police Department Policy - Firearms Training and Proficiency
Demonstration - Policy 2.10;
5. Discussion of FHLB selection process;
6. Discussion of Mobile Stage;
7. Employee Action Recommendations;
8. Consent Agenda
 - a. Approval of Mid-February Docket
 - b. Approval of Planters Remote Deposit Capture Agreement
 - c. Authorize purchase of Dodge Ram Truck on State Contract #8200048294
 - d. Approval to lift open container ordinance for Crosscic Arts and Jazz Festival; and
9. Discussion of catastrophic water leak payment plans.

Said meeting shall be held on **Monday, February 17, 2020 at 8:30 a.m.** in the Mayor's board room at City Hall. Notice of this special meeting shall be delivered to all aldermen who may be found. Notice of this meeting shall be placed in City Hall pursuant to Mississippi Code Annotated § 25-41-13 and shall be made a part of the minutes of said special call meeting.

So called this, the 13th day of February, 2020 at 4:30 p.m.

/s/ Billy Nowell

BILLY NOWELL
Mayor City of Cleveland

Present were: Billy Nowell, Mayor; Kirkham Povall, Robert Sanders, Danny Abraham, Theodore "Ted" Campbell, and Gary Gainspoletti, Aldermen; Katie Portner, City Attorney; Dominique Green, City Clerk; J. Paul Janoush and Maurice Smith, Aldermen, were absent.

The meeting was duly opened, and, upon due proclamation first made, the following proceedings were held, to-wit:

**ORDER TO PROCEED A PARTNERSHIP WITH TRICIA WALKER AS PART
OF THE AMERICANA MUSIC TRIANGLE TO SPONSOR LIVE MUSIC
OPPORTUNITIES**

After discussion, upon Motion by Alderman Gainspoletti, second by Alderman Abraham, and unanimously adopted, it is ordered to proceed with a partnership with Tricia Walker as part of the Americana Music Triangle initiative to bring live music to Cleveland at least twice a week. The projected cost of such partnership is estimated at \$52,000.

ORDERED this February 17, 2020.

**ORDER TO SELECT FEDERAL HOME LOAN BANK GRANT RECIPIENTS
VIA LOTTERY**

After discussion, upon Motion by Alderman Gainspoletti, second by Alderman Abraham, and unanimously adopted, it is ordered to select recipients to receive Federal Home Loan Bank grant funds for home renovations via lottery from the pool of applications received in December 2019.

ORDERED this February 17, 2020.

ORDER TO APPROVE CONSENT AGENDA ITEMS

After discussion, upon Motion by Alderman Povall, second by Alderman Sanders, and unanimously adopted, it is ordered that the consent agenda with supporting documentation attached hereto as "Exhibit A" be approved as follows.

1. Approval of Consent Agenda
 - a. Approval of Mid-February Claims Docket
 - b. Approval of Planters Remote Deposit Capture Agreement
 - c. Authorize purchase of Dodge Ram Truck on State Contract #8200048294
 - d. Approval to lift open container ordinance for Crosstie Arts and Jazz Festival

ORDERED this February 17, 2020.

**ORDER TO AUTHORIZE NEGOTIATION OF PAYMENT PLANS WITH
CITIZENS THAT HAVE EXPERIENCED CATASTROPHIC WATER
LEAKS**

After discussion, upon Motion by Alderman Sanders, second by Alderman Abraham, and unanimously adopted, it is ordered to authorize the negotiation of payment plans with citizens that have experienced catastrophic water leaks.

ORDERED this February 17, 2020.

**ORDER TO APPROVE UPDATED RATE SCHEDULE FOR
MOBILE STAGE USE**

After discussion, upon Motion by Alderman Gainspoletti, second by Alderman Campbell, and unanimously adopted, it is ordered to approve an updated rate schedule for use of the Mobile Stage.

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City of Cleveland
Mobile Stage Cost and Expenses

Employee cost at standard rates	Regular Rate	Overtime Rate
Certified & Trained by Manufacturer	17.85	26.77
Salaried Employee	11.00	16.50
Hourly	13.00	19.50
Hourly	11.00	16.50
Total Hourly Cost	52.85	79.27

Local Events

Number of Employee Hours	
Setup time	3.00
Breakdown time	3.00
Transporting to and from City	0.50
On-site	4.00
Total hours	10.50

Employee Cost	
Regular time	158.55
Overtime	594.55
Total Employee Cost	753.10

Out of Town Events

Number of Employee Hours	
Setup time	3.00
Breakdown time	3.00
Transporting to and from City	3.00
On-site	4.00
Total hours	13.00

Employee Cost	
Regular time	158.55
Overtime	792.74
Total Employee Cost	951.28

Out of town vehicle cost:			2-Round -Trip Miles	
Towing Vehicle	@	1.00 per mile	160	160.00
Storage Vehicle	@	0.75 per mile	160	120.00
Meals for employees 2 @ \$10/meal		8 @ \$10		80.00
Total Other Cost				360.00
Actual Cost In Town Events				753.10
				Actual Cost Out of Town Events
				1,311.28

Billing Amount 760.00 1,320.00

Cost of an Additional Stage Move to another Location

			Round -Trip Miles	
Towing Vehicle	@	1.00 per mile	80	80.00
Storage Vehicle	@	0.75 per mile	80	60.00

Number of Employee Hours	
Travel time	2.00
Breakdown time	3.00
Setup time	3.00
	8.00

Employee Cost	634.19
Actual Cost of 2nd Move	2,094.19

Total Billing 2,100.00

Regular time is usually the first 3 hours - anything over that is generally overtime.

If the stage is kept overnight, it is the responsibility of the Renter to provide 24 hour security. Any loss of equipment or damage to the stage will be the full responsibility of the Renter.

Trailer is NOT available from September 15th through January 20th.

ORDERED this February 17, 2020.

ORDER TO ADJOURN

With there being no further business to come before the Board at this session of this special meeting, upon motion duly made by Alderman Povall, second by Alderman Gainspoletti, and unanimously adopted, it is ordered that the special called meeting of February 17, 2020 thereof be adjourned.

ORDERED this February 17, 2020.

Billy Nowell
BILLY NOWELL, Mayor

Attest:

Dominique Green
DOMINIQUE GREEN, City Clerk

Minutes approved this 3rd day of March, 2020.

Billy Nowell
BILLY NOWELL, Mayor

Attest:

Dominique Green
DOMINIQUE GREEN, City Clerk

BE IT RESOLVED AND ORDERED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF CLEVELAND, MISSISSIPPI that the transfers and claims detailed on the Municipal Claims Docket of said City for the month immediately preceding the month of this meeting, aggregating \$531,939.92 and all hereby approved for payment to the fund and claimant in the amount and from the particular fund as set forth in each of said transfers and claims on said docket, and said amount is hereby appropriated for the immediate payment of each and all of said transfers and claims from the respective funds as shown on said docket to be payable as aforesaid. RESOLVED AND ORDERED as a part of the consent agenda.

Unanimously adopted as part of the consent agenda, it is ordered to approve a Remote Deposit agreement with Planter's Bank.

