



## Agenda Item: 6

**Date:** January 12, 2010

**Subject:** Resolution No. 10-04 Authorizing Entry into an Agreement with Westamerica Bank for Remote Deposit Services

**Staff Contact:** Daniel A. Bills, Director of Finance

### **Recommended Board Action:**

Adopt Resolution No. 10-04 authorizing the General Manager, Assistant General Manager, or Director of Finance to enter into an Agreement with Westamerica Bank for Remote Deposit Services.

### **Discussion:**

In 2003 the "Check Clearing for the 21<sup>st</sup> Century Act" (Check 21) was enacted. The law allows the recipient of an original check to create a digital version of the check—called a "substitute check" thereby eliminating the need for further handling of the original check. With the District's IT infrastructure securely in place, staff desires to utilize the enhanced processing capabilities available under the auspices of Check 21. Westamerica Bank (Bank) has offered these services to the District at a cost of \$0.21 per transaction and a \$50.00 monthly service charge. One-time costs include a set-up fee of \$100.00 and the purchase of a check scanner for approximately \$700.00.

Benefits to the District include faster clearing of checks, faster notification of invalid checks, on-line copies of both sides of the check, and elimination of the need for staff to manually photocopy only the front side of each check.

The District would maintain the original check for 60 days after presentation. After 60 days the check would be shredded. Checks processed via the remote deposit service would be just those checks that come into the District office. The lockbox would continue to be utilized for customer payments made through the mail.

Both the resolution and the Agreement have been reviewed by legal counsel.

### **Fiscal Impact:**

Minor additional cost offset in whole or in part by an increase in operational efficiency.

### **Strategic Plan Alignment:**

Agreement with Westamerica Bank for Remote Deposit Services

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Finance – 4.A. Monitor District operations through internal control procedures, documentation and such other processes necessary to ensure effective financial performance.

**RESOLUTION NO. 10-04**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
SACRAMENTO SUBURBAN WATER DISTRICT AUTHORIZING ENTRY INTO AN  
AGREEMENT WITH WESTAMERICA BANK FOR REMOTE DEPOSIT SERVICES**

WHEREAS, Westamerica Bank (“Bank”) is a bank duly authorized under the laws of the State of California and regulated by the State of California Banking Department;

WHEREAS, the Bank manages the District’s banking functions;

WHEREAS, the Bank provides remote deposit services to its customers; and

WHEREAS, the District desires to obtain the remote deposit services provided by the Bank.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Suburban Water District as follows:

1. The District Board of Directors approves and authorizes each person shown below (each an “Authorized Officer”) to execute and deliver on behalf of the District a Remote Deposit Processing Agreement or any such other agreements as the Bank may require, and any renewals or amendments thereof, for remote deposit services (“Agreement”), including such provisions as an Authorized Officer approves (including, but not limited to, provisions relating to security procedures, security interests, and indemnification powers), and once approved or ratified by the Board, the execution of any Agreement by an Authorized Officer shall be conclusive evidence of the District’s approval of the provisions contained in such Agreement. A true and correct copy of the Agreement is attached to and made a part of this Resolution as Exhibit A.
2. The Board authorizes each Authorized Officer, whether jointly or individually, in connection with any Agreement to: (a) initiate, amend, cancel, confirm, or verify the authenticity of instructions to the Bank for remote deposit services, whether given orally, electronically, or by facsimile instructions; and (b) delegate to one or more persons on District staff the performance of any of the foregoing actions and to revoke at any time such authorization as the Authorized Officer deems appropriate.
3. The Board authorizes each Authorized Officer to take such further action and to execute and deliver such instruments, certificates or other documents on behalf of the District as he or she deems necessary or appropriate in connection with any Agreement or the consummation of the transactions contemplated by these resolutions.

