



Colorado Springs

El Paso County

Manitou Springs

Green Mountain Falls

**MEMORANDUM**

**DATE:** September 10, 2008  
**TO:** Pikes Peak Rural Transportation Authority Board  
**FROM:** Beverly Majewski, Financial Manager  
**THROUGH:** Robert MacDonald, Secretary to the Board *RFM*  
**SUBJECT:** MBIA/Wells Fargo Investment Contract Legal Issue

***ACTION REQUESTED: Approval***

During the process of setting up the proper accounts and signing all the documents required to establish an investment account with MBIA some legal issues were raised by the Pikes Peak RTA Attorney concerning the Wells Fargo Safekeeping Agency Agreement and the Online Access Agreement. Copies of both agreements are attached to this memo. The Attorney's concerns regarding these two agreements are as follows:

Safekeeping Agreement

1. Section 6 Safekeeping Agent's Protection: This section requires the PPRTA to indemnify Wells Fargo. We typically recommend that such a provision be deleted because it is our position that such a provision would constitute an unbudgeted contingent liability that is prohibited by the Colorado Constitution. If Wells Fargo presses, I recommend adding "To the extent permitted by law," prior to the indemnification language. Also, a non-waiver of the Governmental Immunity Act should be added to the end of this section.
2. Section 15 Governing Law: This section has the governing law as the State of Minnesota. In the event of a dispute regarding the terms of the Agreement, the laws of the State of Minnesota would be used and would need to be researched. Suggest revising this section to be the laws governed by the State of Colorado.

## On-Line Commercial Electronic Office Agreement

1. Section 6 Limitation on Liability: This section provides a significant limitation on liability for Wells Fargo. Suggest deleting this provision. If this provision remains, the PPRTA should be aware of the limitation on Wells Fargo's liabilities.
2. Section 11 Governing Law: This section has the governing law as the State of California. In the event of a dispute regarding the terms of the Agreement, the laws of the State of California would be used and would need to be researched. Suggest revising this section to be the laws governed by the State of Colorado.

Wells Fargo declined to change the above agreements to satisfy our concerns.

After discussing this issue with the Board Chair and Vice Chair they recommended we compare the City of Colorado Springs Wells Fargo Agreements to the ones we received and have a discussion at the Board meeting to determine how to proceed. Also attached to this memo are the City's agreements. The City's Online Access Agreement is identical to the one sent to the RTA. However, The City's and RTA's Safekeeping Agency Agreements are different. The difference between the two Safekeeping Agreements is that the version entered into by the City (revised November 2003) has since been revised into the present January 2007 version. This updated version includes all of the previous version's provisions plus additional Services of the Safekeeping Agent provisions, additional Powers of the Safekeeping Agent provisions, a Shareholder Communications Disclosure provision, a Securities Advices provision and other standard form contract language.

The Pikes Peak RTA attorney will be available to discuss the issues.

### Recommendation to the Board

The Pikes Peak RTA staff would like the Board to discuss the issues and recommend a course of action for the staff.

### Attachments:

1. Pikes Peak RTA Wells Fargo Safekeeping Agency Agreement
2. Pikes Peak RTA Online Access Agreement
3. City of Colorado Springs Wells Fargo Safekeeping Agreement
4. City of Colorado Springs Online Access Agreement

# WELLS FARGO BANK, N.A. SAFEKEEPING AGENCY AGREEMENT

WELLS  
FARGO

This Agreement is made effective as of the 31st day of July, 2008, by and between Wells Fargo Bank, N.A. ("Wells Fargo"), and The Pikes Peak Rural Transportation Authority (the "Customer") in regard to the safekeeping of certain securities.

Customer wishes to appoint a safekeeping agent to hold certain securities of the Customer pursuant to the direction of the Customer in connection with certain investment account services provided by Wells Fargo Brokerage Services, LLC, an affiliate of Wells Fargo. Therefore, with respect to each account or accounts opened at Wells Fargo for this purpose on behalf of the Customer, the parties hereto agree as follows:

1. Appointment and Acceptance. Customer hereby appoints Wells Fargo, and Wells Fargo hereby accepts its appointment, as safekeeping agent ("Safekeeping Agent") of certain securities of the Customer (the "Account"). The Account shall consist of those assets that the Customer notifies Wells Fargo shall be included in the Account, together with the income, proceeds and profits thereon. Wells Fargo will act as the Safekeeping Agent for the purposes, to the extent, in the manner, and within the limitations set forth in this Agreement. All Account(s) opened for the Customer at Wells Fargo shall be subject to and governed by this Agreement.
2. Services of Safekeeping Agent. Wells Fargo shall:
  - 2.1 Open and maintain a safekeeping account in the name of the Customer and hold in such account all cash and securities initially deposited plus any additional cash and securities that may be received from Customer or pursuant to the direction of the Customer from time to time for deposit to the Account.
  - 2.2 Act upon written direction from the Customer or from investment managers or other agents duly appointed in writing by the Customer.
  - 2.3 Settle securities transactions for the Account with brokers or others in accordance with the written direction of the Customer or duly appointed agent.
  - 2.4 Be responsible for the collection of all investment income relating to the assets in the Account and provide for the daily investment thereof.
  - 2.5 Present for payment all maturing securities or any securities called for redemption and collect proceeds therefrom.
  - 2.6 Provide for the investment of cash balances in money market mutual funds, through an automated sweep or manual transaction, as authorized and directed by the Customer or duly appointed agent in the Addendum – Money Market Mutual Funds – Investment Direction and Acknowledgment ("Addendum") attached hereto.
  - 2.7 Deliver cash or securities as the Customer or duly appointed agent may direct.
  - 2.8 Deliver proxy and other materials for securities held in the Account, including offers to tender or exchange such securities, to the Customer or duly appointed agent. Wells Fargo shall have no responsibility to vote proxies or exercise any rights incident to ownership of the securities held in the Account.

*Safekeeping Agency Agreement Addendum*

- 2.9 Receive and hold directly, by nominee or through third party depositories for the account of Customer subject to this Agreement, securities that are delivered to it for the account of Customer, making payment therefore, if required, in accordance with Customer's written instructions.
  - 2.10 Provide to Customer a summary of Account activity, including any security transactions effected by Wells Fargo, and a summary of settled security positions held in safekeeping on a monthly basis or, to the extent no transactions occur in the Account, on a quarterly basis.
  - 2.11 Use its best efforts to identify and timely process bond calls and corporate reorganizations reported by the Federal Reserve and the Depository Trust Company relating to securities it is holding for Customer. Safekeeping Agent may amend its list of sources of bond call and reorganization information upon thirty (30) days prior written notice to Customer. Safekeeping Agent shall not be responsible in any manner whatsoever, and shall not have any liability to Customer whatsoever, for any losses incurred by Customer in connection with bond calls or corporate reorganizations if notices are published in other sources. Safekeeping Agent will process bond calls and corporate reorganizations within a reasonable time after receipt of written notice provided to Safekeeping Agent.
3. Powers of the Safekeeping Agent. The Safekeeping Agent is authorized and empowered to:
- 3.1 Hold assets in the name of the nominee selected by the Safekeeping Agent or such other nominee name as the Customer or its agent may direct in writing.
  - 3.2 Employ agents other than persons on its regular payroll and delegate to them such ministerial and other non-discretionary duties as it sees fit and to rely upon such information furnished by such agents.
  - 3.3 Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any other instruments that may be necessary or appropriate to carry out the safekeeping duties and powers.
  - 3.4 Hold assets in shares of a registered investment company (mutual fund), which may be a mutual fund with respect to which Wells Fargo or its affiliates provide investment advisory or other services and receive compensation therefore, as disclosed in the prospectus and/or the Addendum attached hereto.
4. Shareholder Communications Disclosure. Pursuant to the Securities and Exchange Commission's Beneficial Owner Information Disclosure Rule #14b-2 ("Rule"), the Customer authorizes Wells Fargo to provide the Customer's name, address and share position to any issuers of securities held by Wells Fargo in its nominee name for the benefit of the Customer. It is understood that the Rule prohibits the requesting issuer from using Customer's name and address for any purpose other than corporate communications.
5. Securities Advices. Customer understands and acknowledges its right to receive notification of details on each security transaction Wells Fargo effects on its behalf under Federal Regulations 12 CFR §§ 12.4 and 12.5. Customer waives this right, with the understanding that details of securities trades will be reflected in the standard summary of account activity provided periodically to the Customer.