PLANTERS BANK & TRUST COMPANY

REMOTE DEPOSIT CAPTURE AGREEMENT

This *Remote Deposit Capture Agreement* (as amended and/or supplemented, this "Agreement") is made and entered into on the 18 day of February, 2020 between The City of Cleveland ("Customer") with its principal place of business at 100 North Street Cleveland, MS 38732 and Planters Bank & Trust Company ("Bank") with its principal place of business in Indianola, MS. This Agreement governs Customer's use of Bank's Remote Deposit Capture Service (the "Remote Deposit Service"). Bank offers the Remote Deposit Service under this Agreement only in association with one or more deposit accounts maintained by Customer at Bank. The terms, provisions and conditions of this Agreement does not replace, but supplements, any and all other agreements (whether now or in the future) that govern any account maintained by Customer at Bank (whether now or in the future) or any other Bank services utilized by Customer (whether now or in the future).

Terms and Conditions

1. **General Description of Remote Deposit Service.** Subject to the terms, provisions and conditions of this Agreement, Bank shall provide the Remote Deposit Service to Customer, which allows Customer to make deposits to Customer's deposit accounts listed in Attachment "A" attached hereto and made a part hereof (each such deposit account an "Account" and, collectively, the "Accounts") from Customer's office by scanning checks on a desktop scanner and delivering the images and information required hereby to Bank or Bank's designated processor (a "Processor"). The scanner must capture an image of the front and back of each Check (as herein defined) to be deposited (each an "Image" and, if more than one, "Images") in accordance with the Procedures (as herein defined), must read and capture the magnetic ink character recognition ("MICR") line on each check and must read and capture all such other data and information as is required by this Agreement. After capture of the Images, the MICR line on each check and all other required data and information from each check, Customer will transmit one or more files containing the Images, the MICR line from each check and all other required data and information from or pertaining to all checks and all batched ACH (as herein defined) data and other required information (each such file a "File" and, if more than one, "Files") to Bank or Processor via the Internet. Subject to compliance with the terms, provisions and conditions of, and as provided in, this Agreement, Bank will provisionally credit the Account or Accounts designated by Customer for the amount of the deposit(s) to which the File(s) pertains on the day of receipt of the File(s) and enter the images of the checks into the collection process, in accordance with the provisions of Bank's then current deposit account agreement and disclosure pertaining to the Account(s) into which the deposit is to be made (the "Deposit Agreement") and this Agreement. In addition, or as an alternative, to transmitting images of checks, Customer may use the desktop scanner to initiate electronic signals for paperless debit entries through Bank to accounts maintained either at Bank or in other depository financial institutions by means of the Automated Clearing House ("ACH"). Customer understands and agrees that Customer must execute, and Bank must approve and accept, Bank's then current agreement pertaining to the provision of ACH services (such agreement the "ACH Agreement") before initiating ACH debit entries. Customer shall receive credit for ACH debit entries in accordance with the terms of the ACH Agreement. Customer acknowledges and agrees that Bank may discontinue, and/or change the terms of, the Remote Deposit Service or any related content, features, products or services associated therewith, at any time without notice or liability to Customer or any third party.

2. **Hardware and Software.** Customer understands it must, and hereby agrees to, at its sole cost and expense, use computer hardware and software that meets all technical requirements for the proper delivery of the Remote Deposit Service and that fulfills Customer's obligation to obtain, and maintain, secure access to the Internet. Customer understands and agrees it may also incur, and shall pay, any and all expenses related to the use of the Remote Deposit Service, including, but not limited to, telephone service or Internet service charges. Customer is solely responsible for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of the Remote Deposit Service. Customer understands and agrees that it is solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with the Remote Deposit Service and the cost thereof, and Customer hereby agrees that it will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements, and such performance shall be rendered by properly trained personnel, whether they are employees of Customer or third-party employees. Bank is not responsible for, and Customer hereby releases Bank from any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using electronic mail or the Internet. Bank is not responsible for, and Customer hereby releases Bank from any and all claims or damages resulting from, or related to, defects in or malfunctions of Customer's computer hardware or software, or failures of or interruptions in any electrical, telephone or Internet services. Bank hereby advises Customer, and Customer hereby agrees, to scan its computer hardware and software on a regular basis using a reliable computer virus detection product in order to detect and remove computer viruses. In connection with its use of the Remote Deposit Service, Customer shall only use the hardware described in Attachment "B" attached hereto and made a part hereof (as the same may be amended or supplement, the "Hardware List") or such other hardware as is approved in advance by Bank and shall only use such software as is approved in advance by Bank.

All right, title and interest in and to (a) any and all computer programs, including, but not limited to, the object and source codes therefore, and any and all updates, upgrades, fixes and enhancements thereto and any and all documentation, user guides and instructions pertaining thereto (everything in this clause (a), collectively, "Software"), (b) the Remote Deposit Procedure Manual (defined hereinbelow) and (c) any and all users guides, instructions and other documentation provided to, or used by, Customer in connection with the Remote Deposit Service (everything in this clause (c) together with the Remote Deposit Procedure Manual, collectively, the "Documentation") shall be, and remain, the property of Bank or any third party Software provider, as applicable. Unless otherwise expressly authorized, Customer may not (a) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit, reverse engineer, reverse compile or create derivative works of, the Software in any form or (b) copy, reproduce, transmit, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit the Documentation.

3. **Checks Deposited and Security Interest.** Customer hereby agrees that it will only deposit a check(s) as that term is defined in Federal Reserve Board Regulation CC ("Reg CC"). Customer further agrees that it will not remotely deposit any check or other item (each such check and other item a "Check" and, if more than one, "Checks") that: (a) are payable to any person or entity other than Customer, (b) are drawn, or otherwise issued, by Customer or any affiliate of Customer on any account of Customer or of such affiliate, (c) are prohibited by

Bank's then current procedures pertaining to the Remote Deposit Service (the "Procedures") or are in violation of any law, rule or regulation, (d) Customer knows or suspects, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn, (e) have not been previously endorsed by a bank and are either "substitute checks" (as defined in Reg CC or other applicable federal law or regulation) or "image replacement documents" that purport to be substitute checks, without Bank's prior written consent, (f) are drawn on financial institutions that are located outside of the United States or Territories of the United States, (g) is a Remotely Created Check, or (h) which are not acceptable to Bank for deposit into a deposit account as provided in the Deposit Agreement, which is incorporated herein by reference and made a part hereof (Checks described in clauses (a) through (h) each a "Prohibited Check" and collectively, "Prohibited Checks"). Customer agrees that the terms "Check" shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code (1990 Official Text). If Customer deposits a Prohibited Check, Customer agrees to indemnify and reimburse Bank for, and hold Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys fees) Bank may incur associated with any warranty, indemnity or other claim related thereto. Furthermore, if, after first having obtained Bank's written consent to do so, Customer provides Bank with an electronic representation of a substitute check for deposit into an Account instead of an original Check, Customer agrees to indemnify and reimburse Bank for, and hold Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys fees) Bank incurs because any such substitute check resulting from such electronic representation does not meet applicable substitute check standards and/or causes duplicate payments.

