

**SUMMARY REPORT TO MANAGER**  
For City Council Meeting of November 14, 2005

**SUBJECT:** Approving changes to agreement with Chemical Bank regarding ChemConnect, an online banking service.

**INITIATED BY:** David A. Keenan, Director of Fiscal Services

**RESOLUTION SUMMARY:** This resolution designates the Midland City Treasurer as the account supervisor for the ChemConnect service and authorizes the Treasurer to execute the revised ChemConnect agreement, upon review and approval of the Midland City Attorney, to provide the additional capabilities mentioned herewith.

**ITEMS ATTACHED:**

1. Letter of transmittal
2. ChemConnect agreement
3. Resolution

**CITY COUNCIL ACTION:**

1. 3/5 affirmative vote required to approve resolution



City Hall • 333 West Ellsworth Street • Midland, Michigan 48640 • 989.837.3300 • 989.835.2717 Fax • [www.midland-mi.org](http://www.midland-mi.org)

TO: Karl S. Tomion, City Manager  
FM: David A. Keenan, Director of Fiscal Services  
DT: November 10, 2005  
RE: ChemConnect Agreement with Chemical Bank

In March of 2003 City Council approved entering into an agreement with Chemical Bank to utilize their then called "ChemConnect II" online banking service. Since that time the City Treasurer has been using this service to manage money via the Internet.

The attached resolution will approve modifications to the existing agreement with Chemical Bank and will enable the City to accomplish two objectives. The most important objective is that it will allow the City to implement a means by which citizens can pay certain bills electronically using technology that already exists within the City's accounting software, HTE. This option of electronic payment, also known as "auto pay" will be introduced through quarterly water and sewer billings. Auto pay is a process whereby customers agree to have their billing automatically deducted from their bank account and transferred to the City's bank account. The City's property tax module also supports this service, and will be considered pending successful implementation of water and sewer billings.

The second objective that this resolution will allow the City to accomplish is to eliminate the use of two phone modems, which are currently used to transmit payroll and pension direct deposit information. This data will now be transferred via the Internet.

**CHEMCONNECT - COMMERCIAL APPLICATION WITH ACH  
CHEMICAL BANK**

**General Company Information**

Company Name: CITY OF MIDLAND  
 SSN or EIN: 38-6004711  
 Address: 333 W ELLSWORTH STREET  
 City, State, Zip: MIDLAND, MT 48640

**Supervisor**

Login ID: S K MARSHALL  Add  Remove Bank use only  
 First Initial, Middle Initial, Last Name (assigns access levels for all other users)  
 E-Mail Address SMARSHAL@MIDLAND-MT.ORG Business Phone: (989) 837-3319

Login ID: D A KEENAN  Add  Remove Bank use only  
 (Only for multiple Supervisors) (assigns access levels for all other users)  
 E-Mail Address DKEENAN@MIDLAND-MT.ORG Business Phone: (989) 837-3329

Note: The Supervisor named on the application will have the authority to

- Change Users and their associated rights
- Change Plan Information
- Request Changes to the Maximum Daily Limit for the Company.

**Additional Users**

Login ID: S L TEALL KOLHOFF  Add  Remove Bank use only  
 First Initial, Middle Initial, Last Name

Login ID: C A MERSMANN  Add  Remove Bank use only  
 First Initial, Middle Initial, Last Name

Login ID: P L RADDE  Add  Remove Bank use only  
 First Initial, Middle Initial, Last Name

**Security Features:**

A Login ID is tied to a specific computer. Another Login ID may be requested to access ChemConnect through a second computer.

**Plan Selection**

\*Fees will be debited on the first business day of each month.