6. Safekeeping Agent's Protection. Customer agrees to reimburse, indemnify and hold Wells Fargo harmless from and against any and all liability, loss, claim, damage or expense, including taxes, other governmental charges, and reasonable legal fees which may be imposed, assessed or incurred against the Account or against Wells Fargo by reason of its acting as safekeeping agent and following directions as contemplated by this Agreement. This indemnity does not extend to any liability, loss, claim, damage or expense arising from the alleged negligence, malfeasance or violation of applicable law or regulation or fraud or alleged fraud on the part of Wells Fargo, its officers, agents or employees. Wells Fargo, its affiliates, and their officers, directors, employees or agents shall not be liable to Customer for any actions or failures to act or for any errors of judgments made in good faith.
7. Fees. Wells Fargo shall be paid reasonable compensation and fees for its services under this Agreement in accordance with its current fee schedule that has been provided to Customer. These fees are subject to change on thirty (30) days prior written notice. Such compensation and fees may be paid from the Account if not paid by the Customer within thirty (30) days after Wells Fargo mails a written invoice to the Customer.
8. No SIPC Insurance. Customer understands that the Securities Investor Protection Corporation (SIPC) does not insure securities held in the safekeeping Account that are subject to this Agreement.
9. Amendment and Termination. Wells Fargo may amend this Agreement at any time in any respect upon notice to Customer. The Agreement may be terminated at any time by either Wells Fargo or Customer upon thirty (30) days written notice to the other or as otherwise agreed by the parties. As soon as administratively feasible following the effective date of such termination, Wells Fargo shall deliver the assets of the Account to the Customer or successor safekeeping agent appointed by the Customer and shall have no further responsibilities for the assets in the Account.
10. Authorized Persons. The Customer shall furnish to Wells Fargo a written certification of the names and specimen signatures of individuals authorized to communicate with Wells Fargo on behalf of the Customer. Wells Fargo shall be entitled to rely on the oral direction as confirmed in writing or written direction of such persons.
11. Notices. Notice to Wells Fargo shall be directed as follows:

Wells Fargo Bank, N.A.  
Institutional Trust - Risk Management  
Northstar East – 5<sup>th</sup> Floor, MAC# N9303-054  
608 Second Avenue South  
Minneapolis, MN 55479  
**Fax:** (612) 667-6321

Notice to Customer shall be directed and mailed to the address on record for their account.

12. Severability. If any provisions of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provisions had not been included.

13. Assignment. No assignment of this Agreement shall be made by either party without written consent of the other.
14. Section Headings. The headings of sections in this Agreement are inserted for convenience and reference and shall not be deemed to be a part of or used in the construction of this Agreement.
15. Governing Law. This Agreement and all transactions hereunder shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Minnesota.
16. Successors and Assigns. This Agreement shall bind the successors and assigns of Trustee and shall bind the successors and assigns of Wells Fargo.
17. Entire Agreement. This agreement shall constitute the entire Agreement between the parties and shall supersede any and all prior oral or written representations, conditions, warranties, understanding, proposals, or agreements between the parties regarding the services to be provided hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**Company name:** The Pikes Peak Rural Transportation Authority

By Robert F. MacDonald (signature)

**Title** Board Secretary

**Print name:** Robert F. MacDonald

**Safekeeping Agent:** WELLS FARGO BANK, N.A.

By: Sean O'Farrell

**Title:** Assistant Vice President

**Print name:** Sean O'Farrell

AFTER COMPLETING, PLEASE RETURN ALL PAGES OF THIS AGREEMENT

**SAFEKEEPING AGENCY AGREEMENT  
ADDENDUM TO SAFEKEEPING AGENCY AGREEMENT  
MONEY MARKET MUTUAL FUNDS  
INVESTMENT DIRECTION AND ACKNOWLEDGEMENT**

**WELLS  
FARGO**

Wells Fargo Bank, N.A. ("Wells Fargo"), as Safekeeping Agent, provides for the investment of cash balances through an automated daily sweep or through individual transactions as directed by an authorized representative of the Account. To facilitate this service, Wells Fargo has agreements with selected mutual fund companies, who make their money market mutual funds available for Wells Fargo safekeeping accounts.

Automated Cash Investment Direction.

As authorized representative of the Account, you, the Customer may direct Wells Fargo to systematically invest cash held in the Account, awaiting permanent investment or distribution, in money market mutual fund(s) as evidenced by your investment account application executed with Wells Fargo Brokerage Services, LLC ("WFBS"), an affiliate of Wells Fargo. Wells Fargo shall continue to automatically invest cash in this designated fund(s) until it receives direction from an authorized representative of the Account to invest cash in another investment vehicle.

Non-Automated Cash Investments.

In addition to automated cash investment, it is acknowledged that an authorized representative of the Account can direct Wells Fargo to invest available cash positions into one or more of the money market mutual funds made available by Wells Fargo, including the same fund used for the automated cash investment. Individual cash investment directions shall be provided to Wells Fargo in writing or electronically or directed through a representative of WFBS, who will perform the directed transaction on behalf of the authorized representative of the Account.

Disclosure of Money Market Mutual Fund Service Fees.

For non-Wells Fargo money market mutual funds, Wells Fargo and/or its affiliates may receive fees from the fund for providing certain shareholder and administrative services. The amount of these fees may differ depending on the fund but will not exceed .25 of 1% calculated on an annual basis. Specific fee information is available upon request by contacting a Wells Fargo representative.

For Wells Fargo Advantage money market mutual funds, fees payable to Wells Fargo or its affiliates by the Wells Fargo Advantage Funds are described in the Organization and Management of the Funds and Summary of Expenses sections of the applicable Fund's prospectus, and in the Management section of the Statement of Additional Information. Wells Fargo receives no additional fees from its money market mutual funds with regard to its safekeeping accounts. The Statement of Additional Information, which the applicable prospectus incorporates, is available upon request by calling Wells Fargo Funds Investor Services at 1-800-222-8222.

