

**SECURITIES PURCHASE AGREEMENT**

**by and among**

**THE UNITED STATES DEPARTMENT OF THE TREASURY,**

**FMS BANK**

**and, for the purposes of Section 2.02, Section 4.02, Section 5.02, Section 7.01 and Section  
7.04 of this Agreement,**

**BANKERS' BANK OF THE WEST BANCORP, INC.**

**Dated as of April 21, 2014**

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## **SECURITIES PURCHASE AGREEMENT**

**THIS SECURITIES PURCHASE AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is dated as of April 21, 2014 by and among the United States Department of the Treasury (the "Seller"), FMS Bank, a Colorado state bank (the "Purchaser"), and, for the purposes of Section 2.02, Section 4.02, Section 5.02, Section 7.01 and Section 7.04 of this Agreement, Bankers' Bank of the West Bancorp, Inc., a Colorado corporation (the "Company").

### **RECITALS**

**WHEREAS**, the Company and the Seller desire that the Seller sell to the Purchaser, and the Purchaser desires to purchase from the Seller, subject to the terms and conditions contained in this Agreement, 523 Shares at a purchase price of \$1,000 per Share plus accrued and unpaid dividends to but not including the date of Closing (the "Securities Purchase"); and

**WHEREAS**, concurrently herewith, the Company and the Seller are entering into securities purchase agreements, substantially in the same form as this Agreement, with other purchasers (the "Other Purchasers"), pursuant to which, together with the sale to Purchaser pursuant to this Agreement, Seller will sell all of its Shares.

**NOW, THEREFORE**, in consideration of the premises, and of the various representations, warranties, covenants and other agreements and undertakings of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

#### **I     DEFINITIONS.**

**1.01. Definitions of Certain Terms.** For purposes of this Agreement, the following terms are used with the meanings assigned below (such definitions to be equally applicable to both the singular and plural forms of the terms herein defined):

"Affiliate" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise.

"Agreement" has the meaning set forth in the introductory paragraph of this agreement.

"BHCA" shall mean the Bank Holding Company Act of 1956, as amended.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banking organizations in the State of New York or the State of Colorado are required or authorized by Law to be closed.

“Closing” has the meaning set forth in Section 2.02(A).

“Closing Date” has the meaning set forth in Section 2.02(A).

“Company” has the meaning set forth in the introductory paragraph to this Agreement.

“Company Material Adverse Effect” means a material adverse effect on the business, results of operation or financial condition of the Company and its consolidated Subsidiaries taken as a whole; *provided, however*, that Company Material Adverse Effect shall not be deemed to include the effects of (i) changes after the date hereof in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company and its Subsidiaries operate, (ii) changes or proposed changes after the date hereof in United States generally accepted accounting principles or regulatory accounting requirements, or authoritative interpretations thereof, or (iii) changes or proposed changes after date hereof in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (i), (ii) and (iii), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated Subsidiaries taken as a whole relative to comparable United States banking or financial services organizations.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended.

“Governmental Entity” means any court, administrative agency or commission or other governmental or regulatory authority or instrumentality or self-regulatory organization.

“Law” means any law, statute, code, ordinance, rule, regulation, judgment, order, award, writ, decree or injunction issued, promulgated or entered into by or with any Governmental Entity.

“Liens” means any liens, licenses, pledges, charges, encumbrances, adverse rights or claims and security interests whatsoever.

“Prohibited Investor” has the meaning set forth in Section 3.01(E)(8).

“Purchase Price” has the meaning set forth in Section 2.01.

“Purchased Shares” has the meaning set forth in Section 2.01.

“Purchaser” has the meaning set forth in the introductory paragraph to this Agreement.

“Regulatory Event” means, with respect to the Company, that (i) the Federal Deposit Insurance Corporation or any other applicable Governmental Entity shall have been appointed as conservator or receiver for the Company or any Subsidiary; (ii) the Company or any Subsidiary shall have been considered in “troubled condition” for the purposes of 12 U.S.C. Sec. 1831i or any regulation promulgated thereunder; (iii) the Company or any Subsidiary shall qualify as “Undercapitalized,” “Significantly Undercapitalized,” or “Critically Undercapitalized” as those terms are defined in 12 U.S.C. Sec. 1831o or other applicable Law; or (iv) the Company or any Subsidiary shall have become subject to any formal or informal regulatory action requiring the Company or any Subsidiary to materially improve its capital, liquidity or safety and soundness.

