

AGREEMENT FOR BANKING SERVICES

This **AGREEMENT FOR BANKING SERVICES** ("Agreement"), is made and entered into as of July 1, 2012 by and between the **TOWN OF FAIRFAX**, a California municipal corporation ("Town") and **BANK OF MARIN** a California chartered bank ("Bank").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

A. This Agreement shall be for a period of five (5) years ("Term"), commencing on July 1, 2012, (the "Effective Date") and ending at midnight on June 30, 2017 (the "Expiration Date") unless is otherwise terminated in accordance with the provisions of this Agreement. On or before January 15, 2017 the Town may opt to extend the agreement for an additional two years.

B. Either party to this Agreement may terminate this Agreement, with or without cause, at any time by giving ninety (90) days written notice of termination to the other party.

C. Upon termination of this Agreement for any reason and at any time, Bank shall cooperate with Town to ensure the smooth transition of the Town's banking services to another entity selected by Town in its sole and absolute discretion.

SECTION 2. SCOPE OF SERVICES.

Bank agrees to perform the services set forth in Exhibit "A," Scope of Services, which is attached hereto and incorporated herein by this reference. The Services shall be performed in accordance with the terms and conditions of this Agreement and the Proposal for Banking Services submitted by Bank dated January 11, 2012, (the "Proposal"); provided, however, in the event of a conflict between the terms of the Agreement and the Proposal, the terms of this Agreement shall apply.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. Subject to any limitations set forth in this Agreement, Town agrees to pay Bank the amounts specified in Exhibit "B," Fee Schedule, which is attached hereto and incorporated herein by this reference. With the exception of the amounts payable by Town for armored car services and merchant card services, such fees shall not be increased during the initial five (5) year period of the Term.

B. The Town shall reimburse Bank for its actual costs in providing armored car and merchant card services hereunder, such costs not to include any overhead, internal processing or other fee or charge in connection with such service except for the Monthly Support Fee and the Training/Setup Fee set forth in Exhibit B.

C. Bank shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit "A," Scope of Services, unless such additional services are authorized in advance and in writing by the Town. Bank shall be compensated for any such additional services in the amounts and in the manner agreed to by the Town.

D. The aggregate amount of all compensation, other than that payable under Section 3 of Exhibit B, to be paid by Town to Bank each month will be subject to offset against the earnings allowance for the month. The earnings allowance will be calculated by Bank each month in accordance with its standard account analysis methodology. Town will only be responsible for payment for a given month of any shortfall between the earnings allowance and the aggregate amount of all compensation (again, excluding that payable under Section 3 of Exhibit B) payable to Bank for the month.

E. The compensation payable to by Town to Bank pursuant to Section 3 of Exhibit B shall be separately payable and not subject to offset against any earnings credits.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

A. Bank hereby makes the following ongoing representations and warranties to Town:

i. Bank is a "state or national bank" as defined in Government Code Section 53630.5; and

AGENDA ITEM # 1

ii. Bank is a member of the Federal Reserve System, has access to all Federal Reserve services and is insured by the Federal Deposit Insurance Corporation (FDIC); and

iii. Bank meets and conforms with all applicable provisions of the California Government Code pertaining to depository requirements and is a qualified depository of California public funds in accordance with such requirements.

iv. Bank has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner.

B. Town hereby represents and warranties to Bank that it has taken all action required by the Government Code and all other applicable law to authorize the execution of this Agreement.

SECTION 5. STANDARD OF PERFORMANCE.

Bank shall at all times faithfully and competently perform all services described herein, all in accordance with generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Bank under this Agreement. Bank shall assign experienced staff capable of servicing the Town's accounts and responding to the Town within two (2) hours during the normal banking hours maintained by Bank. Bank shall designate a representative who will be responsible for interacting with the Town on all matters set forth herein.

SECTION 6. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Bank shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules pertinent to the services to be provided hereunder and in effect during the term of this Agreement, including without limitation the provisions of California Government Code Section 53600, et seq. and any and all implementing regulations. Bank shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement, including without limitation, Town of Fairfax business license. Neither Town, nor any elected or appointed boards, officers, officials, employees or agents of Town, shall be liable, at law or in equity, as a result of any failure of Bank to comply with this section.

SECTION 7. NONDISCRIMINATION.

Bank shall not unlawfully discriminate against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, disability or marital status in connection with or related to the performance of this Agreement.

SECTION 8. CONFLICTS OF INTEREST.

A. Bank covenants that neither it, nor any executive officer of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Town or which would in any way hinder Bank's performance of services under this Agreement. Bank further covenants that in the performance of this Agreement, no person known by Bank to have any such interest shall be assigned to responsibilities to Town under this Agreement without the express written consent of the Town Manager. Bank agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of Town in the performance of this Agreement.