In addition to the money market mutual fund fees received by Wells Fargo for the services it provides as Safekeeping Agent, WFBS may receive fees for the services it performs as broker with regard to the purchase of non-Wells Fargo money market mutual funds by the Customer. The amount of these fees may differ depending on the fund but will not exceed .10 of 1% calculated on an annual basis. Specific fee information is available upon request by contacting a Wells Fargo or WFBS representative.

All fees paid to Wells Fargo or WFBS are a part of the fees already paid by the applicable funds' shareholders as disclosed in the applicable prospectuses and do not represent an additional expense for investing in the funds. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Safekeeping Agency Agreement.





**COMMERCIAL ELECTRONIC OFFICE (CEO)**  
**ONLINE ACCESS AGREEMENT**

You, the customer named below, have asked to be allowed to enter the Commercial Electronic Office (the "CEO") of Wells Fargo Bank, N. A. ("Wells Fargo") at Wells Fargo's website so that you can use certain financial services (the "Services") of Wells Fargo or its affiliates (the "Affiliates") online. The general terms and conditions applicable to your use of the CEO are contained in this Online Access Agreement (the "Agreement") which you must sign and return to Wells Fargo before you are allowed access to the CEO. Persons entering the CEO for you (the "Users") must also accept the Terms of Use for the CEO. Finally, before you are able to use a Service through the CEO you must sign or accept the applications, agreements, instruments, rules, standards, policies, instructions, and other documents and forms required to use the Service (the "Service Forms").

1. **USING THE CEO.** You agree to use the CEO only as provided in (a) this Agreement, (b) the rules, procedures, standards, requirements, and policies made applicable to the CEO from time to time by Wells Fargo and the Affiliates, (c) any communications, instructions, terms, or conditions appearing at the CEO, and (d) any state or federal laws or regulations applicable to the CEO
2. **ID CODES AND PASSWORDS.**
  - (a) Each User will be given an ID code and a password by Wells Fargo to be used when the User first enters the CEO. Wells Fargo will also assign a company ID code to you for use each time a User enters the CEO. Although your company ID code and the ID codes for each User will remain the same for each entry into the CEO, the password assigned by Wells Fargo to each User must be changed to a new User-selected password when each User first enters the CEO. Wells Fargo will not know the new passwords or any subsequent passwords selected by the Users.
  - (b) You will be able to manage and control who in your company has access to the CEO and the Services by the ID codes and passwords. It is your responsibility to ensure that your company ID code and the User ID codes and passwords are known to, and used only by, persons who have been properly authorized by you to access the CEO and use the Services through the CEO.
  - (c) **FAILURE TO PROTECT ID CODES AND PASSWORDS MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICES, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICES, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, WELLS FARGO AND THE AFFILIATES, OR (4) ACCESS YOUR ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE CEO, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH YOUR ID CODES AND PASSWORDS WILL BE DEEMED TO BE ENTRIES, COMMUNICATIONS, AND USES AUTHORIZED BY YOU AND BE BINDING UPON YOU. YOU ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL ID CODES AND PASSWORDS.** You acknowledge the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) notifying Wells Fargo immediately when any new person becomes a User or when any existing User no longer is to be a User, and (b) not keeping, in any form or in any place, lists of ID codes or passwords.
  - (d) You agree to notify Wells Fargo immediately when you become aware of any loss or theft of, or any unauthorized use of, any ID codes or passwords. You also agree to notify Wells Fargo immediately when you become aware of any unauthorized entry into the CEO.
3. **FINANCIAL INFORMATION.** Financial market data, quotes, news, research, and other financial information (collectively, "Financial Information") developed by, and transmitted to, Wells Fargo by third parties will be available at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Wells Fargo or any Affiliate that any particular Service or transaction is suitable or appropriate for you or that you should receive or in any way use any Service. Neither Wells Fargo nor any Affiliate guarantees the accuracy, completeness, timeliness or correct sequencing of any Financial Information, nor are they in any way responsible for the actions or omissions of the third parties developing or transmitting Financial Information or for any decision made or action taken by you in reliance upon any Financial Information.
4. **USE OF CERTAIN SOFTWARE TO ACCESS THE CEO.** In using the CEO you will be sending financial and other data as well as electronic messages directly to Wells Fargo and the Affiliates through the Internet. You acknowledge that when the Internet, or any other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, you agree to transmit and receive data and messages through the CEO using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol- or other protocols required by, or acceptable to, Wells Fargo, and to follow the Wells Fargo log-on procedures that support such protocols.

