



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
agary@baldwincountyal.gov
www.baldwincountyal.gov

ANU GARY
Records Manager

MONICA E. TAYLOR
Assistant Records Manager

March 27, 2013

Mr. Brian McCollum
Vice President, Sales and Product Development
Creative Payment Solutions, Inc.
Post Office Box 2341
Wilson, North Carolina 27893

RE: Agreement Between Creative Payment Solutions, Inc. and Baldwin County Commission

Dear Mr. McCollum:

Enclosed is a **fully executed copy** of the *Agreement* approved during the March 7, 2013, Baldwin County Commission meeting between the Commission and Creative Payment Solutions, Inc. for electronic lockbox services. This *Agreement* shall be effective on March 7, 2013, and shall remain in effect for a term of three (3) years, unless and until terminated by either party.

If you have any questions or need further assistance, please do not hesitate to contact Kim Creech, Clerk/Treasurer, at (251) 937-0303.

Sincerely,

MONICA E. TAYLOR, Assistant Records Manager
Baldwin County Commission

/met Item EG3

cc: Kim Creech
Eva Cutsinger
Donna Bryars

ENCLOSURE

CREATIVE PAYMENT SOLUTIONS, INC.
AGREEMENT FOR ELECTRONIC LOCKBOX SERVICES

RECEIVED
MAR 25 2013
BY: MJ

This AGREEMENT is made this 7th day of March, 2013 by and between Baldwin County Commission, (the "Client") and Creative Payment Solutions, Inc. ("CPS").

1. Service. CPS shall, on behalf of Client, receive and aggregate electronic payments or remittances owed to the Client by third parties ("Electronic Payments") and the related payment detail information respecting the Electronic Payments (the "Payment Detail Information"), and shall transfer daily to Client (a) a single payment by Credit Entry (as defined in the ACH Rules) or wire transfer consisting of an amount equal to the aggregate of all Electronic Payments received by CPS on behalf of Client, and (b) a single data file containing the aggregated Payment Detail Information received by CPS on behalf of Client with respect to each Electronic Payments. The services described in the preceding sentence are referred to herein as the "Service."

2. Receipt of Electronic Payments; ACH Rules. The Electronic Payments received by CPS on behalf of Client may be received directly from third party bill payment processors ("Bill Payment Processors"), or through the automated clearing house ("ACH") system pursuant to the rules of the National Automated Clearing House Association ("ACH Rules"). With respect to Electronic Payments received through the ACH system, CPS and the Client shall comply with and be bound by the ACH Rules as in effect from time to time. Client acknowledges that ACH Credit Entries (as defined in the ACH Rules) received by CPS on behalf of Client may be subject to reversal by the party originating the ACH Credit and that any payment by CPS to Client in respect of any such ACH Credit Entry is therefore provisional until receipt by CPS of final settlement for such ACH Credit Entry. Client acknowledges that ACH Credit Entries are provisional and if such final settlement is not received by CPS, then CPS shall, in addition to any other remedies set forth herein, be entitled to a refund from the Client of the amount credited.

3. Processing of Electronic Payments; Daily Payment. Except as otherwise provided in this Section, CPS will credit to a demand deposit account maintained by CPS (the "Concentration Account") each Electronic Payment received by it on behalf of Client as to which the instructions and information relating to such Electronic Payment delivered or transmitted to CPS by the Bill Payment Processor, Originating Depository Financial Institution or other originator (such instructions and information hereafter collectively referred to as "Receiver Information") indicate that such Electronic Payment is to be credited to the Concentration Account. Except as otherwise provided in this Section, each such Electronic Payment will be credited to the Concentration Account on the later of the payment date/effective entry date specified in the respective Receiver Information, or the date on which such Electronic Payment and the related Receiver Information are received by CPS. Amounts credited by CPS to the Concentration Account on Client's behalf will be paid by ACH Credit Entry or wire transfer to Client at the end of each business day (the "Daily Payment").

In no event shall CPS have responsibility to determine whether any Electronic Payment received by it on Client's behalf has been authorized by the Payor (as defined in Section 5), corresponds to the amount specified by the Payor on any authorization, or is equal to an amount then owed to Client by such Payor.

