

APB98ACH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: ALPINE BANK

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: AUTOMATED  
CLEARING HOUSE ORIGINATION AGREEMENT

CITY DEPARTMENT: ADMINISTRATIVE SERVICES

YEAR: 1998

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

# ALPINE BANK

## ACH ORIGINATION AGREEMENT

This Agreement is made this 13th day of January, 1998, by and between: The City of Grand Junction ("The Company") and ALPINE BANK ("The Financial Institution").

The Company has requested that the Financial Institution permit it to initiate electronic signals for paperless entries through the Financial Institution to accounts maintained at the Financial Institution and at other financial institutions, by means of the Automated Clearing House (the "ACH"). The Financial Institution has agreed to do so on the terms of this Agreement.

Now, therefore, the Company and the Financial Institution agree as follows:

1. **RULES**

The Company acknowledges receipt of a copy of the current operating rules of NACHA dated 1997 ("Rules"). The Company agrees to comply with and be bound by the rules as the same may be amended from time to time. The Company shall be responsible for operating in compliance therewith. The financial Institution agrees to inform the Company of revisions to the Rules of which the Financial Institution has knowledge, and to mail copies thereof upon request of the Company.

2. **TRANSMISSION OF ENTRIES: SECURITY PROCEDURES**

The Company will transmit all debit and credit entries to the Financial Institution at the location, on or before the deadlines, described on Attachment 1 to the Agreement. The Company will conform all entries to the format, content, and specifications contained in the Rules, except as provided with the security procedures described in Attachment 2 to the Agreement. The Company authorizes the Financial Institution to transmit all entries received by the Financial Institution from the Company in accordance with the terms of this Agreement and to credit or debit entries to the specified accounts.

3. **FINANCIAL INSTITUTION OBLIGATIONS**

In a timely manner and in accordance with the Rules, the Financial Institution will process, transmit, and settle for the entries received from the Company which comply with the terms of the Agreement, including the security procedures.

4. **WARRANTIES**

The Company warrants to the Financial Institution all warranties the Financial Institution is deemed by the Rules to make with respect to entries originated by the Company. Without limiting the foregoing, the Company warrants and agrees that (a) each entry is accurate, is timely, has been authorized by the party whose account will be credited or debited and otherwise complies with the Rules; (b) each debit entry is for a sum which, on the settlement date with respect to it,

will be owing to the Company from the party whose account will be debited, is for a sum specified by such party to be paid to the Company, or is a correction of a previously transmitted erroneous credit entry; (c) the Company has complied with all prenotification requirements of the Rules; (d) the Company will comply with the terms of the Electronic Funds Transfer Act if applicable, or Uniform Commercial Code 4A (UCC4A) if applicable and shall otherwise perform its obligations under this Agreement in accordance with all applicable laws and regulations. The Company will retain the original or copy of the customer authorization record as required by the rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request of Financial Institution, furnish such original or copy to the Financial Institution. The Company shall indemnify the Financial Institution against any loss, liability, or expense (including reasonable attorney's fees and expenses) resulting from or arising out of the Company's breach of any of the foregoing warranties or agreements.

5. **PROVISIONAL CREDIT**

The Company acknowledges that the Rules make provisional any credit given for any entry until the financial institution crediting the account specified in the entry receives final settlement. If the financial institution does not receive final settlement, it is entitled to a refund from the credited party, and the originator of the entry shall not be deemed to have paid the party.

6. **SETTLEMENT**

The Company will maintain an account with the Financial Institution at all times during the term of this Agreement. The Company will maintain in the account as of the applicable settlement date immediately available funds sufficient to cover all credit entries initiated by it. The Company authorizes the Financial Institution to debit its account on the applicable settlement date in the amount of the entry.

7. **CANCELLATION OR AMENDMENT**

The Company shall have no right to cancel or amend any entry/file after its receipt by the Financial Institution. However, the Financial Institution shall use reasonable efforts to act on a request by the Company to cancel an entry/file before transmitting it to the ACH or crediting an on-us entry. Any such request shall comply with the security procedures described on Attachment 2 to the Agreement. The Financial Institution shall have no liability if it fails to effect the cancellation.

8. **REJECTION OF ENTRIES**

The Financial Institution shall reject any entry, including an on-us entry, which does not comply with the requirements of Section 1 of this Agreement and may reject any entry if the Company is not otherwise in compliance with the terms of the Agreement. The Financial Institution shall notify the Company by telephone of such rejection no later than the business day such entry would otherwise have been transmitted by the Financial Institution to the ACH or, in the case of an on-

us entry, its effective entry date. The Financial Institution shall have no liability to the Company by reason of the rejection of any entry of the fact that such notice is not given at an earlier time than that provided for herein. The Financial Institution shall retain the right to reject any on-us transaction for any valid reason such as, but not limited to, insufficient funds or revoked authorization.