5. **DISCLAIMERS.** Neither Wells Fargo nor any Affiliate will be your advisor or fiduciary with respect to this Agreement or any Service. **NEITHER WELLS FARGO NOR ANY AFFILIATE MAKES ANY EXPRESS OR IMPLIED WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CEO, THE FINANCIAL INFORMATION, OR THE SERVICES, AND NEITHER WELLS FARGO NOR ANY OF THE AFFILIATES MAKES ANY OTHER WARRANTY, PROMISE, COMMITMENT, GUARANTEE, OR REPRESENTATION WITH RESPECT TO THE CEO, THE FINANCIAL INFORMATION, OR THE SERVICES EXCEPT THOSE WARRANTIES, PROMISES, COMMITMENTS, GUARANTEES, OR REPRESENTATIONS SPECIFICALLY STATED IN THIS AGREEMENT OR THE SERVICE FORMS.**

6. **LIMITATION OF LIABILITY.** Neither Wells Fargo nor any Affiliate will be liable to you for any direct or indirect damages or losses suffered or incurred by you in connection with the CEO, any of the Services, any Financial Information, any other information or data you receive through the CEO, or any failure to provide, or delay in providing, access to the CEO, any Service, or any Financial Information, except to the extent any Service Form specifically provides otherwise and except to the extent such damages or losses arise directly from the gross negligence or willful misconduct of Wells Fargo or an Affiliate. Notwithstanding any provision of this Agreement or any Service Form to the contrary, **IN NO EVENT WILL WELLS FARGO OR ANY AFFILIATE HAVE LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR LOSSES WHETHER ANY CLAIM FOR SUCH DAMAGES OR LOSSES IS BASED ON TORT OR CONTRACT OR WHETHER WELLS FARGO OR ANY AFFILIATE KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCE.**

7. **RESTRICTING OR TERMINATING ACCESS TO THE CEO.** In addition to, and not in substitution for, any provision in this Agreement or the Service Forms, you understand and agree that neither Wells Fargo nor any Affiliate will in any way be obligated to permit Users access to any Financial Information or the use of any Service through the CEO if (a) such use or access is not in accordance with any term or condition applicable to the Service or the CEO or to the information to be accessed, (b) such use or access is not permitted by any state or federal law or regulation, (c) Wells Fargo or an Affiliate has reasonable cause to believe that such use or access may not be authorized by you or any third person whose authorization Wells Fargo or such Affiliate believes is necessary for such use or access, or (d) Wells Fargo or an Affiliate has reasonable cause to deny such use or access for your protection or the protection of Wells Fargo or any Affiliate. If any Service cannot be used through the CEO, Wells Fargo will make reasonable efforts for such Service to be used by other means. Wells Fargo reserves the right in its sole discretion at any time upon 60 calendar days written notice to you, or upon immediate written notice to you if you have violated any provision of this Agreement or any Service, to terminate this Agreement and your access to the CEO or to terminate your use of any or all the Services through the CEO. Neither Wells Fargo nor any Affiliate shall have liability to you for any losses or damages you may suffer or incur as a result of any such termination.

8. **WAIVERS.** Neither Wells Fargo nor any Affiliate shall be deemed to have waived any of its rights or powers under this Agreement unless such waiver is in writing and such writing is signed by an authorized representative of Wells Fargo or such Affiliate. No delay, extension of time, compromise, or other indulgence which may occur or be granted from time to time by Wells Fargo or any Affiliate under this Agreement shall impair the rights or powers of Wells Fargo or any Affiliate under this Agreement.

9. **AMENDMENTS.** Wells Fargo may amend this Agreement or add to this Agreement at any time upon written notice to you. You will be deemed to have accepted an amendment of, or an addition to, this Agreement if any of your Users use any Service through the CEO more than 30 calendar days after you receive notice of such amendment or addition.

10. **ASSIGNMENT.** Except for transfers of your rights, duties, and obligations to Wells Fargo and the Affiliates under this Agreement by operation of law, such rights, duties and obligations may not be assigned by you without the prior written consent of Wells Fargo and the appropriate Affiliate. Except for transfers of Wells Fargo's or any Affiliate's rights, duties and obligations to you under this Agreement to another Affiliate or by operation of law, such rights, duties and obligations may not be assigned by Wells Fargo or any Affiliate without your prior written consent.

11. **GOVERNING LAW.** Your rights and obligations and the rights and obligations of Wells Fargo and the Affiliates under or in connection with this Agreement will be governed by and be subject to the laws of the State of California.

12. **SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of such provision in other jurisdictions, and of the remaining provisions of this Agreement in all jurisdictions, shall not in any way be affected or impaired.