Authorized Officers(s): Robert S. Roscoe \_\_\_\_\_  
(Name) (Signature)

Edward H. Formosa  
(Name)

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

Daniel A. Bills  
(Name)

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

- 4. The Board ratifies and confirms for all purposes the execution and delivery of any Agreements with the Bank, any delegations of authority and related designations and any revocations of authorization, and all other actions taken in the name of the District under any such agreements prior to the date of this Resolution.
- 5. The Board acknowledges and agrees that the Bank is authorized to act and rely on this Resolution until it actually receives written notice of its amendment or revocation.

PASSED AND ADOPTED by the Board of Directors of the Sacramento Suburban Water District on this 25th day of January 2010 by the following vote:

AYES:  
NOES:  
ABSENT:

By: \_\_\_\_\_  
Thomas C. Fellenz  
President, Board of Directors  
Sacramento Suburban Water District

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**District Secretary's Certificate**

I, Robert S. Roscoe, General Manager/Secretary of Sacramento Suburban Water District, a special district organized and existing under the laws of the State of California, hereby certify that: (a) the foregoing is a complete, true, and correct copy of the resolution of the Board of Directors of the District, duly and regularly adopted by the Board of Directors of the District in all respects as required by law and the applicable District ordinances, resolutions, rules, and regulations on January 25, 2010, at a meeting at which a quorum of the Board of Directors of the District was present throughout; and (b) that the requisite number of such directors voted in favor of the resolution.

I further certify that the said resolutions remain in full force and effect, have not been amended or revoked, and do not exceed the powers of the District or its Directors.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the District, and affixed the seal of the District, on January 25, 2010.

(SEAL)

By:

\_\_\_\_\_  
Robert S. Roscoe  
General Manager/Secretary  
Sacramento Suburban Water District, a Special  
District of the State of California

The undersigned Sacramento Suburban Water District ("Customer") has agreed to obtain the electronic check processing services (the "Service") offered by Westamerica Bank. By signing this Acceptance, Customer agrees to be bound by the Service documents described below (together, with this Acceptance, collectively, the "ExpressDeposit Agreement") as if it had executed each of such documents and further agrees for the purposes of this Acceptance and the Service, the term "Customer" includes the affiliates and/or subsidiaries of the Customer named below that receive the Service under this Acceptance.

The undersigned acknowledges receipt of this Acceptance and the Service documents described below. Except as expressly modified in the Service documents, the terms of the Service and all deposits made pursuant to the Service documents are also subject to the terms and conditions of the general deposit agreement(s) governing Customer's accounts with Bank.

IN WITNESS WHEREOF, Customer has caused this Acceptance to be executed and delivered by its duly authorized officer as of \_\_\_\_\_, 20\_\_.

Documents included in the acceptance:

- Express Deposit General Terms
- Introduction to Remote Deposit

Initially, the following limits will apply, but may be amended by Bank at its sole discretion upon notice to the Company.

Daily Deposit Limit    \$1,000,000.00  
Per Item Limit         \$600,000.00

- PERSONAL OR SOLE PROPRIETORSHIP ACCOUNT (Owner(s) must sign. If joint account, all account holders must sign.)
- CORPORATION ACCOUNT (Ⓢ and Ⓣ must sign. Ⓢ = Signature of President, or Chairman, or any Vice President   Ⓣ = Signature of Secretary or Treasurer)
- PARTNERSHIP ACCOUNT (All general partners must sign.)

_____ Signature	_____ Print Name and Title	_____ Date
_____ Signature	_____ Print Name and Title	_____ Date
_____ Signature	_____ Print Name and Title	_____ Date
_____ Signature	_____ Print Name and Title	_____ Date

**WESTAMERICA BANK**

_____ Signature	_____ Print Name and Title	_____ Date
_____ Signature	_____ Print Name and Title	_____ Date
_____ Branch Name	_____ Branch Address	

**1. Scope of Service.** Customer may use this Service to convert paper checks and other permissible items into electronic form and transmit the resulting images, together with other necessary information (e.g., MICR line data) (the resulting images and other information referred to herein as "Electronic Items"), to us for deposit to Customer's Account. (For purposes of this ExpressDeposit Agreement, the term "Check" shall mean and refer to the original paper item, and/or the captured images and other information, as the context requires.) The Checks will then either be presented electronically or reprinted as substitute paper checks ("Substitute Checks"). Customer may only use scanners and software that meet Bank's requirements for capturing and transmitting images.