- Commercial Internet Banking with ACH Feature
- \$39.95 per month plus \$125.00 setup fee
  - Wires, Tax Payments, Credit and Debit Origination and Payroll options are available. (See Additional fees)
- Commercial Internet Banking with ACH & Bill Pay
- \$44.95 per month plus \$125.00 setup fee
  - Includes 10 bill payments, each additional bill payment will be \$.50.
  - Wires, Tax Payments, Credit and Debit Origination and Payroll options are available. (See Additional fees)

**Services**

**Maximum Limit**

**Per Item Fee**

Note: You must indicate the Daily limit you require, but will not exceed. Change requests must be in writing from a single signer listed on the Resolution on file with the bank. Without a resolution, all signers must approve a change unless named Supervisor above.

<input checked="" type="checkbox"/> Payroll	\$ _____	\$ .10
<input checked="" type="checkbox"/> Wire Transfers	\$ _____	See Additional Fees below
<input type="checkbox"/> Tax Payments	\$ _____	\$1.00
<input checked="" type="checkbox"/> Ach Payments	\$ _____	\$1.00
<input checked="" type="checkbox"/> Ach Receipts	\$ _____	\$1.00
<input checked="" type="checkbox"/> Send Files		No Charge

Bank Approval Signature \_\_\_\_\_ Date \_\_\_\_\_  
 (must be on Service/Limit Approver List)

Additional Fees will be assessed at the time of the transaction:  
 Stop Payment Fee.....\$27.00 each      Wire Transfer Fee.....\$20.00 each

**Account/Service Charge Information**

Enter the Chemical Bank accounts to which the Company desires Internet access.

Account Number	Type of Account	Account Owner(s)
<input type="checkbox"/> Add <input type="checkbox"/> Remove 10-00195	CHECKING	<del>CITY OF MIDLAND</del> GENERAL ACCOUNT
Note: All fees associated with this service will be debited from the Primary Account.		
<b>Additional Accounts</b>		
<input type="checkbox"/> Add <input type="checkbox"/> Remove 2010076574	CHECKING	<del>CITY OF MIDLAND</del> BUSINESS MONEY MARKET
<input type="checkbox"/> Add <input type="checkbox"/> Remove 2010139422	CHECKING	<del>CITY OF MIDLAND RETIREE HRA</del>
<input type="checkbox"/> Add <input type="checkbox"/> Remove _____	_____	_____

**By Signing Below, You Agree As Follows:**

The undersigned authorized representative(s) hereby certifies that their company resolution(s) allow for them to enter into this agreement on behalf of their company and as such:

The organization shall execute a ChemConnect application and enter into a ChemConnect account agreement.

The accounts of the organization listed above shall be accessible through the ChemConnect service.

The organization assumes all responsibility for maintaining the confidentiality of the PIN issued in connection with the ChemConnect service and for access obtained through ChemConnect to the organization's deposit accounts or other accounts (if any) also accessible through the ChemConnect service.

Chemical Bank may rely on this agreement until it receives written notice.

The individual signing below certifies that the resolutions have been validly adopted and are in full force and effect and that the above information is true and correct.

For Internet Banking Services, you will receive important information required by the Electronic Funds Transfer Act electronically via the web. Please read this notice carefully and keep a copy for your records.

- ChemConnect Access Agreement and Electronic Fund Transfer Act Disclosure is available at first login and anytime at [www.chemicalbankmi.com](http://www.chemicalbankmi.com) under the Terms & Conditions link on the login page.
- We may provide the additional disclosures electronically in the future such as changes to the disclosure and agreement or changes in services offered.
- The information can also be requested by e-mailing [chemconnect@chemicalbankmi.com](mailto:chemconnect@chemicalbankmi.com) (or use the email button in ChemConnect) or by contacting us at 1-866-804-4592.

Date: \_\_\_\_\_ CITY TREASURER  
Customer Signature Title

Date: \_\_\_\_\_  
Customer Signature Title

Date: \_\_\_\_\_  
Customer Signature Title

**AGREEMENT FOR  
PAYMENT OF FUNDS BY ELECTRONIC MEANS**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CHEMICAL BANK  
\_\_\_\_\_ a Michigan banking corporation (the "Bank") and  
\_\_\_\_\_ (the "Company").