Customer grants Bank a security interest in all Accounts or other deposits (whether general or special) of Customer's at the Bank, and in all funds in such Accounts or other deposits, to secure your obligations to Bank under this Agreement. This security interest will survive termination of this Agreement. Bank may hold any funds on deposit with Bank by Customer after termination of this Agreement for up to 14 calendar days following the expiration of any return or chargeback rights regarding any Item or ACH entry processed by Customer using the Service or, if later, until any other claims to such funds have expired.

Customer may be required to maintain a reserve ("Settlement Reserve") of an amount to be solely determined by the Bank. Customer acknowledges and agrees that any Settlement Reserve will be deposited in a Bank account for exclusive use by the Bank for purposes of offsetting any of Customer's obligations under this Agreement. Customer authorizes the Bank to immediately replenish the Settlement Reserve to an amount to be determined by the Bank via an ACH debit to Customer's account or by a direct deposit to the Settlement Reserve if your Settlement Reserve falls below the required amount. Customer grants the Bank a security interest in any Settlement Reserve to enable the Bank to enforce any obligation owed by Customer under this Agreement without notice or demand to Customer. Customer's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement, with such obligation lasting until all of customer's obligations under this Agreement have been fully offset. The Bank's security interest shall continue until all of Customer's obligations under this Agreement have been fully offset.

4. Scanning of Checks and Transmission of Files. Customer shall properly install and use all software and hardware required by this Agreement or otherwise required for, or related to, the use of the Remote Deposit Service. Customer shall (a) endorse each Check to be deposited in accordance with the Procedures, (b) scan the front and back of each Check to be deposited and thereby capture the image of the front and back of each Check and capture the MICR encoding on, and any other required data from, each Check and (c) transmit the File containing the images of, the MICR line from and all other required data and information from or pertaining to, such Checks and all batched ACH data and other information to Bank or its Processor in accordance with the Procedures, a copy of which Procedures have either heretofore been, or are herewith, provided to Customer by Bank, and Customer acknowledges receipt thereof. Bank reserves the right to amend the Procedures, with or without prior notice to Customer. Bank may, also provide Customer with, or require Customer to establish, a User ID, a personal identification number ("PIN") and/or passwords and other procedures (collectively, "Security Procedures") to access the Remote Deposit Service. The specific Security Procedures will be described in the Procedures. Customer agrees to, at all times, (a) comply with the Procedures, (b) safeguard the confidentiality and security of the Procedures, Security Procedures and all other proprietary property or information Bank provides to Customer in connection with the Remote Deposit Service and (c) notify Bank immediately if Customer has any reason to believe the security or confidentiality required by this provision has been or may be breached. Customer acknowledges, understands and agrees the Security Procedures are not designed for the detection of errors. Bank is not, and will not be, obligated to detect errors by Customer or others, even if Bank takes certain actions from time to time to do so.

To ensure accuracy, Customer shall balance the dollar amount of each deposit to the sum of the Checks prior to transmitting the File in accordance with the Procedures. Customer may send multiple Files to Bank or Processor throughout the day, not to exceed the number of Files specified in Attachment A. The total dollar value of the Files sent by Customer to Bank on any day shall not exceed the dollar amount specified in Attachment A (the "Deposit Limit"). If the total dollar value of the Files sent by Customer to Bank on any day exceeds the Deposit Limit, Bank may, at its option, refuse to accept the File that exceeds the Deposit Limit, or Bank may accept and process the File. Customer agrees not to exceed the Deposit Limit. To be eligible for processing on the day transmitted, Files must be received by Bank no later than the cut-off time specified in Attachment A (the "Cut-Off Time"). A File is considered received by Bank when a complete copy of such File has been written on a Bank electronic storage device in conformity with Bank's technical and operational requirements. To meet the Cut-Off Time, the entire File must be received by Bank prior to the Cut-Off Time, and the File must successfully pass the edits for conformity with the technical requirements. For purposes of determining when a File has been delivered and received, Bank's records shall be determinative. A File which is not balanced in accordance with the Procedures or which is received after the Cut-Off Time shall be deemed to have been received on the business day following the business day on which the File is actually received by Bank. Bank reserves the right to change the number of Files that may be transmitted in a day, the Deposit Limit and the Cut-Off Time. All such changes shall be effective immediately and may be implemented prior to Customer's receipt of notice thereof. Customer may contact Bank at any time to verify the current number of Files that may be transmitted in a day, the Deposit Limit and the Cut-Off Time.

5. Maintenance and Destruction of Original Check. Customer shall stamp the original Check "Processed" before or during the process of scanning the Check in accordance with Section 4 of this Agreement. Customer shall securely store all original Checks for a period of forty-five (45) days after Customer has received notice from Bank that the File containing the images of such Checks has been accepted (such period the "Retention Period"). During the Retention Period, Customer shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to original Checks, (b) the information contained on such Checks shall not be disclosed, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Customer shall

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destroy original Checks upon the expiration of the Retention Period applicable to such Checks. Customer will use commercially reasonable methods of destruction approved by Bank to destroy original Checks after expiration of the Retention Period. Customer hereby indemnifies Bank for, and holds Bank harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is(are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the destruction of original Checks by Customer.

6. Image and MICR Quality. Each File transmitted by Customer to Bank shall contain Images of the front and the back of the Checks scanned and remotely deposited by Customer. Each Image of each Check shall be of such quality that the following information can clearly be read and understood by sight review of such Image:

- (a) the amount of the Check;
- (b) the payee of the Check;
- (c) the signature of the drawer of the Check;
- (d) the date of the Check;
- (e) the Check number;
- (f) the information identifying the drawer and the paying bank that is preprinted on the Check, including the MICR line; and
- (g) all other information placed on the Check prior to the time an image of the Check is captured, such as any required identification written on the front of the Check and any indorsements applied to the back of the Check.

Each Image shall also meet all standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

Customer shall also capture and transmit to Bank the full-field MICR encoding on each Check. In accordance with the Procedures, Customer shall ensure that the following information is captured from the MICR line of each Check:

- (a) the American Bankers Association routing transit number ("RTN");
- (b) the number of the account on which the Check is drawn;
- (c) when encoded, the amount of the Check; and
- (d) when encoded, the serial number and the process control field of the Check.