13. **ENTIRE AGREEMENT.** This Agreement and the Terms of Use for the CEO set forth the entire and only agreement among you, Wells Fargo and the Affiliates and between you and Wells Fargo and between you and each Affiliate with respect to your use of the CEO. Any prior agreements, representations, statements, negotiations, undertakings, promises or conditions, whether oral or written, with respect to the CEO which conflict with the provisions in this Agreement are superseded by this Agreement.

This Agreement is signed below by your duly authorized officer or officers on the dated stated below.

Date: \_\_\_\_\_

Robert F. MacDonald  
[Customer Name]

By: Robert F. MacDonald  
Title: PPRTA Board Secretary

Customer Account Number 10155760

Safekeeping

## Safekeeping Agreement

This Agreement is between City of Colorado Springs (herein referred to as the "Customer") and Wells Fargo Bank, National Association (herein referred to as the "Safekeeping Agent").

It is Agreed that:

1. *The Safekeeping Agent Will:*
  - a) Act in accordance with instructions from Customer with respect to transactions affecting cash or securities.
  - b) Receive and hold directly, by nominee or through third party depositories for the account of Customer subject to this Agreement and subject to Customer's written instructions, securities that are delivered to it for the account of Customer, making payment therefore, if required, in accordance with Customer's written instructions.
  - c) Deliver securities to brokers or others upon and in accordance with Customer's written direction against receipt of sums payable thereon or against other proper delivery receipts; remit such sums as directed in writing by Customer.
  - d) Deliver securities to various paying agents upon and in accordance with Customer's written direction for registration.
  - e) Issue and deliver to Customer appropriate advices for all transactions subject to this Agreement.
  - f) Provide to Customer a summary of settled security positions, held in Safekeeping on a monthly basis or at Customer's request.
  - g) Receive payments of dividends and interest and detach from securities and present for payment all maturing coupons, remit the proceeds thereof and of any other income payments received by it for the account of Customer as directed by Customer and furnish appropriate advices to Customer showing the source of such payments.
  - h) Present for payment all securities for redemption (whether by prepayment or maturity), remit proceeds thereof and of any other principal payments received by it for the account of Customer as directed by Customer and furnish appropriate advices to Customer showing the source of such payments.
  - i) Use its best efforts to identify and timely process bond calls and corporate reorganizations reported by the Federal Reserve and the Depository Trust Company relating to securities it is holding for Customer. Safekeeping Agent may amend its list of sources of bond call and reorganization information upon thirty (30) days prior written notice to Customer. Safekeeping Agent shall not be responsible in any manner whatsoever, and shall not have any liability to Customer whatsoever, for any losses incurred by Customer in connection with bond calls or corporate reorganizations if notices are published in other sources. Safekeeping Agent will process bond calls and corporate reorganizations within a reasonable time after receipt of written notice provided to Safekeeping Agent.

2. Customer agrees to indemnify and hold Safekeeping Agent harmless from and against any and all losses, claims and expenses (including attorney's fees) which may be imposed or incurred by Safekeeping Agent in connection with its appointment under this agreement, excluding, however, any loss, claim or expense occasioned by the negligence or willful misconduct of Safekeeping Agent or any of its employees.
3. Customer shall reimburse Safekeeping Agent for its out-of-pocket expenses necessarily reasonable hereunder. Safekeeping Agent shall receive compensation for its services under this Agreement. Safekeeping Agent has provided Customer with its current fee schedule. These fees are subject to change on thirty (30) days prior written notice.
4. Customer shall file with Safekeeping Agent (and from time to time whenever there are changes) copies of the instructions designating the person or persons authorized to act for and on behalf of Customer together with specimen signature of such person or persons. Safekeeping Agent shall be protected in relying upon instructions signed by the person as were designated in the most recent instrument received by it.
5. Customer understands that the Securities Investor Protection Corporation does not insure securities held in a bank safekeeping account.
6. This Agreement may be terminated upon thirty (30) days prior written notice by either party to the other which period of notice must be waived in whole or in part by the other party. Upon termination, Safekeeping Agent shall deliver all securities in accordance with Customer's written direction. Safekeeping Agent may require payment to it of any balances, which may be owing to it by Customer before delivering securities held hereunder.
7. All notices and other communications from Safekeeping Agent shall be addressed or delivered to Customer as follows:

City of Colorado Springs  
Finance Office Suite 202  
P O Box 1575  
Colorado Springs, CO 80901

All notices and other communications from Customer to Safekeeping Agent shall be addressed to:

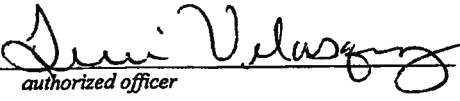
Wells Fargo Bank, N.A.  
MAC N9303-054  
C/O WFBS Account Services  
608 Second Avenue South, 5<sup>th</sup> Floor  
Minneapolis, MN 55479

Unless and until Safekeeping Agent in writing directs Customer otherwise, the last such written direction shall be controlling.