1. Adoption of Rules. The operating rules of the National Automated Clearing House Association (NACHA) and the Payments Authority, including all applicable schedules and appendices, and the Chemical Bank/Payments Authority user manual for customers, as amended from time to time (hereinafter collectively referred to as the "Rules") are hereby adopted, made a part of and incorporated into this Agreement. The Company agrees to be bound thereby and does hereby assume and agree to discharge fully and timely each and all of the responsibilities of a "Company" under the Rules. Terms defined in the Rules and used in this Agreement shall have the meaning assigned to them in the Rules, except as context clearly otherwise requires.

2. Customer Agreement; Warranties Respecting Entries. The Company agrees that, as to all debit and credit entries, it has complied and will comply in all respects with all applicable laws and with the Rules, including but not limited to the requirements concerning standing authorizations. The Company also affirms and undertakes, for the benefit of the Bank and for the benefit of those other parties dealing with entries initiated on the Company's behalf, vis., The Payments Authority, the Automated Clearing House, the Federal Reserve Bank and its branches, and every Receiving Bank, for each and every debit or credit entry presented to the Bank:

(a) The entry is accurate, is timely and has been authorized by the party whose account will be credited or debited; and

(b) Each debit entry represents an amount due and owing the Company by the Customer whose bank account is to be charged, or is a correction of a previously transmitted erroneous credit entry.

*The Company shall indemnify the Bank and those other parties identified above as dealing with the entries against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing warranties or agreements.*

3. Bank Obligations. The Bank will process, transmit, and settle for any entries received from the Company which comply with the terms of the Agreement, including the security procedures, in a timely manner and in accordance with the Rules.

4. Provisional Credit. The Company acknowledges that the Rules make provisional any credit given for an 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.

5. Cancellation or Amendment of Entries. The Company shall have no right to cancel or amend any entry/file after its receipt by the Bank. However, the Bank shall use reasonable efforts to act on a request by the Company to cancel an entry/file before transmitting it to The Payments Authority or crediting an on-us entry. Any such request shall comply with the applicable security procedures. The Bank shall have no liability if it fails to effect the cancellation.

6. Rejection of Entries. The Bank may reject any entry, including an on-us entry, which does not comply with the Rules or any applicable law or otherwise fails to comply with the terms of this Agreement. The Bank shall notify the Company by telephone of such rejection no later than the business day such entry would otherwise have been transmitted by the Bank to The Payments Authority or, in the case of an on-us entry, its effective entry date.

7. Notice of Returned Entries. The Bank shall notify the Company by telephone of the receipt of a returned entry from The Payments Authority no later than one business day after the business day of such receipt. The Bank shall have no obligation to re-transmit a returned entry if the Bank complied with the terms of this Agreement with respect to the original entry.

8. Reversals. The Company may initiate a reversing entry or file of entries for erroneous or duplicate transactions, as permitted by the Rules.

9. Maintenance of Account. The Company agrees to establish a demand deposit account with the Bank and to maintain therein balances as requested by the Bank from time to time in an amount sufficient to pay all charges of the Bank and to permit debits to the account equal to credit entries generated on the Company's behalf. An advice of such balance and the time for establishing the same will be provided by the Bank to the Company from time to time.

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

11. 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.

12. Format of Company Data. The Company, or its agents or assigns as it solely determines, agrees to provide the Bank with data input for entries to be generated on the Company's behalf in conformity with the Rules and in the format required by the Rules' appendices. All such data input, and any corrections, modifications, revocations or other adjustments thereto, shall be generated by the Company and delivered to the Bank electronically in conformity with Bank Operating Guidelines, a copy of which is attached hereto as Exhibit A.

13. Company Agents; Fees. The Company agrees to provide the Bank with a certificate setting forth those persons who are authorized to act on the Company's behalf with respect to entries, adjustments and other matters which are the subject matter of this Agreement and who are authorized to receive reports and other information provided by the Bank to the Company from time to time. Authenticated signatures of such persons will be supplied at the Bank's request. Unless and until the Bank receives written notice to the contrary, it shall be entitled to rely upon the authority of the persons so designated.