7. Receipt of File. Customer agrees that Customer shall be solely liable for, and Bank shall not have any liability whatsoever to Customer for, any File or the Images or other information contained therein that are not received by Bank or for any File or the Images or other information contained therein that are intercepted or altered by an unauthorized third party. Customer agrees that Bank has no obligation to accept a File and, therefore, may reject any File or the Images or other information contained therein. Bank shall have no liability to Customer for the rejection of a File or the Images or other information contained therein or for the failure to notify Customer of such rejection. Upon receipt of a File submitted by Customer, Bank may examine such File and the Images and other information contained therein to ensure that Customer has complied with this Agreement and followed the Procedures. If Bank determines that Customer has not complied with this Agreement or followed the Procedures or if errors exist in the Images or other information contained in the File, Bank, in its sole discretion, may either reject the File or elect to correct the error and accept and process the corrected File (a "Corrected File"). As a form of correction, Bank may credit Customer's Account for the full amount of the deposit and make any necessary adjustments to the Account to correct the error. Bank may, at its option, also perform a risk management analysis of one or more Files submitted by Customer to detect potentially fraudulent Checks, and, in its sole discretion, Bank may reject any such File or the Images or other information contained therein. If after examination of a File and the Images and other information contained therein, Bank determines that Customer has complied with this Agreement and processed and transmitted the File in accordance herewith and with the Procedures, the File is balanced and the Images meet the requirements of Section 6 of this Agreement, then Bank shall accept the File (an "Accepted File") for deposit to Customer's Account. Upon acceptance of the File, Bank shall electronically notify Customer of receipt and acceptance of the Accepted File for deposit. Notwithstanding the fact that Bank has accepted a File for deposit, any credit made to Customer's Account shall be provisional, and Customer shall remain liable to Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, Bank.

8. Provisional Credit and Availability of Funds. Upon acceptance of the File, Bank shall grant Customer's Account Provisional Credit (as herein defined) for the total amount of the Corrected File or the Accepted File, as applicable. As used herein, "Provisional Credit" means that the credit is made to Customer's Account subject to final payment of the Checks and subject to the terms of the Deposit Agreement. For the purpose of determining availability of funds, Bank may hold funds for the period of time permitted by Reg CC. For the purposes of determining the time for which funds may be held by Bank under Reg. CC, the place of deposit shall be Indiana, MS.

9. Laws, Rules and Regulations. Customer agrees to comply with all existing and future operating procedures used by Bank for processing of transactions. Customer further agrees to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts and ACH transactions, including, but not limited to, all rules and procedural guidelines established by the Federal Trade Commission ("FTC"), the Board of Governors of the Federal Reserve, National Check Exchange ("NCE"), Small Value Payments Customer ("SVPCo"), Viewpoint, Endpoint Exchange, the National Automated Clearing House Association ("NACHA"), Electronic Check Clearing House Organization ("ECCHO") and any other clearinghouse or other organization in which Bank is a member or to which rules Bank has agreed to be bound. The Rules are incorporated herein by reference. These procedures, rules, and regulations (collectively the "Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control.

10. Collection of Checks. Bank, in its sole discretion, shall determine the manner in which Images shall be presented for payment to the drawee bank. Bank, in its sole discretion, shall select the clearing agents used to collect and present the Images, and Bank's selection of the

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clearing agents shall be considered to have been designated by Customer. Bank shall not be liable for the negligence of any clearing agent. Collection of Checks is also subject to the Rules and the terms of the Deposit Agreement.

11. **Contingency Plan.** Customer agrees that, in the event Customer is not able to capture, balance, process, produce or transmit a File to Bank, or otherwise comply with the terms hereof or of the Procedures, for any reason, including, but not limited to, communications, equipment or software outages, interruptions or failures, Customer will transport the originals of all Checks to the closest office of Bank and deposit original Checks with Bank until such time that the outage, interruption or failure is identified and resolved. The deposit of original Checks at an office of Bank shall be governed by the terms and conditions of the Deposit Agreement and not by the terms of this Agreement. Notwithstanding the foregoing, and to the extent applicable, Section 12 of this Agreement dealing with warranties shall apply to the deposit of original Checks.

12. **Warranties.** Customer represents, warrants and covenants the following to Bank:

- (a) **Checks Deposited.** Customer shall only deposit Checks that are authorized by this Agreement, the Procedures and the Deposit Agreement;
- (b) **Image Quality.** Each Image transmitted by Customer to Bank contains an accurate representation of the front and the back of each Check and complies with the requirements of this Agreement;
- (c) **Accuracy of Information.** All data and other information submitted by Customer to Bank, including, but not limited to, data contained in the MICR line of each Check is complete and accurate and complies with the requirements of this Agreement;
- (d) **Business Purpose Only.** Customer is not a consumer, and the Remote Deposit Service shall be used for business purposes only;
- (e) **No Duplicates.** Customer will not: (i) create duplicate Images of the Checks, (ii) transmit a duplicate Image or File to Bank, or (iii) deposit or otherwise negotiate the original of any Check of which an Image was created. Customer further warrants that no subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Item(s);
- (f) **No Loss.** No Subsequent transferees of the Item(s), including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check;
- (g) **Information.** All information provided by Customer to Bank is true, complete and accurate and properly reflects the business, financial condition and principal partners, owners or officers, of Customer. Customer is not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed by Customer to Bank;
- (h) **Authority and Legality.** (i) Customer is authorized to enter into, and perform its obligations under, this Agreement, (ii) the person signing this Agreement on behalf of Customer is duly authorized to execute this Agreement, (iii) this Agreement is valid and enforceable against Customer in accordance with its terms, and (iv) the entry into, and performance of, this Agreement by Customer will not violate any law, or conflict with any other agreement, to which Customer is subject;
- (i) **No Litigation.** There is no action, suit or proceeding pending or, to Customer's knowledge, threatened which, if decided adversely, would impair Customer's ability to carry on its business substantially as now conducted or which would adversely affect Customer's financial condition or operations.
- (j) **Transactions.** All Checks and business transactions of Customer are, and will be, bona fide. All signatures on Checks are authentic and authorized.
- (k) **Rule Compliance.** Customer conducts its business, and submits Checks and Files in compliance with this Agreement, the Procedures, applicable law and the Rules.
- (l) **Computer Virus.** No Files or Checks contain any computer viruses or other harmful, intrusive or invasive codes.
- (m) **Indemnity.** Customer agrees to indemnify Bank for, and hold Bank harmless from and against, any and all claims, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from a breach of any of Customer's warranties, representations and/or obligations under this Agreement or any other agreement with between Customer and Bank, including, but not limited to, the Deposit Agreement, and the terms of this paragraph shall survive the termination of this Agreement.

13. **Returned Checks.**

- (a) **Chargeback of Returned Checks.** If Images of Checks deposited by Customer are dishonored or otherwise returned unpaid by the drawee bank, or are returned by a clearing agent for any reason, including, but not limited to, issues relating to the

quality of the Image, Customer understands and agrees that, since Customer either maintains the original Check or has destroyed the original Check in accordance with Section 5 of this Agreement, the original Check will not be returned, and Bank may charge back an Image of the Check to Customer's Account. Customer understands and agrees that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by Bank, Customer agrees not to deposit the original Check if an Image or other debit as previously described is charged back to Customer.

- (b) **Special Instructions.** Customer may request that Bank re-present returned Images of Checks to the drawer or process returned Images of Checks according to instructions provided by Customer to Bank (the "Special Instructions"). These Special Instructions may be given to Bank in a separate document in conjunction with or subsequent to the execution of this Agreement. Bank shall not be bound by such Special Instructions until such time as Bank has agreed in writing to accept the Special Instructions. Notwithstanding the fact that Bank has agreed to accept the Special Instructions, Bank may, in its sole discretion, disregard the Special Instructions and charge the returned Check back to Customer Account to which the Checks were deposited. In the event that Customer has requested that returned Images of Checks be re-presented, in no event will Bank re-present an Image of a Check or an ACH entry in excess of the limit established or permitted for the number of times that an Check or ACH entry may be re-presented by the Rules. Customer may change or amend the Special Instructions by providing Bank a written request to change or amend the Special Instructions. Changes or amendments to the Special Instructions shall not become effective until acknowledged and accepted in writing by Bank. Customer hereby agrees to pay Bank the fees for processing returned Checks and Special Instructions contained in Bank's then current schedule of fees for such services.