9. **NOTICE OF RETURNED ENTRIES**

The Financial Institution shall notify the Company by telephone or fax of the receipt of a returned entry from the ACH no later than one business day after the business day of such receipt. The Financial Institution shall have no obligation to retransmit a returned entry if the Financial Institution complied with the terms of this Agreement with respect to the original entry. If a customer of the Company returns any transaction, then it is the Company's responsibility to collect any funds that are owed. The Financial Institution has no obligation to originate a transaction where authorization has been revoked.

10. **REVERSALS**

The Company may initiate a reversing entry or file of entries as permitted by the Rules.

11. **PERIODIC STATEMENT**

The periodic statement issued by the Financial Institution for the Company's account will reflect entries credited and debited to the Company's account. The Company agrees to notify the Financial Institution within a reasonable time not to exceed thirty (30) days after the Company received a periodic statement of any discrepancy between the Company's records and the information in the periodic statement.

12. **FEES**

The Company agrees to pay the Financial Institution for services provided under the Agreement in accordance with the schedule of charges attached to this Agreement as Attachment 3. The Financial Institution may change its fees from time to time upon notice to the Company.

13. **LIABILITY**

(a) The Financial Institution shall be responsible only for performing the services expressly provided for in this agreement and shall be liable only for its negligence or willful misconduct in performing those services. The Financial Institution shall not be responsible for the Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal, or due authorization of any Entry received from the Company) or those of any Federal Reserve Financial Institution or transmission or communications facility, any Receiver or Receiving Depository Financial Institution (including without limitation the return of an Entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed the Financial Institution's agent.

(b) In no event shall the Financial Institution be liable for any consequential, special, punitive, or indirect loss or damage which the Company may incur or suffer in connection with the Agreement, including without limitation, loss or damage from subsequent wrongful dishonor resulting from the Financial Institution's acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, the Financial Institution shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions, or other circumstances beyond the Financial Institution's control. In addition, the Financial Institution shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in the Financial Institution's having exceeded any limitation upon its intro-day net funds position established pursuant to present or future Federal Reserve guidelines or in the Financial Institution's otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) Subject to the foregoing limitations, the Financial Institution's liability for loss shall be limited to general monetary damages not to exceed the total amount which would have been paid by the Company for the affected ACH service under the normal fee structure, as performed by the Financial Institution under this agreement for the preceding 30 calendar days.

(e) Notwithstanding any other provision to the contrary, in the event of default under the terms of this Agreement by either party, the non-defaulting party shall have all rights and remedies available at law or in equity.

14. **INCONSISTENCY OF NAME AND ACCOUNT NUMBER**

The Company acknowledges that, if an entry describes the receiver inconsistently by name and account number, payment of the entry may be made on the basis of the account number even if it identifies a person different from the named receiver.

15. **DATA RETENTION**

The Company shall retain data on file adequate to permit remaking of entries for five (5) business days following the date of their transmittal to the Financial Institution as provided herein and shall provide such data to the Financial Institution upon its request.

16. **TERMINATION**

The Financial Institution may amend the terms of the Agreement from time to time by written notice to the Company. Either party may terminate this Agreement upon ten (10) days written notice to the other. The Financial Institution shall have no obligation to transmit entries if the Company is in default

of any of its obligation under this Agreement, including to pay the Financial Institution of each credit entry. The Financial Institution shall be entitled to rely on any written notice believed by it in good faith to be signed by one of the Authorized Representatives whose names and signatures are set forth on Attachment 4 to this Agreement.

17. **ENTIRE AGREEMENT**

This Agreement (including the Schedules attached hereto), together with the Banking Services Agreement, is the complete and exclusive statement of the agreement between the Financial Institution and the Company with respect to the subject matter hereof and supersedes any prior agreement(s) between the Financial Institution and the Company with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Banking Services Agreement, The terms of the Banking Services Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation, or government policy to which the Financial Institution is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy, and the Financial Institution shall incur no liability to the Company as a result of such violation or amendment.

18. **NON-ASSIGNMENT**

This Agreement and any of the rights or duties hereunder are not assignable to any person without the prior written consent of the other party.

19. **BINDING AGREEMENT BENEFIT**

This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective legal representatives, successor and approved assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Financial Institution or the Company hereunder. No third party shall be a beneficiary hereof.

20. **HEADINGS**


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

21. **GOVERNING LAW**

In the event of any dispute arising out of the terms and conditions of this Agreement, the parties agree that the venue for resolution of said dispute shall be the District Court of Mesa County, Colorado. The prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees and costs.

This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado and the NACHA rules.