The charges of the Bank for the services to be performed by it under this agreement are set forth on a schedule of charges hereto attached. The Bank may change the scheduled charges on a semi-annual basis. The Bank shall give Company not less than 30 days advance written notice of any such change; such change will be deemed to have been accepted by Company unless Company gives Bank written notice of its decision to terminate this Agreement during the 30 day period immediately preceding the effective date of such change. Such termination shall be in accordance with the provisions of Section 17 of this Agreement.

14. Payment Terms. In the event services are not automatically deducted from an account authorized by the Company, the Bank shall invoice the Customer monthly for services rendered the previous month. Customer shall pay invoices net thirty (30) days after receipt of invoice.

15. Limitation on Liability; Indemnification.

(a) Bank Responsibilities. Bank shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for acts or omissions by the Bank or its agents or employees which shall constitute gross negligence or willful misconduct. Bank shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any entry received from Company) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, and 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 Bank's agent. In no event shall the Bank or its agents or employees be liable for any delay in transmitting credit entries, due to failure of any of the Bank's data handling equipment to operate or other causes beyond control of the Bank. Company agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Company or any other person described in this paragraph.

(b) Bank Liability. Further, it is agreed the liability of the Bank in all events shall not exceed an amount equal to the dollar amount of the entries which are the subject matter of any claim and there shall be no liability of the Bank for consequential, special, punitive or indirect loss or damages which Company may incur or suffer in connection with this Agreement.

(c) Force Majeure. Without limiting the generality of the foregoing provisions, Bank 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 Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank'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) Interest Adjustment. Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of Chicago for the period involved. At Bank's option, payment of such interest may be made by crediting the account of the Company or of the Customer that suffered the loss of interest.

16. Compliance with Security Procedures.

(a) If an entry (or a request for cancellation or amendment of an entry) received by Bank purports to have been transmitted or authorized by Company, it will be deemed effective as Company's entry (or request) and Company shall be obligated to pay Bank the amount of such entry as provided herein even though the entry (or request) was not authorized by Company, provided Bank acted in compliance with the security procedure referred to in the Operating Guidelines, with respect to such entry. If signature comparison is to be used as a part of that security procedure, Bank shall be deemed to have complied with that part of such procedure if it compares the signature accompanying a file of entries (or request for cancellation or amendment of an entry) received with the signature of any authorized representative of Company (an "Authorized Representative") and, on the basis of such comparison, believes the signature accompanying such file to be that of such authorized representative.

(b) If an entry (or request for cancellation or amendment of an entry) received by Bank was transmitted or authorized by Company, Company shall be obligated to pay the amount of the entry as provided herein, whether or not Bank complied with the security procedure referred to in the Operating Guidelines with respect to that entry and whether or not that entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedure.

17. Termination. Either the Company or the Bank may terminate this Agreement upon ninety days written notice to the other party but until such notice, this Agreement shall continue in full force and effect. In the event of termination, the rights and obligations of the parties hereunder shall terminate as of the effective date of such termination, provided however that as to entries processed prior to the effective date of such termination, the rights and responsibilities of the parties shall continue.

18. Amendments. From time to time Bank may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any business day, any schedule, or the Operating Guidelines. With the exception of changes to the fee schedule, which shall be governed by Section 13 of this Agreement, such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in Bank's notice to Company.

19. Miscellaneous. This Agreement shall bind and inure to the successors and assigns of the parties hereto and shall be governed by the laws of the State of Michigan, where it is delivered and is intended to be performed. This Agreement may be executed in several counterparts, each of which shall be deemed an original agreement. The Company represents this Agreement has been duly authorized by appropriate corporate action of the Company and constitutes its valid, binding and enforceable agreement. The Bank shall have no obligation to transmit entries if the Company is in default of any of its obligations under this Agreement, including the obligation to pay the Bank for each credit entry.