4. Daily Report. At the end of each business day, CPS will deliver to Client by means of electronic transmission, a report (the "Daily Report") setting forth the Payment Detail Information received by CPS with respect to each Electronic Payment aggregated and delivered to Client in the Daily Payment pursuant to Section 3 above. The Daily Payment shall set forth the same Payment Detail Information as received by CPS with respect to each Electronic Payment included in the Daily Payment, provided that the Daily Report shall, at a minimum, include the name of each individual or entity in respect of whom an Electronic Payment was included in the Daily Payment (each such person a "Payor"), and the amount of the payment received. CPS shall compile each Daily Report from the information contained in the Payment Detail Information supplied to CPS by Bill Payment

Processors, remitting ODFIs or other originators in connection with Electronic Payments, and CPS shall have no liability or responsibility for any inaccurate, incomplete or non-current information provided in the Daily Report which was obtained from such Payment Detail Information.

Client shall promptly review each Daily Report and if it determines that the remitting entity made an error in the amount of any Electronic Payment, Payor's name or other information, Client shall promptly notify the remitting entity.

CPS shall have no duty to deliver to any Payor any statement or advice of receipt of payments.

5. Reversals of Electronic Payments. In the event that CPS receives from any Bill Payment Processor, a reversing entry or any other demand or notice to return any Electronic Payments for any reason, CPS will notify Client of such Debit Entry, reversal or return (collectively, "Reversal") and will transmit to Client notice of the Reversal in the Client's Daily Report. Upon CPS's receipt of any Reversal, CPS will set off the amount of such Reversal against funds due Client in the next Daily Payment.

6. Warranties; Indemnity. Client hereby represents and warrants to CPS that each Electronic Payment received by CPS on Client's behalf has been authorized by the named Payor thereof, and that at the time of receipt by CPS of any Electronic Payment in respect of a Payor and at the times such Electronic Payment is credited to the Concentration Account and paid to Client in the Daily Payment, such authorization has not (a) been revoked or terminated by such Payor or, (b) been terminated as a whole or in part by operation of law. Client continually represents and warrants, so long as Client uses the Service, that it is neither bankrupt nor insolvent, that it has not made an assignment for the benefit of creditors or sought the protection of any bankruptcy, insolvency or similar statute governing creditors' rights generally and does not have a present intent to do so, and that no governmental authority having jurisdiction over it has served a notice of intent to suspend or revoke its operations. Client further continually represents and warrants that (a) it is duly qualified, authorized and licensed to do business and to carry out the obligations under this Agreement, and (b) this Agreement does not violate any law, regulation or agreement to which Client is a party. Client must immediately notify CPS if at any time these representations and warranties are no longer true or will, subject to the passage of time, become untrue.

Client shall indemnify CPS, its parent affiliates, and their officers, directors, employees, attorneys, agents and representatives (each an "Indemnified Person") and hold each of them harmless from and against any and all claims, demands, losses, liabilities, damages, judgments, disputes, charges or expenses (including litigation expenses, costs of investigations and reasonable attorneys' fees and costs) (each a "Claim") resulting directly or indirectly from CPS's entering into or performance under this Agreement, unless the exclusive cause of any such Claim is CPS's failure to perform under this Agreement in accordance with the standards set forth herein. Client will, at its own expense, defend any action or proceeding brought against CPS or any other Indemnified Person in connection with any such Claim.

7. Liability Limitations. Client acknowledges and agrees that, due to the automated nature of many aspects of the Service, the large volume of transactions that may occur, and Client's desire to minimize fees associated with the Service, CPS shall not be liable for any damages or losses of any kind resulting from any unintentional error or omission by CPS in performing the Services in accordance with, or unintentional deviation by CPS from, the terms and conditions of this Agreement or any exhibits, schedules or addenda attached to this Agreement. Notwithstanding the foregoing, CPS shall be liable for any damages or losses arising out of CPS's own negligence or willful misconduct in performing the Services in accordance with or deviation by CPS from, the terms and conditions of this Agreement or any exhibits, schedules or addenda attached to this Agreement. Further, Client acknowledges and agrees that if CPS has failed to perform under this Agreement in accordance with the standards set forth herein, CPS's liability for any damages, losses or other compensation owing to Client shall be limited to interest on the funds at issue at the average "federal funds rate" at the Federal Reserve Financial Institution of New York for the period during which such breach of this Agreement remains uncorrected.

To the maximum extent permitted by law, CPS shall not be liable for any loss, damage, liability or claim arising, directly or indirectly, from: (i) any act or failure to act of a Bill Payment Processor or any other third party; (ii) any event or circumstance beyond the reasonable control of CPS, including any fire, earthquake, natural disaster, war, civil unrest, power surge or failure, governmental act, labor dispute, communications or computer network failure, legal constraint, whether or the possibility or likelihood of any such event was known or contemplated by CPS; or (iii) indirect, special or consequential damages, regardless of the form of action and even if CPS is advised of the possibility of such damages.