**2. Using the Service.** Customer agrees to: (a) follow Bank's Service instructions for capturing Check images and other information and transmitting the Checks to Bank; (b) view each Check as it is scanned to ensure that the images (front and back) have been captured properly; and (c) provide Bank with the original Check (if it is within Customer's possession) or a sufficient copy of the Check within 5 business days of Bank's request. A "sufficient copy" of a Check is a paper reproduction of an original Check that accurately reflects all of the information on the front and back of the original Check as of the time the image was transmitted to Bank by means of the Service. Customer agrees to retain all information about its imaging and transmitting of Checks for no less than 14 days. In the event of lost, mistaken, incomplete or unusable Checks, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer agrees to cooperate fully with Bank in providing information, including access to such records.

Bank strongly advises Customer to insert (above Customer's endorsement) "For Deposit Only to Account [*insert Customer's account number*]" on the original Check. Once Customer transmits a Check to Bank, Customer will not attempt, directly or indirectly, or allow anyone else to, negotiate, deliver, transfer or deposit the Check, or any copy or image thereof, with Bank or others.

**3. Permissible Items.** Customer may use the Service only to process the deposit of original paper Checks that are payable to it. Unless Bank specifically agrees with Customer otherwise in writing, Customer may not use the Service to deposit: (a) Checks payable to a third party, (b) demand drafts or remotely created checks (i.e., checks lacking the original signature of the drawer); (c) substitute checks (i.e., paper checks created from an electronic image), other than substitute checks that Bank has returned to Customer; (d) Checks that are irregular in any way (e.g., where the numerical and written amounts are different); (e) Checks that have previously been returned unpaid for any reason; (f) Checks that are postdated or more than 6 months old; (g) Checks drawn on a foreign bank or payable in a foreign currency; (h) Checks payable to "Cash"; (i) Checks issued by Customer or any company affiliated with it through common ownership or control; (j) any Check that Customer suspects is fraudulent or not properly authorized; or (k) any Check(s) that exceed the transaction limitation(s) that Bank establishes from time to time. Bank's processing of any of the Checks described above shall not obligate it to continue that practice, and Bank may stop doing so without cause or prior notice. If Customer processes through the Service any previously truncated and reconverted substitute check, it will ensure that the identification of previous truncating and reconverting banks are preserved and that the returned substitute check meets the requirements for legal equivalency under Federal Reserve Regulation CC. Bank may refuse any Check for deposit, with or without cause, or may elect to take a Check on a collection basis only. In addition, Bank may immediately suspend the Service or the processing of any Check if it has reason to believe that there has been a breach in the security of the Service, fraud involving

Customer's accounts with Bank or such Check, or any uncertainty as to the authorization or accuracy of Checks.

**4. Customer's Representations.** Customer makes the following representations and warranties with respect to each Check that it transmits to Bank using the Service: (a) Customer has the legal right to accept the Check for deposit and negotiation, regardless of the name of the payee shown on the Check, (b) the images and other information Customer transmits accurately represent all of the information on the front and back of the original Check, including, without limitation, all endorsements, as of the time it captured the images of the Check; (c) Customer has not taken any action that would obscure, alter or impair the capture or transmission of information on the front or back of the Check or that otherwise may prevent Bank or another institution from capturing or processing such information, and the Check as transmitted contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; (d) all warranties that would otherwise apply to the Check if Customer had deposited the original paper Check with Bank; (e) all encoding, transfer, presentment and other warranties that Bank (or any correspondent bank we use) are deemed to provide to others (e.g., as a reconverting bank) and (f) the Check is a permissible item pursuant to the preceding paragraph 3.