20. Complete Agreement. This Agreement replaces any prior discussions or negotiations of Company and Bank, and represents their complete agreement.

21. Assignment. Company, its agents or assigns, may not assign this Agreement or any rights or duties hereunder without the Bank's prior written consent.

22. Contact Us. Company may contact Bank by email, telephone, facsimile or postal mail.

- Email:** [chemconnect@chemicalbankmi.com](mailto:chemconnect@chemicalbankmi.com)
- Telephone:** 1-(866) 804-4592.
- Facsimile:** 1-(989) 633-3800.
- Postal Mail:** Chemical Financial Corporation - Attn: Electronic Banking  
333 E. Main Street, PO Box 569; Midland, MI 48640-0569

IN WITNESS WHEREOF, the Company and the Bank have set their hands on the day and year first above written.

\_\_\_\_\_  
Company Name

Chemical Bank \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Title

Its: \_\_\_\_\_  
Title

## Exhibit A: Bank Operating Guidelines

### Types of Entries, Maximum Daily Limits, Format, Delivery Methods, Transmission Day and Cut-Off Times

1. Types of Entries. The following types of Entries (services) are authorized by this agreement.
  - (a) Payroll
  - (b) Wire Transfers
  - (c) Tax Payments
  - (d) ACH Payments
  - (e) ACH Receipts
  - (f) Sent Files
2. Maximum Daily Limits. The maximum daily limits are defined by service in the original commercial application. Customer requests to change these limits are in writing using the Service & Maximum Daily Limit Change Form for ChemConnect or MVP as appropriate.
3. File Format. Each Entry must be formatted in specifications approved by the National Automated Clearing House Association (NACHA) and the Payments Authority in the Rules. A copy of the Rules were provided with this agreement at the time of application.
4. Delivery Methods.
  - (a) Electronic Transmission. The ACH file must be process or transmitted via one of the following methods.
    1. Processed directly by Company via ChemConnect Internet.
    2. Transmitted by Company as "Sent File" via ChemConnect Internet. Pulled and Processed by Bank.
    3. Transmitted by Company via MVP Internet. Pulled and Processed by Bank.
    4. Transmitted by Company via MVP Touch-Tone. Processed by Bank.
    5. Transmitted by Company via MVP PC-to-PC. Processed by Bank.
  - (b) Diskette/CD Delivery. On an exception basis where Company is experiencing system problems and the deadline nature of the file requires an alternate method of delivery outside the normal electronic methods noted above, the ACH file must be delivered on a 3 ½ inc diskette or CD to a local branch office along with a completed ACH Payroll File-Alternate Delivery Method Exception Form. The form is signed by Company individual authorized for payroll files; approved by Bank and faxed to the ChemConnect Department. The file is uploaded, virus scanned and emailed via Bank network
5. Company Transmission Day/Time. **2:00 p.m.** on the Transmission Day
  - (a) Payroll **2 Business Days** before the Effective Entry Date
  - (b) ACH Payments **2 Business Days** before the Effective Entry Date
  - (c) ACH Receipts **1 Business Days** before the Effective Entry Date
  - (d) Tax Payments **1-2 Business Days** before the Effective Entry Date
  - (e) Wire Transfers. **Same Day** as the Effective Entry Date
6. System/Bank Cut-Off Times. A small window from the Company Cut-Off Times must be allowed for Problem Resolution before the system Cut-Off times.
  - (a) Wire Transfers. **2:30 p.m. on the Transmission Day (communicate with the Fed.)**
  - (b) ChemConnect/MVP **3:00 p.m. on the Transmission Day**

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\_\_\_\_\_, a Michigan banking corporation (the "Bank") and  
\_\_\_\_\_, (the "Company").