14. Fees and Charges. So long as this Agreement remains in effect, Customer agrees to pay to Bank the normal deposit account service charges established from time to time by Bank and, in addition thereto, the fees and charges set forth in the Fee Schedule attached to this Agreement as Attachment C or provided from time to time hereafter to Customer, and all such other fees and charges as may be agreed upon from time to time by Customer and Bank.

Customer authorizes Bank to deduct any charges for the Remote Deposit Service from any Account, even if such deduction causes an overdraft in the Account. Should Customer fail or refuse to pay any charges under this Agreement, Customer agrees to pay all collection costs (including reasonable attorney's fees) which may be incurred by Bank. Bank shall have the right to increase or decrease charges imposed for the Remote Deposit Service upon thirty (30) days prior written notice, and Customer's use of the Remote Deposit Service thereafter shall constitute Customer's agreement to the same.

In addition to the Remote Deposit Service fees, Customer agrees to pay all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Remote Deposit Service, this Agreement, and/or the software or equipment made available to Customer (excluding any income tax payable by Bank). Customer is also responsible for the costs of any communication lines and any data processing charges payable to third parties.

15. Amendments. Bank may amend the terms of this Agreement (including the fees and charges for the Remote Deposit Service) at any time, in its sole discretion, by giving written notice to Customer. If required by this Agreement or by applicable law, notice will be given for the applicable required number of days in advance of each such amendment. Customer's continued use of the Remote Deposit Service shall constitute Customer's agreement to such amendments. No amendments requested by Customer shall be effective unless received, and agreed to in writing, by Bank.

16. Confirmation: Account Reconciliation. Bank will provide notice of receipt of deposits to Customer's Account on the periodic statement for such Account. Customer is responsible for detecting and reporting to Bank any discrepancy between Customer's records and the records Bank provides to Customer. If Customer does not detect and notify Bank of such a discrepancy within 30 days of Customer's receipt of any terminal printout, mailed report or periodic statement (each a "Report"), whichever is received first, then such transactions shall be considered correct, and Customer shall be precluded from asserting such error or discrepancy against Bank.

17. Update Notice. Customer shall provide written notice to Bank of any changes to the information previously provided by Customer to Bank, including, but not limited to, any additional locations, any change in business, any new business, the identity of principals and/or owners, the form of business organization, type of goods and services provided and method of conducting sales. Such notice must be received by Bank within 5 business days of the change. Customer shall provide any additional information requested by Bank within 5 days of such request. Bank retains the right to: (i) review Customer's Checks, Files and business activities from time to time to confirm Customer is conducting business as stated by Customer at the time of the execution of this Agreement and (ii) re-price or terminate the Remote Deposit Service based on changes to information previously provided to Bank by Customer.

18. Bank's Duties. Bank's duties and responsibilities are limited to those described in this Agreement, the Deposit Agreement and any other agreements governing the Accounts. Bank will use commercially reasonable care in performing its responsibilities under this Agreement.

19. Bank's Responsibilities. Customer agrees to monitor its account balances and charges, to promptly notify Bank if any Report conflicts with Customer's records, and to refrain from acting on information it has reason to believe is erroneous. In all instances, Bank's and, if the services of a third party provider are utilized in the provision of the Remote Deposit Service, such third party's sole liability to Customer shall be limited to the correction of any errors made. Bank shall not be responsible for suspension of performance of all or any of its obligations, responsibilities or covenants hereunder, whether expressed or implied, if at any time, or from time to time, compliance therewith is prevented or hindered by, or are in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U.S. Postal Service and commercial carriers(s), or electric power disruption or shortage, telecommunications failure or computer failures; acts, omissions or errors of any carrier and/or agent operating between Customer and Bank or Bank and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipients of transferred funds, any incorrect, unauthorized or fraudulent use or other fraud by any person other than Bank's employees; or, without limiting the generality of the

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foregoing, any other cause or circumstance beyond Bank's control or other conditions or circumstances not wholly controlled by Bank, which would prohibit, retard or otherwise affect Bank's complete or partial performance under this Agreement.

20. Internet Disclaimer. Bank does not, and cannot, control the flow of any documents, files, data or other information via the Internet, whether to or from Bank's network, other portions of the Internet or otherwise. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Bank cannot guarantee that such events will not occur. Accordingly, Bank disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall Bank be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the Internet infrastructure or Customer's or Bank's ability or inability to connect to the Internet.

21. Indemnification and Liability: Third Party Claims. Customer hereby indemnifies Bank and each of its parents, subsidiaries and affiliates and their respective officers, directors, employees, members, partners, agents, insurers and attorneys (each an "Indemnified Party" and, collectively, the "Indemnified Parties") for, and holds each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorneys' fees) of any nature or kind (including those by third parties) arising out of, or related to, this Agreement, including all actions, causes of action, claims, damages, liabilities and expenses arising out of, related to or resulting from: (a) Customer's (i) failure to report required changes, (ii) transmission of incorrect data to Bank or (iii) failure to maintain compliance with the Rules, (b) Bank's provision of the Remote Deposit Service, (ii) Bank's action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by Bank to be an authorized representative of Customer, (c) Customer's breach of any of Customer's representations, warranties, covenants or other agreements or responsibilities under this Agreement and/or (d) Customer's breach or violation of any Rules, provided, however, Customer is not obligated to indemnify Bank for any damages solely and proximately caused by Bank's gross negligence or willful misconduct.

22. Limit of Liability

- (a) ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, BANK SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND BANK'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) CUSTOMER'S ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY CUSTOMER TO BANK FOR THE REMOTE DEPOSIT SERVICE. IN NO EVENT SHALL BANK OR ANY PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSSES OR INJURIES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR COST OF COVER) ARISING OUT OF, OR RELATED TO, THE USE BY CUSTOMER OF THE REMOTE DEPOSIT SERVICE OR ANY SERVICE OR THE FAILURE OF BANK OR ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER, EVEN IF BANK OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.
- (b) CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER'S USE OF THE REMOTE DEPOSIT SERVICE SHALL BE AT CUSTOMER'S SOLE RISK, AND THAT THE REMOTE DEPOSIT SERVICE IS PROVIDED BY BANK ON AN "AS IS" BASIS.
- (c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO CUSTOMER OR TO ANY OTHER PERSON, AS TO THE REMOTE DEPOSIT SERVICE OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY, AND . AND BANK HEREBY DISCLAIMS ANY AND ALL OF THE SAME. CUSTOMER AGREES THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE REMOTE DEPOSIT SERVICE TO BE PERFORMED PURSUANT HERETO.
- (d) TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH BANK'S LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BANK'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM BANK'S FAILURE TO EXERCISE ORDINARY CARE.
- (e) BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO CUSTOMER OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH THE REMOTE DEPOSIT SERVICE, INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S COMPUTER SYSTEMS OR RELATED EQUIPMENT, CUSTOMER'S SOFTWARE, OR CUSTOMER'S INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF BANK'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT CUSTOMER USES, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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- (f) BANK SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, CUSTOMER'S COMPUTER HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY BANK TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM CUSTOMER TO BANK, FROM BANK TO CUSTOMER, FROM CUSTOMER TO ANY PROCESSOR, FROM ANY PROCESSOR TO BANK, OR OTHERWISE. BANK SHALL NOT BE RESPONSIBLE FOR NOTIFYING CUSTOMER OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF CUSTOMER'S COMPUTER HARDWARE OR SOFTWARE.