B. Town agrees that for purposes of SECTION 8.A, the ownership of property or the ownership or management of a business located in the Town of Fairfax shall not, of itself, be deemed to be a conflict of interest, nor shall Bank's maintenance of one or more branch premises with the Town of Fairfax be a conflict of interest. Without limiting the generality of the foregoing, neither shall the holding of any Town license, permit, variance or other authorization or the application or petition to Town for such a license, permit, variance or other authorization be deemed to be a conflict, nor shall support or opposition lodged by a person described in SECTION 8.A to an application or petition to Town for such a license, permit, variance or other authorization sought by any other person be a conflict.

SECTION 9. INDEMNIFICATION.

A. Town and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Town Indemnitees") shall have no liability to Bank or any other person for, and Bank shall indemnify, defend with counsel reasonably acceptable to Town, protect and hold harmless Town Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages,

judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Town Indemnitees may suffer or incur or to which Town Indemnitees may become subject by reason of or arising out of Bank's failure to properly perform and fulfill its obligations hereunder, except to the extent that liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses are also attributable to the failure by the Town to perform its obligations hereunder.

B. Bank and its officers, agents and employees and volunteers (individually and collectively, "Bank Indemnitees") shall have no liability to Town or any other person for, and Town shall indemnify, defend with counsel reasonably acceptable to Bank, protect and hold harmless Bank Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Bank Indemnitees may suffer or incur or to which Bank Indemnitees may become subject by reason of or arising out of Town's failure to properly perform and fulfill its obligations hereunder, except to the extent that liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses are also attributable to the failure by the Bank to perform its obligations hereunder.

SECTION 10. ASSIGNMENT.

The expertise and experience of Bank are material considerations for this Agreement. Town has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Bank under this Agreement. In recognition of that interest, Bank shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Bank's duties or obligations under this Agreement without the prior written consent of the Town. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling Town to any and all remedies at law or in equity, including summary termination of this Agreement. For purposes of this Agreement, the terms "assignment" and "transfer" shall not include any assignment or transfer that might arise should Bank merge with or into, acquire or be acquired by another financial institution, whether or not Bank is the surviving entity.

SECTION 11. NOTICES.

A. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To Town	Town of Fairfax Michael Vivrette Finance Director 142 Bolinas Road Fairfax, CA 94930
To Bank	Bank of Marin Michael Kadel Regional Manager 1101 Fourth Street San Rafael, CA 94901

B. Notice shall be deemed effective on the date received or, if mailed, three business (3) days after deposit of the same in the custody of the United States Postal Service, properly addressed and postage prepaid.

SECTION 12. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of each party represents and warrants to the other party that the signer(s) has(have) the authority to so execute this Agreement and to bind the party on whose behalf the signer(s) execute this Agreement to the performance of its obligations hereunder.

SECTION 13. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 14. MODIFICATION OF AGREEMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Bank and by the Town. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 15. WAIVER.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by Town of any work or services by Bank shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 16. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Marin. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California.

SECTION 17. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 18. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" and "B," the Proposal, and each agreement referenced on Exhibit A, constitute the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersede all other agreements or understandings, whether oral or written, or entered into between Bank and Town prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties through their authorized representatives.

SECTION 19. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF FAIRFAX

BANK OF MARIN

By: _____
Michael Rock, Town Manager

By: _____
Michael Kadel, Vice President and Regional Manager

By: _____

EXHIBIT A.

SCOPE OF SERVICES

1. Establish one (1) general/concentration account at Bank (an "Account").
2. Establish two (3) zero balance accounts (each a "ZBA" and an "Account") at Bank.
3. Disburse funds via repetitive wire transfer upon on-line request of an authorized person.*
4. Accept and send ACH transactions and provide on-line notification of ACH deposits within one (1) banking day.*
5. Process direct deposits of Town's employee bi-weekly payroll. Each participating employee may elect to automatically deposit his/her payroll in up to three (3) different bank accounts.*
6. Permit Town to utilize a daylight overdraft facility. The amount of the daylight overdraft is to be determined by the Town and subject to approval by Bank. Daylight overdrafts in excess of this amount shall be subject to approval or rejection by Bank.*
7. Accept cash and check deposits at branch locations.
8. Provide Town with armored car service ("Courier") on days to be determined to transport deposits to and from Bank. In this regard, Town shall enter into a contractual arrangement with an armored car service of Bank's choice and reasonably acceptable to Town, on terms acceptable to Town, which contract shall direct the Courier to send its service invoices to Bank for payment. Bank shall indemnify Town against any additional costs or expenses that might be incurred by Town under its contract with the Courier should Bank fail to pay or otherwise address the Courier's invoices on a timely basis and do so. By use of the Courier's service, Town acknowledges that Courier shall be acting as Town's agent and neither Bank nor its insurance carriers (including without limitation the Federal Deposit Insurance Corporation) shall have any responsibility for funds or other property to be transported, or claimed by Town to have been transported, by Courier (i) as to funds to be transported from Town's premises to Bank, until such funds and other property have been received, verified and accepted by Bank at Bank's licensed branch premises; and (ii) as to funds and property to be transported to Town's premises from Bank, as soon as such funds and other property have been delivered to Courier by Bank at Bank's licensed branch premises.
9. Provide automated balance reporting services for all Accounts which shall include, without limitation, closing ledger, closing collected, opening ledger, opening collected, float, previous day debit and credit detail (including bankcard deposits, ZBA transfers and ACH credit and debit detail).*
10. Provide on-line access to account information, cleared checks and automated stop payments.*
11. Provide bankcard processing of bankcard deposits and credit the same to a specified Account.*
12. Provide monthly activity statements and reports for all Accounts. The statement cutoff shall be the last day of the month. Statements must be sent no later than the 5th of the following month.
13. Transfer funds to and accept transfers from the Local Agency Investment Fund and from the deposit account described in above, at no cost or expense to the Town.