1. Adoption of Rules. The operating rules of the National Automated Clearing House Association (NACHA) and the Payments Authority, including all applicable schedules and appendices, and the Chemical Bank/Payments Authority user manual for customers, as amended from time to time (hereinafter collectively referred to as the "Rules") are hereby adopted, made a part of and incorporated into this Agreement. The Company agrees to be bound thereby and does hereby assume and agree to discharge fully and timely each and all of the responsibilities of a "Company" under the Rules. Terms defined in the Rules and used in this Agreement shall have the meaning assigned to them in the Rules, except as context clearly otherwise requires.

2. Customer Agreement; Warranties Respecting Entries. The Company agrees that, as to all debit and credit entries, it has complied and will comply in all respects with all applicable laws and with the Rules, including but not limited to the requirements concerning standing authorizations. The Company also affirms and undertakes, for the benefit of the Bank and for the benefit of those other parties dealing with entries initiated on the Company's behalf, vis., The Payments Authority, the Automated Clearing House, the Federal Reserve Bank and its branches, and every Receiving Bank, for each and every debit or credit entry presented to the Bank:

- (a) The entry is accurate, is timely and has been authorized by the party whose account will be credited or debited; and
- (b) Each debit entry represents an amount due and owing the Company by the Customer whose bank account is to be charged, or is a correction of a previously transmitted erroneous credit entry.

*The Company shall indemnify the Bank and those other parties identified above as dealing with the entries against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing warranties or agreements.*

3. Bank Obligations. The Bank will process, transmit, and settle for any entries received from the Company which comply with the terms of the Agreement, including the security procedures, in a timely manner and in accordance with the Rules.

4. Provisional Credit. The Company acknowledges that the Rules make provisional any credit given for an 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.

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permit debits to the account equal to credit entries generated on the Company's behalf. An advice of such balance and the time for establishing the same will be provided by the Bank to the Company from time to time.

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12. Format of Company Data. The Company, or its agents or assigns as it solely determines, agrees to provide the Bank with data input for entries to be generated on the Company's behalf in conformity with the Rules and in the format required by the Rules' appendices. All such data input, and any corrections, modifications, revocations or other adjustments thereto, shall be generated by the Company and delivered to the Bank electronically in conformity with Bank Operating Guidelines, a copy of which is attached hereto as Exhibit A.

13. Company Agents; Fees. The Company agrees to provide the Bank with a certificate setting forth those persons who are authorized to act on the Company's behalf with respect to entries, adjustments and other matters which are the subject matter of this Agreement and who are authorized to receive reports and other information provided by the Bank to the Company from time to time. Authenticated signatures of such persons will be supplied at the Bank's request. Unless and until the Bank receives written notice to the contrary, it shall be entitled to rely upon the authority of the persons so designated.

The charges of the Bank for the services to be performed by it under this agreement are set forth on a schedule of charges hereto attached. The Bank may change the scheduled charges on a semi-annual basis. The Bank shall give Company not less than 30 days advance written notice of any such change; such change will be deemed to have been accepted by Company unless Company gives Bank written notice of its decision to terminate this Agreement during the 30 day period immediately preceding the effective date of such change. Such termination shall be in accordance with the provisions of Section 17 of this Agreement.

14. Payment Terms. In the event services are not automatically deducted from an account authorized by the Company, the Bank shall invoice the Customer monthly for services rendered the previous month. Customer shall pay invoices net thirty (30) days after receipt of invoice.

15. Limitation on Liability; Indemnification.

(a) Bank Responsibilities. Bank shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for acts or omissions by the Bank or its agents or employees which shall constitute gross negligence or willful misconduct. Bank shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any entry received from Company) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, and 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 Bank's agent. In no event shall the Bank or its agents or employees be liable for any delay in transmitting credit entries, due to failure of any of the Bank's data handling equipment to operate or other causes beyond control of the Bank. Company agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Company or any other person described in this paragraph.