*IN TESTIMONY WHEREOF*, Customer and Safekeeping Agent have caused this Agreement to be executed as of the date indicated below.

City of Colorado Springs  
*account holder*

**Wells Fargo Bank, N.A.**

By:   
*authorized officer*

By:   
*authorized officer*

Its: Finance Director  
*title*

Its: V.P.  
*title*

Date: 8/15/05





## COMMERCIAL ELECTRONIC OFFICE (CEO)

### ONLINE ACCESS AGREEMENT

You, the customer named below, have asked to be allowed to enter the Commercial Electronic Office (the "CEO") of Wells Fargo Bank, N. A. ("Wells Fargo") at Wells Fargo's website so that you can use certain financial services (the "Services") of Wells Fargo or its affiliates (the "Affiliates") online. The general terms and conditions applicable to your use of the CEO are contained in this Online Access Agreement (the "Agreement") which you must sign and return to Wells Fargo before you are allowed access to the CEO. Persons entering the CEO for you (the "Users") must also accept the Terms of Use for the CEO. Finally, before you are able to use a Service through the CEO you must sign or accept the applications, agreements, instruments, rules, standards, policies, instructions, and other documents and forms required to use the Service (the "Service Forms").

1. **USING THE CEO.** You agree to use the CEO only as provided in (a) this Agreement, (b) the rules, procedures, standards, requirements, and policies made applicable to the CEO from time to time by Wells Fargo and the Affiliates, (c) any communications, instructions, terms, or conditions appearing at the CEO, and (d) any state or federal laws or regulations applicable to the CEO

2. **ID CODES AND PASSWORDS.**

(a) Each User will be given an ID code and a password by Wells Fargo to be used when the User first enters the CEO. Wells Fargo will also assign a company ID code to you for use each time a User enters the CEO. Although your company ID code and the ID codes for each User will remain the same for each entry into the CEO, the password assigned by Wells Fargo to each User must be changed to a new User-selected password when each User first enters the CEO. Wells Fargo will not know the new passwords or any subsequent passwords selected by the Users.

(b) You will be able to manage and control who in your company has access to the CEO and the Services by the ID codes and passwords. It is your responsibility to ensure that your company ID code and the User ID codes and passwords are known to, and used only by, persons who have been properly authorized by you to access the CEO and use the Services through the CEO.

(c) **FAILURE TO PROTECT ID CODES AND PASSWORDS MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICES, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICES, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, WELLS FARGO AND THE AFFILIATES, OR (4) ACCESS YOUR ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE CEO, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH YOUR ID CODES AND PASSWORDS WILL BE DEEMED TO BE ENTRIES, COMMUNICATIONS, AND USES AUTHORIZED BY YOU AND BE BINDING UPON YOU. YOU ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL ID CODES AND PASSWORDS.** You acknowledge the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) notifying Wells Fargo immediately when any new person becomes a User or when any existing User no longer is to be a User, and (b) not keeping, in any form or in any place, lists of ID codes or passwords.

(d) You agree to notify Wells Fargo immediately when you become aware of any loss or theft of, or any unauthorized use of, any ID codes or passwords. You also agree to notify Wells Fargo immediately when you become aware of any unauthorized entry into the CEO.

3. **FINANCIAL INFORMATION.** Financial market data, quotes, news, research, and other financial information (collectively, "Financial Information") developed by, and transmitted to, Wells Fargo by third parties will be available at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Wells Fargo or any Affiliate that any particular Service or transaction is suitable or appropriate for you or that you should receive or in any way use any Service. Neither Wells Fargo nor any Affiliate guarantees the accuracy, completeness, timeliness or correct sequencing of any Financial Information, nor are they in any way responsible for the actions or omissions of the third parties developing or transmitting Financial Information or for any decision made or action taken by you in reliance upon any Financial Information.

4. **USE OF CERTAIN SOFTWARE TO ACCESS THE CEO.** In using the CEO you will be sending financial and other data as well as electronic messages directly to Wells Fargo and the Affiliates through the Internet. You acknowledge that when the Internet, or any other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, you agree to transmit and receive data and messages through the CEO using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol- or other protocols required by, or acceptable to, Wells Fargo, and to follow the Wells Fargo log-on procedures that support such protocols.