23. Third Parties; Maintenance.

- (a) **Remote Deposit Service from Others.** Customer may be using special equipment, services or software provided by a third party to assist it in processing Checks and Files hereunder (each a "Third Party" and, if more than one, "Third Parties"). Customer (i) agrees that any Third Party is acting as Customer's agent in the delivery of Checks and Files to Bank, and (ii) agrees to assume full responsibility and liability for any failure of that Third Party to comply with the Rules or this Agreement. Bank will not be liable for any losses or additional costs incurred by Customer as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Customer shall provide at least 10 days advance written notice to Bank in the event it uses any such Third Party. Customer is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. Bank shall not have any responsibility for any Check or File handled by a Third Party until that point in time when Bank accepts and approves a Check or File from such Third Party for processing.
- (b) **Equipment Maintenance.** Customer shall be solely responsible for obtaining and properly maintaining its equipment and system requirements, including computer equipment, Internet connectivity, scanning terminals (unless contracted with Bank) and any other equipment or items necessary to receive the Remote Deposit Service. Bank shall not be liable to Customer, in any manner whatsoever, for any type of errors, losses, damages or other claims related to Customer's failure to do so.

24. Use of Trademarks. Customer may not use Bank's name or trademarks without the express written consent of Bank. If Customer is permitted to use any of Bank's name, trademarks or promotional materials, Customer will not indicate, directly or indirectly, that Bank endorses, or is connected in any way with, any of Customer's goods or services.

25. Financial Information. Bank may from time to time request information from Customer in order to evaluate a continuation of the Remote Deposit Service to be provided by Bank hereunder and/or adjustment of any limits set by this Agreement. Customer agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. Customer authorizes Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement or the Remote Deposit Service and to request reports from credit bureaus and reporting agencies for such purpose. Upon request by Bank, Customer hereby authorizes Bank to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with this Agreement. If Customer refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the credit risk of Customer is unacceptable, or if Customer refuses to give Bank access to Customer's premises, Bank may terminate the Remote Deposit Service according to the provisions hereof.

26. Confidential Information and Proprietary Right in Data. All information of a business nature relating to the assets, liabilities or other business affairs disclosed to Bank by Customer and Customer's Customers in connection with this Agreement is confidential. Except as allowed by applicable law, Bank shall not disclose or permit access to any such information by any person, firm or corporation. Bank shall cause its officers, employees and agents to take such action as shall be reasonably necessary to preserve and protect the confidentiality of such information, by disclosing such information only to persons needing to have access thereto for the performance of the Bank's obligations under this Agreement or to any other party to which Bank may be required by law to report such information. Customer agrees to hold confidential, and to use only in connection with the Remote Deposit Service, all information furnished to Customer by Bank or by third parties from whom Bank has secured the right to use the Remote Deposit Service, including, but not limited to, Bank's product and service pricing structure, system design, programming techniques or other unique techniques. In addition, should Customer at any time receive or acquire any information relating to another Customer of Bank, Customer shall promptly return such information to Bank and not reveal such information to any other party and shall not make use of such information for its own benefit or otherwise. Bank's and Customer's obligations and agreements under this paragraph shall not apply to any information supplied that was known to either party prior to the disclosure by the other, is or becomes generally available to the public other than by breach of this Agreement or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is understood and agreed by the parties hereto that the performance of the Remote Deposit Service is or might be subject to regulation and examination by authorized representatives of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation and/or a State regulatory agency, and Customer agrees to the release of by Bank of Customer's reports, information, assurances and other data and information as may be required under applicable laws and regulations. Customer agrees that any specifications or programs developed by Bank in connection with this Agreement, or supplied or made available to Customer by Bank, are the exclusive property of Bank, its agents, suppliers or contractors, and further agrees that such material shall not be copied or used in any manner or for any purpose without the express written consent of Bank. This clause shall survive the termination of the Agreement.

27. Arbitration and Waiver of Jury Trial. Customer and Bank agree that the transactions contemplated this Agreement involve "commerce" under the Federal Arbitration Act ("FAA"). EVERY CONTROVERSY OR CLAIM BETWEEN CUSTOMER AND ANY INDEMNIFIED PARTY ARISING OUT OF, OR IS IN ANY WAY RELATED TO OR RESULTING FROM, THIS AGREEMENT, THE REMOTE DEPOSIT SERVICE OR ANY OTHER SERVICES PROVIDED BY BANK, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING CLAIMS OF FRAUD, SUPPRESSION, MISREPRESENTATION AND FRAUD IN THE INDUCEMENT, WILL BE RESOLVED BY BINDING ARBITRATION UNDER THE FAA. The arbitration will be

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administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules (the "Arbitration Rules"). IF A CLAIM IS SUBMITTED TO ARBITRATION, (A) CUSTOMER WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B) CUSTOMER WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE ARBITRATION RULES; (C) CUSTOMER WILL NOT HAVE THE RIGHT TO HAVE ANY CLAIM ARBITRATED AS A CLASS ACTION UNDER THE ARBITRATION RULES OR UNDER ANY OTHER RULES, WHETHER OF CIVIL PROCEDURE OR OTHERWISE; AND (D) THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING WITH LIMITED RIGHTS TO APPEAL. THIS ARBITRATION PROVISION IS SUPPLEMENTAL TO, AND NOT IN LIEU OF, ANY OTHER ALTERNATIVE DISPUTE RESOLUTION PROVISION, AND IN THE EVENT OF A CONFLICT BETWEEN THIS PROVISION AND ANY OTHER SUCH ALTERNATIVE DISPUTE RESOLUTION PROVISION, THE TERMS OF THIS PROVISION SHALL CONTROL. This agreement to arbitrate disputes will survive the closing of Customer's Accounts and the termination of this Agreement.

28. Attorneys' Fees. In the event of any arbitration or other adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

29. Successors. This Agreement and all the terms and provisions herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

30. Assignment. No right or interest hereby conferred shall be assignable without the prior written consent of the other party, and any assignment made without such consent shall be null and void; provided, however that Bank may assign this Agreement or any part of it to any of Bank's affiliates or to a successor of Bank by merger or acquisition upon written notice to Customer.