The provision of services noted with an "*" shall be pursuant to the terms of this Agreement and of the standard separate written agreement generally required by Bank for such services.

EXHIBIT B.

Services	Est. Monthly Volume	Unit Price
General Account Services		
Account Maintenance	4	\$15.00
Zero Balance Account Master Maintenance	1	\$25.00
Zero Balance Account Subsidiary Maintenance	4	\$10.00
Analysis Statement	5	\$0.00
Additional Paper Statements		\$5.00
Photocopies		\$5.00
Depository Services		
Banking Center Deposits	3	\$0.00
Night Depository Deposits		\$0.00
Vault Deposits		\$0.00
Coin/Currency Deposited (per \$100)		\$1.20/thousand
Change Orders		\$0.00
Coin Deposited (standard bags)		At Courier Cost
Coin Deposited (non-standard bags)		At Courier Cost
Checks Deposited - Unencoded	135	\$.10
Checks Deposited - Encoded		\$.10
On-Us		\$.10
Local Clearings		\$.10
Select in District		\$.10
All Other-IRD Deposited items	26	\$.10
Excessive Rejects - Encoded Checks		0
Returned Items	2	\$7.00
Returned Items Recleared		\$0.00
Deposit Correction RDS		\$0.00
Lockbox Services		
Lockbox Maintenance		\$150.00
Lockbox Minimum Charge		\$0.00
Lockbox Image Access Maintenance		\$.01
Lockbox Image CD ROM		\$45.00
Lockbox Overnight Courier		\$5.00
Payment Processing		\$.35
Deposited Item		\$.10
Deposit Fee		\$1.30
Set-up Fee		\$100.00
Paper Disbursement Services		
Checks Paid (truncated)	110	\$.15
Checks Paid (not truncated)	\$0.00	\$0.00

NSF Items Paid/Returned	10	\$30.00
Stop Payments - Manual	2	\$28.00
Stop Payments - Automated		\$20.00
CD-ROM Maintenance	1	\$25.00
CD-ROM Per Image	121	\$.05
CD-ROM Per Disk	1	\$0.00
Image Retrieval Online		\$0.00
Paper Disbursement Reconciliation Services		
Partial Maintenance		\$0.00
Partial Maint with Positive Pay		\$0.00
Partial Item		\$.08
Partial AR – Credit per item		\$0.00
Check Issue Input – Transmit Media		\$0.00
Partial Recon Transmission out per account		\$0.00
Full Reconciliation Maintenance		\$0.00
Full A/R with Positive Pay		\$70.00
Positive Pay Returns		\$5.00
General ACH Services		
ACH Monthly Maintenance		\$0.00
ACH Debits Received	13	\$.10
ACH Credits Received	29	\$.10
ACH Input Transmission		\$0.00
ACH Processed (On-Us)		\$.15
ACH Originated Addenda		\$0.00
ACH Account Block		\$0.00
ACH Account Filter		\$25.00
ACH Returned Items		\$7.00
ACH Night Window Surcharge		\$0.00
Notification of Change		\$0.00
Delete/Reversal – Batch/File		\$7.00
ACH Optional Reports		\$100.00
Wire and Other Funds Transfer Services		
Wire Out – Domestic	6	\$25.00
Wire Out – Book	2	\$10.00
Wire Out - International		\$35.00
Incoming Wires		\$10.00
Wire - Mail Advice		\$0.00
Template Storage		\$0.00
Wire Maintenance Fee - Monthly	1	\$0.00
Fax/Phone Notification (Incoming)		\$5.00
Information Services		
Detail Items Printed	166	\$0.00

Investment Services		
Automated Investment Sweep Acct. Maint.	1	\$50.00
Other Charges:		
Remote Deposit Capture	1	\$50.00
Remote Deposit Capture CHK IMG	137	\$.10
Business Online Banking	1	\$50.00

*The Bank will waive the first 90 days of account analysis fees in order to accommodate the implementation of services.

**The Town will receive a \$100.00 credit towards the first order of checks.

***Total Price is based on services and volumes provided on the Summary of Bank Activity.

Merchant Card Services:*

- a. Discount rate and all other applicable charges for credit card processing:
- b. Debit card transactions:

All other charges:

* All discount fees are base interchange fees stipulated by VISA and MasterCard. Historically, VISA and MasterCard increase some of their fees once or twice a year. Bank of Marin utilizes Orbis Payment Solutions for processing all credit card transactions.