**5. Hours of Operation.** Customer may use the Service to transmit Check information 24 hours a day, 7 days a week, except when Bank's system is unavailable due to needed maintenance or system outages. Deposit information received on or after Bank Service cutoff hour (which Bank may change from time to time) or on a Saturday, Sunday, state banking or federal holiday, may be deemed received by Bank as of the next business day. Bank is not responsible for the unavailability of the Service or any damages that may result from its unavailability for any reason, including Bank's own fault, act or omission. If the Service is not available for any reason or a Check cannot be processed by means of the Service, Customer may deposit its Checks directly at any of Bank's branches.

**6. Rejected Checks.** If the transmitted Check information is incomplete, not a permissible item, or cannot be processed by Bank for any reason, Bank may reject the Check for deposit, notwithstanding any transmission confirmation that Customer receives, and may charge the amount back against any provisional credit to Customer's account. Bank may notify Customer by email if Bank is unable to process or declines to process a Check. Depending on which online service Customer's uses, Customer may confirm its Check deposits online with Bank either on the day of deposit or on the following business day.

**7. Returned Checks and Claims.** If a Check is returned to Bank for any reason, Bank may return it to Customer in the form of a Substitute Check. If Customer decides to reDeposit the returned item, Customer may only reDeposit the Substitute Check; Customer may not reDeposit the original Check. If the drawee of a Check or another third party makes a claim against Bank or seeks a recredit with respect to any Check processed through this Service, Bank may provisionally freeze or hold aside a like amount in Customer's account pending Bank investigation and resolution of the claim.

**8. Indemnification.** CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD BANK AND ITS AFFILIATED COMPANIES HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, LIABILITIES, LOSSES, COSTS, ATTORNEY FEES AND CLAIMS, INCLUDING (WITHOUT LIMITATION) WARRANTY CLAIMS THAT RESULT FROM OR ARISE IN CONNECTION WITH: (A) ANY MISUSE OF THE SERVICE BY CUSTOMER OR ITS EMPLOYEES OR AGENTS; (B) CUSTOMER'S BREACH OF

**THIS EDEPOSIT AGREEMENT, (INCLUDING WITHOUT LIMITATION ANY COVENANT, REPRESENTATION OR WARRANTY); (C) ACTIONS BY THIRD PARTIES (SUCH AS THE INTRODUCTION OF A VIRUS) THAT DELAY, ALTER OR CORRUPT THE TRANSMISSION OF CHECK IMAGES OR INFORMATION TO BANK; (D) BANK'S ACTS OR OMISSIONS THAT ARE IN ACCORDANCE WITH THIS EDEPOSIT AGREEMENT OR CUSTOMER'S INSTRUCTIONS; OR (E) ANY CLAIM BY A RECIPIENT OF A CHECK (IN ELECTRONIC FORM) OR SUBSTITUTE CHECK WITH RESPECT TO (I) THE RECEIPT OF THE ELECTRONIC CHECK OR SUBSTITUTE CHECK INSTEAD OF THE ORIGINAL PAPER CHECK, OR (II) MULTIPLE PAYMENTS WITH RESPECT TO THE SAME ORIGINAL CHECK, BASED ON ANY COMBINATION OF THE ORIGINAL CHECK, ANY CORRESPONDING SUBSTITUTE CHECK(S), AND/OR ANY PAPER OR ELECTRONIC COPY OF EITHER.**

**9. Safekeeping and Destruction of Checks.** It is Customer's responsibility to adopt and maintain commercially reasonable security procedures in connection with the storage and destruction of original Checks and any copies of such Checks. Customer should retain the original paper Checks only for that amount of time that it deems necessary, based on: (a) the risk of fraudulent duplicate presentments of the original Check or any paper or electronic copy thereof, (b) the needs of Customer's business, (c) any requirements of law or regulation affecting Customer's business; and (d) potential claims by recipients of Checks where such recipients incurred a loss due to the receipt of the Check (in electronic form) or Substitute Check instead of the original paper Check Bank suggests that Customer keep the original paper Checks for no more than 45 days after Customer transmits them to Bank. After the end of Customer's retention period, Customer agrees to destroy (by shredding) the original Checks.