31. No Third Party Beneficiaries. This Agreement shall not be construed to confer any rights or remedies upon any person not a party to this Agreement, whether as a third party beneficiary or otherwise, against Customer or Bank, their respective successors, assigns and affiliates.

32. Captions and Headings. The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.

33. Entire Agreement. The terms of the Deposit Agreement, all other agreements with Bank pertaining to the Accounts and the Rules, are incorporated by reference and made a part of this Agreement. In the event of any inconsistency between such agreements, the Rules and this Agreement, the provisions of this Agreement shall control to the extent necessary. Customer agrees that this Agreement is the entire statement of the terms and conditions which apply to the subject matter hereof. This Agreement supersedes any prior agreements between the parties relating to the Remote Deposit Service.

34. No Waiver. No delay or failure on the part of Bank in exercising any of Bank's rights under this Agreement shall constitute a waiver of such rights, and no exercise of any remedy hereunder by Bank shall constitute a waiver of its right to exercise the same or any other remedy hereunder. Except for changes made in accordance with this Agreement, no deviation, whether intentional or unintentional, will constitute an amendment of this Agreement or will constitute a waiver of any right or duty of either party.

35. Severability. In the event all or any part of any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable, in any respect, the remaining provisions or parts thereof shall be binding and enforceable as if any such invalid, illegal or unenforceable provision had never been contained herein.

36. Construction. This Agreement is an agreement between parties who are experienced in sophisticated and complex matters similar to the transactions contemplated by this Agreement, is entered into by both parties in reliance upon the economic and legal bargains contained herein, and shall be interpreted and construed in a fair and impartial manner, without regard to such factors as the party which prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties or the domicile of any party.

37. Termination. This Agreement shall remain in full force and effect from the date hereof until such time as this Agreement is terminated by either party as hereinafter provided:

- (a) this Agreement may be terminated at any time by either party following ten (10) days prior written notice;
- (b) either party shall have the right to terminate this Agreement immediately by giving written notice to the other if such other party: (i) ceases to conduct its business in the ordinary sense; (ii) has any substantial part of its property become subject to any levy, seizure, assignment or application for sale for, or by, any creditor or government agency; (iii) is a party to an acquisition or (iv) in the reasonable judgment of the party seeking termination, experiences an adverse change in its financial condition or business which impairs the ability of such party to perform its obligations under this Agreement, (v) fails to perform its obligations under this Agreement or defaults under any other agreement between the parties or (vi) makes any warranty or representation which proves to be false or misleading.

Notwithstanding the foregoing, Bank may immediately terminate this Agreement without notice if, in Bank's sole discretion, Bank determines that Customer has abused the Remote Deposit Service or Bank believes that it will suffer a loss or other damage if the Agreement is not terminated.

Bank's election to terminate this Agreement is in addition to any and all other remedies that may be available to Bank and will not affect any obligations Customer may have to Bank. Any reinstatement of the Remote Deposit Service under this Agreement will be at Bank's sole discretion and must be agreed upon in writing by an authorized representative of Bank.

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Upon termination of this Agreement, any property or rights of a party in the possession of the other party, tangible or intangible, shall be returned to owner thereof within thirty (30) days after the later to occur of (i) termination of the Agreement or (ii) the last date that such party receives any such property or rights.

Upon termination of this Agreement, (i) Customer will promptly pay to Bank all sums due or to become due under this Agreement. (ii) Customer shall have no further right to make use of the Remote Deposit Service or any system or software which may have been provided in connection with any Remote Deposit Service.

Bank and Customer agree that Sections 5, 12, 13, 21, 22, 24, 26, 27, 28, 30, 31, 34, 36, and 38 shall survive the termination of this Agreement.

38. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Mississippi, without reference to its conflict of laws provisions, and applicable federal law.

39. **Notices.** Any notice required hereunder shall be given by first class U.S. Mail, postage prepaid, by receipted hand delivery, electronically or by any other means agreed upon by both parties and if, to Bank, at the address set forth below and, if to Customer, at the most recent address shown for Customer in Bank's records. If any notice instructions are given, the provisions of such shall govern the method and location for giving notice. Any notice mailed shall be presumed received on the third business day after mailing thereof.

40. **Self-Assessment** Customer will complete the Remote Deposit Capture Customer Self-Assessment before processing first deposit and on an annual basis. If assessments are not received by the bank in a timely manner, it may be grounds for termination of this agreement. If assessment responses expose lack of customer controls, it may be grounds for termination of this agreement.

If to Bank: Planters Bank & Trust Company
P. O. Box 31
Indianola, MS 38751

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized officers.

PLANTERS BANK & TRUST

By: _____
Title: _____
Date: _____

The City of Cleveland
(CUSTOMER)
By: Dominique Free
Title: CITY CLERK
Date: 2-18-2020

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ATTACHMENT A

1. Account(s) 0100024406, 0100040524, 0100034319
2. The total dollar amount per day transmitted by Depositor shall not exceed \$ 250,000.
3. Cut-off Time 4:00 pm on a business day we are open.
4. Authorized user name (1) Dominique Green
5. Authorized user email address dominique.green@cityofclevelandms.com
6. Authorized limit for user 250,000
7. Authorized user name (2) Rose Walters
8. Authorized limit for user rose.walters@cityofclevelandms.com
9. Authorized user email address 150,000
10. Authorized user name (3) Brittney Beavers
11. Authorized user email address brittney.beavers@cityofclevelandms.com
12. Authorized limit for user 150,000

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HARDWARE LIST:

Scanner(s) License. If the Scanner(s) is provided by Bank as part of this Service, Bank hereby grants to Customer a nontransferable non-exclusive license ("License") to use the Scanner(s) listed in this Attachment B ("Scanner(s)") only in connection with the Service provided by Bank. Customer accepts the License subject to the terms and conditions set forth in the following sections.

(i) **OWNERSHIP OF SCANNER(S).** Customer acknowledges the Scanner(s) is and shall at all times remain the sole and exclusive property of Bank and agrees that Customer will do nothing inconsistent with such ownership. Customer agrees that nothing in this License shall give Customer any right, title or interest in the Scanner(s) other than the right to use the Scanner(s) in accordance with this License, and Customer agrees that it will not attack the validity of this License.

(ii) **USE.** Customer shall use the Scanner(s) in a careful and proper manner in accordance with the Documentation and shall comply with and conform to all federal, state, municipal, and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Scanner(s). If at any time during the term hereof, Bank supplies the Customer with labels, plates or other markings, stating that the Scanner(s) is owned by Bank, the Customer shall affix and keep them upon a prominent place on the Scanner(s). The Customer shall limit the use of the Scanner(s) to the processing of transactions with Bank pursuant to this Agreement. The Customer may not use the Scanner(s) to facilitate processing transactions with any other person without the prior express written authorization of Bank.

(iii) **RECEIPT OF SCANNER(S).** Customer agrees that Bank will deliver or ship the Scanner(s) to Customer at the address designated by Customer in this Agreement. Customer acknowledges that delivery or shipment to the address designated by Customer shall be considered receipt of the Scanner(s) by Customer.