(b) Bank Liability. Further, it is agreed the liability of the Bank in all events shall not exceed an amount equal to the dollar amount of the entries which are the subject matter of any claim and there shall be no liability of the Bank for consequential, special, punitive or indirect loss or damages which Company may incur or suffer in connection with this Agreement.

(c) Force Majeure. Without limiting the generality of the foregoing provisions, Bank 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 Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established

pursuant to present or future Federal Reserve guidelines or in Bank'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) Interest Adjustment. Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of Chicago for the period involved. At Bank's option, payment of such interest may be made by crediting the account of the Company or of the Customer that suffered the loss of interest.

16. Compliance with Security Procedures.

(a) If an entry (or a request for cancellation or amendment of an entry) received by Bank purports to have been transmitted or authorized by Company, it will be deemed effective as Company's entry (or request) and Company shall be obligated to pay Bank the amount of such entry as provided herein even though the entry (or request) was not authorized by Company, provided Bank acted in compliance with the security procedure referred to in the Operating Guidelines, with respect to such entry. If signature comparison is to be used as a part of that security procedure, Bank shall be deemed to have complied with that part of such procedure if it compares the signature accompanying a file of entries (or request for cancellation or amendment of an entry) received with the signature of any authorized representative of Company (an "Authorized Representative") and, on the basis of such comparison, believes the signature accompanying such file to be that of such authorized representative.

(b) If an entry (or request for cancellation or amendment of an entry) received by Bank was transmitted or authorized by Company, Company shall be obligated to pay the amount of the entry as provided herein, whether or not Bank complied with the security procedure referred to in the Operating Guidelines with respect to that entry and whether or not that entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedure.

17. Termination. Either the Company or the Bank may terminate this Agreement upon ninety days written notice to the other party but until such notice, this Agreement shall continue in full force and effect. In the event of termination, the rights and obligations of the parties hereunder shall terminate as of the effective date of such termination, provided however that as to entries processed prior to the effective date of such termination, the rights and responsibilities of the parties shall continue.

18. Amendments. From time to time Bank may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any business day, any schedule, or the Operating Guidelines. With the exception of changes to the fee schedule, which shall be governed by Section 13 of this Agreement, such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in Bank's notice to Company.

19. Miscellaneous. This Agreement shall bind and inure to the successors and assigns of the parties hereto and shall be governed by the laws of the State of Michigan, where it is delivered and is intended to be performed. This Agreement may be executed in several counterparts, each of which shall be deemed an original agreement. The Company represents this Agreement has been duly authorized by appropriate corporate action of the Company and constitutes its valid, binding and enforceable agreement. The Bank shall have no obligation to transmit entries if the Company is in default of any of its obligations under this Agreement, including the obligation to pay the Bank for each credit entry.

20. Complete Agreement. This Agreement replaces any prior discussions or negotiations of Company and Bank, and represents their complete agreement.

21. Assignment. Company, its agents or assigns, may not assign this Agreement or any rights or duties hereunder without the Bank's prior written consent.

22. Contact Us. Company may contact Bank by email, telephone, facsimile or postal mail.

**Email:** [chemconnect@chemicalbankmi.com](mailto:chemconnect@chemicalbankmi.com)

**Telephone:** 1-(866) 804-4592.

**Facsimile:** 1-(989) 633-3800.

**Postal Mail:** Chemical Financial Corporation - Attn: Electronic Banking  
333 E. Main Street, PO Box 569; Midland, MI 48640-0569

IN WITNESS WHEREOF, the Company and the Bank have set their hands on the day and year first above written.