**10. Fees.** Customer will pay Bank the service fees as set forth in the Fee Schedule. Bank reserves the right to change fees from time to time upon 30 days prior written notice. Customer will be responsible for and pay all sales, use, VAT and other taxes applicable to this EDEPOSIT Agreement and imposed by any governmental authority, except taxes based on Bank's net income. Bank may charge to any of Customer's accounts with Bank all fees and taxes imposed on Bank that are Customer's responsibility.

**11. Term and Termination.** This ExpressDeposit Agreement will continue until terminated as follows: (a) either party may terminate this ExpressDeposit Agreement upon 30 days prior written notice for any reason, provided that Customer will be responsible for any cancellation fees, as provided in the ExpressDeposit Early Termination Addendum (if attached) if Customer terminates this ExpressDeposit Agreement before the end of the term (if any) indicated in the Fee Schedule; (b) Bank may terminate this EDEPOSIT Agreement upon 10 days prior written notice to Customer in the event it breaches any of its obligations, representations or warranties, if such breach is not cured within such 10 day period; (c) Bank may terminate this ExpressDeposit Agreement immediately, with or without notice to Customer, if Bank discovers any willful misconduct (including bad checks or fraudulent activities) on Customer's part or on the part of any other party with respect to Checks Customer processes through the Service; and (iv) this ExpressDeposit Agreement will terminate upon the closing of all Customer's accounts with Bank in accordance with the applicable account agreement(s).

Any termination will not affect obligations arising prior to termination, such as the obligation to process any Checks, including returned Checks that were in the process of being transmitted or collected prior to the termination date. Upon termination of this ExpressDeposit Agreement, Bank may require Customer to (a) keep Customer's account(s) with Bank open until the later of (i) 60 days

after the date of termination, or (ii) final payment with respect to all processing fees, and (b) maintain funds in such account(s) in an amount and for a period of time that Bank determines in its reasonable discretion to cover any outstanding Checks and Customer's obligations for returned Checks, warranty claims, fees and other obligations. If any such liabilities exceed the amount in the account(s), Customer will pay such excess to Bank immediately upon demand. Customer will also continue to retain Checks and forward Checks to Bank as provided in this ExpressDeposit Agreement.

All Sections of this ExpressDeposit Agreement which are intended by their terms to survive termination of this ExpressDeposit Agreement, including, without limitation, Sections 4, 7, 8, 9, 12, 13 and 15 through 24, will survive any termination of this ExpressDeposit Agreement.

**12. Limitations on Liability.** Bank will not be liable to Customer for any of the following, unless the liability or loss is a result of Bank's breach of this ExpressDeposit Agreement, gross negligence or willful misconduct: (a) any damages, costs or other consequences caused by or related to Bank's actions or omissions that are in accordance with this ExpressDeposit Agreement or Customer's instructions; (b) any unauthorized actions initiated or caused by Customer or its employees or agents; (c) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of its specific obligations under this ExpressDeposit Agreement; (d) any refusal of any financial institution to pay a Check or Substitute Check for any reason, including, without limitation, that the Check or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (e) any other party's lack of access to the Internet or inability to transmit or receive data; (f) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems; (g) actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of an electronic item to Bank; or (h) any of the matters described in Section 8 above.

Bank's liability for errors or omissions with respect to the data that it transmits or prints will be limited to correcting the errors or omissions. Correction will be limited to reprinting and/or representing Checks or Substitute Checks.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EDEPOSIT AGREEMENT, BANK'S AGGREGATE LIABILITY TO CUSTOMER FOR CLAIMS RELATING TO THIS EDEPOSIT AGREEMENT, WHETHER FOR BREACH, NEGLIGENCE OR INFRINGEMENT, IN TORT OR OTHERWISE, AND ARISING DURING ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES CUSTOMER HAS PAID TO BANK FOR SUCH TWELVE MONTH PERIOD. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**CUSTOMER AND BANK BOTH ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY, AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. CUSTOMER AND BANK BOTH ACKNOWLEDGE AND AGREE THAT THE OTHER PARTY WOULD NOT ENTER INTO THIS EDEPOSIT AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.**

**13. Disclaimer. BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND**