5. **DISCLAIMERS.** Neither Wells Fargo nor any Affiliate will be your advisor or fiduciary with respect to this Agreement or any Service. **NEITHER WELLS FARGO NOR ANY AFFILIATE MAKES ANY EXPRESS OR IMPLIED WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CEO, THE FINANCIAL INFORMATION, OR THE SERVICES, AND NEITHER WELLS FARGO NOR ANY OF THE AFFILIATES MAKES ANY OTHER WARRANTY, PROMISE, COMMITMENT, GUARANTEE, OR REPRESENTATION WITH RESPECT TO THE CEO, THE FINANCIAL INFORMATION, OR THE SERVICES EXCEPT THOSE WARRANTIES, PROMISES, COMMITMENTS, GUARANTEES, OR REPRESENTATIONS SPECIFICALLY STATED IN THIS AGREEMENT OR THE SERVICE FORMS.**

6. **LIMITATION OF LIABILITY.** Neither Wells Fargo nor any Affiliate will be liable to you for any direct or indirect damages or losses suffered or incurred by you in connection with the CEO, any of the Services, any Financial Information, any other information or data you receive through the CEO, or any failure to provide, or delay in providing, access to the CEO, any Service, or any Financial Information, except to the extent any Service Form specifically provides otherwise and except to the extent such damages or losses arise directly from the gross negligence or willful misconduct of Wells Fargo or an Affiliate. Notwithstanding any provision of this Agreement or any Service Form to the contrary, **IN NO EVENT WILL WELLS FARGO OR ANY AFFILIATE HAVE LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR LOSSES WHETHER ANY CLAIM FOR SUCH DAMAGES OR LOSSES IS BASED ON TORT OR CONTRACT OR WHETHER WELLS FARGO OR ANY AFFILIATE KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCE.**

7. **RESTRICTING OR TERMINATING ACCESS TO THE CEO.** In addition to, and not in substitution for, any provision in this Agreement or the Service Forms, you understand and agree that neither Wells Fargo nor any Affiliate will in any way be obligated to permit Users access to any Financial Information or the use of any Service through the CEO if (a) such use or access is not in accordance with any term or condition applicable to the Service or the CEO or to the information to be accessed, (b) such use or access is not permitted by any state or federal law or regulation, (c) Wells Fargo or an Affiliate has reasonable cause to believe that such use or access may not be authorized by you or any third person whose authorization Wells Fargo or such Affiliate believes is necessary for such use or access, or (d) Wells Fargo or an Affiliate has reasonable cause to deny such use or access for your protection or the protection of Wells Fargo or any Affiliate. If any Service cannot be used through the CEO, Wells Fargo will make reasonable efforts for such Service to be used by other means. Wells Fargo reserves the right in its sole discretion at any time upon 60 calendar days written notice to you, or upon immediate written notice to you if you have violated any provision of this Agreement or any Service, to terminate this Agreement and your access to the CEO or to terminate your use of any or all the Services through the CEO. Neither Wells Fargo nor any Affiliate shall have liability to you for any losses or damages you may suffer or incur as a result of any such termination.

8. **WAIVERS.** Neither Wells Fargo nor any Affiliate shall be deemed to have waived any of its rights or powers under this Agreement unless such waiver is in writing and such writing is signed by an authorized representative of Wells Fargo or such Affiliate. No delay, extension of time, compromise, or other indulgence which may occur or be granted from time to time by Wells Fargo or any Affiliate under this Agreement shall impair the rights or powers of Wells Fargo or any Affiliate under this Agreement.

9. **AMENDMENTS.** Wells Fargo may amend this Agreement or add to this Agreement at any time upon written notice to you. You will be deemed to have accepted an amendment of, or an addition to, this Agreement if any of your Users use any Service through the CEO more than 30 calendar days after you receive notice of such amendment or addition.

10. **ASSIGNMENT.** Except for transfers of your rights, duties, and obligations to Wells Fargo and the Affiliates under this Agreement by operation of law, such rights, duties and obligations may not be assigned by you without the prior written consent of Wells Fargo and the appropriate Affiliate. Except for transfers of Wells Fargo's or any Affiliate's rights, duties and obligations to you under this Agreement to another Affiliate or by operation of law, such rights, duties and obligations may not be assigned by Wells Fargo or any Affiliate without your prior written consent.

11. **GOVERNING LAW.** Your rights and obligations and the rights and obligations of Wells Fargo and the Affiliates under or in connection with this Agreement will be governed by and be subject to the laws of the State of California.

12. **SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of such provision in other jurisdictions, and of the remaining provisions of this Agreement in all jurisdictions, shall not in any way be affected or impaired.

13. **ENTIRE AGREEMENT.** This Agreement and the Terms of Use for the CEO set forth the entire and only agreement among you, Wells Fargo and the Affiliates and between you and Wells Fargo and between you and each Affiliate with respect to your use of the CEO. Any prior agreements, representations, statements, negotiations, undertakings, promises or conditions, whether oral or written, with respect to the CEO which conflict with the provisions in this Agreement are superseded by this Agreement.

This Agreement is signed below by your duly authorized officer or officers on the dated stated below.

Date: 2/27/2007

City of Colorado Springs  
[Customer Name]

By: [Signature]  
Title: Finance Director