Chemical Bank \_\_\_\_\_

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Title

Its: \_\_\_\_\_  
Title

## Exhibit A: Bank Operating Guidelines

### Types of Entries, Maximum Daily Limits, Format, Delivery Methods, Transmission Day and Cut-Off Times

1. Types of Entries. The following types of Entries (services) are authorized by this agreement.
  - (a) Payroll
  - (b) Wire Transfers
  - (c) Tax Payments
  - (d) ACH Payments
  - (e) ACH Receipts
  - (f) Sent Files
2. Maximum Daily Limits. The maximum daily limits are defined by service in the original commercial application. Customer requests to change these limits are in writing using the Service & Maximum Daily Limit Change Form for ChemConnect or MVP as appropriate.
3. File Format. Each Entry must be formatted in specifications approved by the National Automated Clearing House Association (NACHA) and the Payments Authority in the Rules. A copy of the Rules were provided with this agreement at the time of application.
4. Delivery Methods.
  - (a) Electronic Transmission. The ACH file must be process or transmitted via one of the following methods.
    1. Processed directly by Company via ChemConnect Internet.
    2. Transmitted by Company as "Sent File" via ChemConnect Internet. Pulled and Processed by Bank.
    3. Transmitted by Company via MVP Internet. Pulled and Processed by Bank.
    4. Transmitted by Company via MVP Touch-Tone. Processed by Bank.
    5. Transmitted by Company via MVP PC-to-PC. Processed by Bank.
  - (b) Diskette/CD Delivery. On an exception basis where Company is experiencing system problems and the deadline nature of the file requires an alternate method of delivery outside the normal electronic methods noted above, the ACH file must be delivered on a 3 1/2 inc diskette or CD to a local branch office along with a completed ACH Payroll File-Alternate Delivery Method Exception Form. The form is signed by Company individual authorized for payroll files; approved by Bank and faxed to the ChemConnect Department. The file is uploaded, virus scanned and emailed via Bank network
5. Company Transmission Day/Time. **2:00 p.m.** on the Transmission Day
  - (a) Payroll **2 Business Days** before the Effective Entry Date
  - (b) ACH Payments **2 Business Days** before the Effective Entry Date
  - (c) ACH Receipts **1 Business Days** before the Effective Entry Date
  - (d) Tax Payments **1-2 Business Days** before the Effective Entry Date
  - (e) Wire Transfers. **Same Day** as the Effective Entry Date
6. System/Bank Cut-Off Times. A small window from the Company Cut-Off Times must be allowed for Problem Resolution before the system Cut-Off times.
  - (a) Wire Transfers. **2:30 p.m. on the Transmission Day (communicate with the Fed.)**
  - (b) ChemConnect/MVP **3:00 p.m. on the Transmission Day**



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BY COUNCILMAN

WHEREAS, Chemical Bank and Trust Company offers ChemConnect, an online banking service for businesses; and

WHEREAS, on March 10, 2003, City Council approved the Midland City Treasurer as the account supervisor for the ChemConnect service and authorized the Treasurer to execute the ChemConnect application for access to all accounts held at Chemical Bank and Trust, authorized the Treasurer to enter into a ChemConnect account agreement, and approved the Treasurer and/or her designees to be responsible for maintaining the confidentiality of the PIN issued in connection with the ChemConnect service; and

WHEREAS, the Midland City Treasurer desires to expand the City's utilization of ChemConnect to allow the transfer of payroll direct deposit information over the internet, rather than via a phone modem as currently done; and

WHEREAS, the Midland City Treasurer desires to expand the City's utilization of ChemConnect to allow the transfer of City billing information for those customers participating in "autopay", a billing option that will enable customers to pay certain City bills electronically; and

WHEREAS, utilizing these additional capabilities of ChemConnect will require executing a new agreement, and Chemical Bank and Trust Company requires that the governing body authorize a representative to execute this agreement; now therefore

RESOLVED, that the Midland City Council hereby designates the Midland City Treasurer and Director of Fiscal Services as the account supervisors for the ChemConnect service and authorizes the Treasurer to execute the revised ChemConnect agreement, upon review and approval of the Midland City Attorney, to provide the additional capabilities mentioned herewith,

Yeas:

Nays:

Absent:

I, Selina Tisdale, City Clerk, City of Midland, Counties of Bay and Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by a yeavote of all the Councilmen present at a regular meeting of the City Council held Monday, November 14, 2005.

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Selina Tisdale, City Clerk