(iv) **INSPECTION.** Customer shall inspect the Scanner(s) within 24 hours after receipt thereof. Unless Customer, within this period of time, gives written notice to Bank specifying any defect in or other proper objection to the Scanner(s), Customer agrees that it shall be conclusively presumed, as between Bank and Customer, that Customer has fully inspected and acknowledged that the Scanner(s) is in good condition and repair, and that Customer is satisfied with and has accepted the Scanner(s) in such good condition and repair. Bank shall at any and all times during business hours have the right to enter into and upon the premises where the Scanner(s) may be located for the purpose of inspecting the same or observing its use. Customer shall give Bank immediate notice of any attachment or other judicial process affecting Scanner(s) and shall, whenever requested by Bank, advise Bank of the exact location of the Scanner(s).

(v) **MAINTENANCE.** Customer shall maintain the Scanner(s) in working order by following the instructions for proper use, care and cleaning of the Scanner(s) provided to Customer. In the event that the Scanner(s) does not function in accordance with the manufacturer's specifications, Bank shall either repair or replace the Scanner(s) within three (3) business days from the date of receipt of notification from the Customer. Bank shall not repair or replace the Scanner(s) if it is lost or damaged as provided in Section (vi), or because of misuse, negligence or failure of Customer to follow instructions for proper use, care and cleaning of the Scanner(s).

(vi) **LOSS AND DAMAGE.** In the event of loss or damage of any kind to the Scanner(s), or any part thereof, Customer shall make a payment to Bank in an amount contained in an invoice submitted by Bank to Customer ("Invoice Amount"). Payment shall be due within thirty (30) calendar days of receipt of the invoice from Bank. Failure to make such payment shall be a default under Section (xi) of this Attachment B.

(vii) **SURRENDER OF SCANNERS.** Within thirty (30) calendar days of the expiration or earlier termination of this Agreement, with respect to the Scanner(s), Customer shall return the Scanner(s) to Bank in good repair, condition and working order (ordinary wear and tear resulting from proper use thereof alone excepted), or Customer shall pay Bank the Invoice Amount contained in an invoice submitted to Customer upon termination. If Customer fails to return the Scanner(s), or if the Scanner(s) is not in good working order and repair upon return, or if Customer fails to pay the Invoice Amount, such failure shall be a default under Section (xi) of this Attachment B.

(viii) **LOCATION OF SCANNER(S).** Without the written permission of Bank, Customer will not permit the Scanner(s) to be removed from the Customer's business addresses and Customer shall not physically locate the Scanner(s) outside of the United States.

(ix) **PERSONAL PROPERTY.** The Scanner(s) is, and shall at all times remain, personal property notwithstanding that the Scanner(s) or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon, or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise.

(x) **ENCUMBRANCES.** Customer shall not do any act that will in any way encumber the title of Bank in and to the Scanner(s). In the event the Scanner(s) becomes the subject of any lien or encumbrance through the action of Customer, Customer shall indemnify and hold harmless Bank from all costs, losses or expenses with respect thereto, and Customer shall immediately pay any such lien and obtain a release thereof.

(xi) **DEFAULT.** If Customer fails to pay any amount herein provided within thirty (30) calendar days after the same is due and payable, Bank shall have the right to take possession of the Scanner(s), without demand or notice, wherever same may be located,

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without any court order or other process of law. Customer hereby waives any and all damages occasioned by such taking of possession. Any such taking of possession shall constitute a termination of this Agreement.

(xii) **BANK'S EXPENSES.** Customer shall pay Bank all costs and expenses, including reasonable attorney fees, incurred by Bank in exercising any of its rights or remedies hereunder or in enforcing any of the terms, conditions or provisions hereof.

ATTACHMENT C
SCHEDULE OF FEES

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Unanimously adopted as part of the consent agenda, it is ordered to authorize the purchase of a Dodge Ram Truck totaling \$19,861 per State Contract #8200048294.

STANDARD/OPTIONAL EQUIPMENT FORM

DESCRIPTION: TRUCK STD CREW CAB 2 WHEEL DR 8CYL
 VENDOR: Pine Belt CDJR Inc
 ITEM NO: 070-4852310-9
 MAKE/MODEL: Dodge Ram 1500
 ENGINE: 3.6L V6
 PRICE INCLUDING TITLE FEE: \$19861.00

Miles Per Gallon	
City	17
Hwy	25
Combined	20

Contract No: 8200048294	E-Mail: rbearden@pinebeltmotors.com
Pine Belt CDJR Inc.	Phone:662-360-8590
401 Broadway Drive	Toll Free:
Hattiesburg, MS 39401	
Richie Bearden	

LIST FACTORY COLORS AVAILABLE AT NO CHARGE: WHITE, FLAME RED

IF COLOR IS NOT MARKED IT WILL BE ORDERED WHITE

ITEM	OPTION CODE	DEALER COST	REQ.
			OPTION CODE
List optional engines:			
V8 HEMI	27B	\$2,300	
Air Conditioning	INC		
Braking System, Anti-Lock	INC		
Bumper, Rear Step	INC		
Clock, Digital	INC		
Headliner, Cloth	INC		
Radio, AM/FM	INC		
Driver & Pass Air Bag	INC		
Pwr Windows/Locks/Tilt/Cruise	INC		
Remote Keyless Entry	INC		
Transmission, 4-Speed Auto	INC		
Rear Park Assist System	XAA	\$234	
Uconnect 3.0	UA1	\$181	
Limited Slip	DSA	\$460	
Trailer Brake Control	XHC	\$274	
Class IV Receiver Hitch	XF8	\$102	
All Terrain Tires	TTB	\$235	

In an effort to be more efficient in government spending and to save taxpayer dollars, this year's contract does not provide for any options other than the ones listed on the Standard Equipment Form. Any vehicles purchased that deviate from this list will be in violation of State Contract bid requirements. If you need any equipment other than what is listed on this form, you will need to follow normal purchasing procedures.

OPTION CODE	DEALER COST
Billet Sliver	PSC \$182
Blue Streak Pearl Coat	PCL \$91
Case IH Red	P61 \$410
Delmonico Red Pearl Coat	PRV \$91
Diamond Black Crystal P/C	PXJ \$91
Granite Crystal Met. Clear Coat	PAU \$182
Walnut Brown Paint	PUW \$182



February 12, 2020

City of Cleveland
Attention: Chief Buster Bingham
Via email: buster.bingham@cityofclevelandms.com
RE: 2020 Ram 1500 Crew Cab 4x2 quote

Chief Bingham, this letter will serve as confirmation that Cannon Chrysler Jeep Dodge Ram in Cleveland will match the state contract on the 2020 Ram 1500 Crew Cab 4x2 at a price of \$19,861. This price matches state contract number 8200048294. Thank you.

J. Steven Hand

J. Steven Hand
Cannon Motors of MS & AR-Commercial Division
Fleet Sales Manager
70249 Hwy 82 W.
Greenwood, MS 38930
662 453-4211 ext. 3415 Office
601 383-4263 Cellular Phone

Unanimously adopted as part of the consent agenda, it is ordered to lift the open container ordinance for the duration of the Crosstie Arts and Jazz Festival scheduled for April 18th, 2020.