8. Service Fees. Client shall compensate CPS for the Service in accordance with the fee schedule attached hereto as Schedule A.

9. Term; Termination. This Agreement shall be effective March 7, 2013, and shall remain in effect for a term of three (3) years, unless and until terminated by either party. Either party may terminate this Agreement, effective ninety (90) days after sending written notice to the other party. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice to the other party in the event of (i) a material breach of this Agreement by the non-terminating party; or (ii) the non-terminating party's inability to meet its debts as they come due, receivership or voluntary or involuntary bankruptcy or the institution of any proceeding therefore, or any assignment for the benefit of the non-terminating party's creditors, or a determination by the terminating party, in its reasonable discretion, that the financial condition of the non-terminating party has become impaired. The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this Agreement for whatever reason.

10. Amendment. This Agreement, including the attached Schedule and the fee schedules, may be amended only by written instrument executed by all parties to this Agreement. In the event that performance of the Service by CPS would result in a violation of any present or future federal or state law, rule, statute, regulation or policy, this Agreement shall be automatically amended to the extent necessary to comply with such law, rule, statute, regulation or policy, and CPS shall have no liability to Client as a result of such amendment.

11. Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or any breach, termination or invalidity hereof, including without limitation any dispute concerning the scope of this arbitration clause, shall, at the election of either CPS or Client, be settled by binding arbitration. The Parties shall mutually agree to the arbitration association and such arbitration will be conducted in accordance with the rules of the selected arbitration association. The arbitration shall be held in Baldwin County, Alabama, and the laws of the State of Alabama shall apply (without giving effect to its conflicts of laws provisions).

12. Waiver of Jury Trial. Client and CPS hereby knowingly, voluntarily, intentionally and irrevocably waive the right either may have to a trial by jury with respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of or relating to the Service, this Agreement, any exhibit, schedule or addenda attached to this Agreement, or any other document, instrument, transaction, course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto. This provision is a material inducement for CPS to enter into this Agreement.

13. Notices. All notices to CPS shall be sent to CPS at: 233 West Nash St, Wilson, NC 27893. All notices to Client shall be sent to Client at Client's last known address on the books and records CPS. All notices shall be given by U.S. mail (first class, postage prepaid, addressed as indicated above), by hand delivery or by facsimile transmission providing transmittal receipt.

14. Entire Agreement. This Agreement, including the attached Schedules and fee schedules from time to time in effect, contains the entire understanding of the parties with respect to the subject matter hereof and may not be changed or waived orally and supersedes any other understanding or agreement with respect to the Service.

15. Assignment. Client shall not assign this Agreement or any rights or duties hereunder to any third party without CPS's prior written consent.

16. Confidentiality. Each party represents, warrants and mutually agrees that all information concerning the other party that comes into its possession as a result of this Agreement and that all communications and transactions contemplated hereby shall be maintained as confidential and shall not be used or divulged to any other party except as necessary to permit the activities contemplated under this Agreement. CPS may advise potential users of the Service that Client has a relationship with CPS. Notwithstanding anything contained herein to the contrary, Client is a governmental entity and shall be entitled to disclose any information in accordance with applicable laws, rules and regulations.

17. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver and will not preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

18. Severability. Any provisions of this Agreement or any addendum, exhibit or schedule to this Agreement, that is deemed invalid or unenforceable in any jurisdiction shall, as to such jurisdiction and to the extent of such invalidity or unenforceability, be deemed replaced with a valid and enforceable provision as similar as possible to the one replaced, and all remaining provisions of this Agreement shall remain in full force and effect.

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

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

In witness, the parties to this Electronic Lockbox Agreement hereby acknowledge and agree to be bound by the terms and conditions contained in this Agreement and in all exhibits, schedules and addenda attached and made a part hereof or otherwise referenced herein.

BALDWIN COUNTY COMMISSION

By: 
Signature

Tucker Dorsey
Print Name

Chairman
Title

312 Courthouse Square
Address (Line 1)

Suite 12
Address (Line 2)

Bay Minette AL 36507
City State Zip

CREATIVE PAYMENT SOLUTIONS, INC.

By: 
Signature

Brian McCollum
Print Name

VP, Sales and Product Development
Title



SCHEDULE A

Service Fees

Client agrees to pay CPS the following service fees:

One time setup fee	\$0.00
Monthly maintenance	\$0.00
Per transaction received	\$0.10
Per swap entered	\$0.00