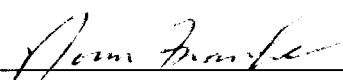
**CITY OF GRAND JUNCTION**

By: 

Name: Ron Lappi

Title: Director of Finance and Administrative Services

**ALPINE BANK**

By: 

Name: Norm Franke

Title: President

# **ATTACHMENT 1**

## **Transmission Location and Formatting Instructions**

All files will be formatted in a NACHA or other preapproved format. Transmission specifications will be established by ALPINE BANK.

### **Personal Computer Transmissions**

The Company will transmit files to Alpine Bank Operation Center, 400 7th Street South Rifle, Co. 81650 (970) 625-1900.

### **Hand-Delivered Files**

The Company will deliver files to their nearest Alpine Bank to be forwarded to Alpine Bank Operation Center, 400 7th Street South Rifle, Co. 81650.

## **ACH PROCESSING DEADLINE**

Processing Deadline for:

### **Credit Entries**

Transmission of a file until: 3:00 two (2) business days prior to the effective date.

### **Debit Entries**

Transmission of a file until: 3:00 one (1) business day prior to the effective date.

"Business Day" is a day the Financial Institution is open to the public for carrying on substantially all of its business (other than Saturday, Sunday and listed holidays).

"Effective Date" must be a business day or the record will be processed on the first business day following the effective date.

## **HOLIDAY SCHEDULE**

(Non-Processing Days)

New Years Day  
Martin Luther King's Birthday  
Presidents Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans Day  
Thanksgiving  
Christmas



## **ATTACHMENT 2**

The Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication shall be deemed to have been signed by such person.

### **Personal Computer File Transmission**

The Company's authorized Representatives will provide the Financial Institution with verification of the totals contained in the transmission by sending a facsimile transmission to the Financial Institution's (ALPINE BANK) Contact. In the event that the Company or the Authorized Representative is unable to fax the information, the Company's Authorized Representative will telephone the Financial Institution's (ALPINE BANK) Contact with the verification and also mail the information as backup on the same day transmitted.

The Financial Institution will anticipate the receipt of an ALPINE BANK transmission from the Company on each scheduled processing date identified by the Company in writing and agreed to by the Financial Institution. The Company's Authorized Representative will notify the Financial Institution if a transmission will not take place on the prearranged scheduled processing date. The Company is responsible for ensuring that the Financial Institution receives the transmission each processing date indicated in the processing schedule.

The Financial Institution will verify that the file totals agree with the Company information given by fax or phone. In the event of a discrepancy in the totals, the Financial Institution will call the specified Company Authorized Representative designated by an authorized signatory of the Company. If an Authorized Representative is not available for notification then the file will not be processed until the Company's Authorized Representative can be contacted on the next business day.

The Company is solely responsible for the accurate creation, modification, and deletion of the account information maintained on the Company's personal computer and used for ALPINE BANK money transfer. The Company agrees to comply with written procedures provided by the Financial Institution for the creation, maintenance, and initiation of ALPINE BANK money transfers.

The Company is solely responsible for access by its employees of the data files maintained on the Company's computer.

The Company is responsible for operator security procedures on the one personal computer authorized for use of the Program.

### Hand-Delivered Files

The Company's Authorized Representative will hand-deliver file(s) to the designated location. Each hand-delivered file will be accompanied by a transmittal register, signed by an authorized signatory of the account.

The Company's Authorized Representative will provide the Financial Institution with verification of the totals contained in the hand-delivered file(s) by sending a facsimile transmission to the Financial Institution's (ALPINE BANK) Contact. In the event that the Company or the Authorized Representative is unable to fax the information, the Company's Authorized Representative will telephone the Financial Institution's (ALPINE BANK) Contact with the verification and also mail the information as backup on the same day transmitted. In no case will the transmittal register accompanying the file be construed as verification.

The Financial Institution will anticipate the receipt of an ALPINE BANK file from the Company on each scheduled processing date identified by the Company in writing and agreed to by the Financial Institution. The Company's Authorized Representative will notify the Financial Institution if a file will not be delivered on the prearranged scheduled processing date. The Company is responsible for ensuring that the Financial Institution receives the file in the ALPINE BANK processing area on each processing date indicated in the processing schedule.

The Financial Institution will verify that the file totals agree with the Company information given by fax or phone. In the event of a discrepancy in the totals, the Financial Institution will call the specified Company Authorized Representative designated by an authorized signatory of the Company. If an Authorized Representative is not available for notification then the file will not be processed until the Company's Authorized Representative can be contacted on the next business day.

**ATTACHMENT 3**  
**Price Schedule**

ALPINE BANK

Software Licensing Fee/Start up \$     —    

Additional Software Training (if needed) \$     —    

Monthly Maintenance \$     —    

Per Transmission or File \$     25<sup>00</sup>    

Per Transaction Originated \$     24    

Return Items/Notification of Change \$     —    

The above normal charges for ACH services are waived by Alpine Bank. Compensation for these services are included with the existing Banking Services Agreement.