“Rule 144” means Rule 144 under the Securities Act.

“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Securities Purchase” has the meaning set forth in the recitals in this Agreement.

“Seller” has the meaning set forth in the introductory paragraph to this Agreement.

“Series B Shares” means the shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series B, of the Company.

“Series C Shares” means the shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series C, of the Company.

“Shares” means the Series B Shares and Series C Shares.

“Subsidiary” means, with respect to any person, any bank, corporation, partnership, joint venture, limited liability company or other organization, whether incorporated or unincorporated, (i) of which such person or a subsidiary of such person is a general partner or managing member or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

**1.02. Interpretation.** The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The term “person” as used in this Agreement shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, government or any agency or political subdivision thereof, or any other entity or any group (as defined in Section 13(d)(3) of the Exchange Act) comprised of two or more of the foregoing. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement, all references to “dollars” or “\$” are to United States dollars. This Agreement and any documents or instruments delivered pursuant hereto or in connection herewith shall be construed without regard to the identity of the person who drafted the various provisions of the same. Each and every provision of this

Agreement and such other documents and instruments shall be construed as though all of the parties participated equally in the drafting of the same. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments.

## II THE SECURITIES PURCHASE.

**2.01. Purchase and Sale of the Shares.** Subject to, and on the terms and conditions of, this Agreement, effective at the Closing, the Purchaser will purchase from the Seller, and the Seller will sell, transfer, convey, assign and deliver to the Purchaser, (i) 498 Series B Shares at a purchase price of \$1,000 per Share, and (ii) 25 Series C Shares at a purchase price of \$1,000 per Share ((i) and (ii) together, the "Purchased Shares"), free and clear of all Liens. The aggregate purchase price for the Purchased Shares shall be an amount in cash equal to \$523,000 (the "Purchase Price").

### **2.02. Closing of the Securities Purchase.**

(A) Subject to Article V, the closing of the Securities Purchase (the "Closing") shall be held at such time or date that is agreed to in writing by the Seller and the Purchaser, but in any event no later than the fifth Business Day following the execution of this Agreement (the date on which the Closing occurs, the "Closing Date"). The Closing shall be held at the offices of Seller's counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, NY, NY 10019-6064, or at such other place as the Seller and the Purchaser shall mutually agree in writing.

(B) At the Closing, or simultaneously therewith, the following shall occur:

(1) the Company will cause to be paid to Seller all accrued and unpaid dividends to but not including the date of Closing, on the Purchased Shares;

(2) the Seller will cause to be delivered to Bankers' Bank of the West, a Colorado state chartered bank and wholly owned subsidiary of the Company, as escrow agent for the Purchaser (the "Escrow Agent"), the certificates for the Shares issued to the Seller for cancellation and reissuance of certificates for the Purchased Shares in the name of the Purchaser (which reissued certificates shall be delivered by the Company to the Purchaser no more than three Business Days after the Closing Date); and

(3) the Purchaser will cause to be paid the aggregate Purchase Price to the Seller, by wire transfer in immediately available funds, to an escrow account designated by the Escrow Agent to the Purchaser, such designation to be made not later than two Business Days prior to the Closing Date.

(4) the Escrow Agent will cause the aggregate purchase price for all of the Shares, including the Purchase Price paid by the Purchaser hereunder and the purchase price paid by the Other Purchasers for the Shares, to be delivered to the Seller by wire transfer in immediately available funds.

### III REPRESENTATIONS AND WARRANTIES.

**3.01. Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants to the Seller as follows:

(A) Existence and Power. The Purchaser is duly organized and validly existing as a state bank under the laws of Colorado and has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement.

(B) Authorization. The execution and delivery of this Agreement, and the consummation by the Purchaser of the transactions contemplated hereby, have been duly and validly approved by all necessary corporate or other applicable action of the Purchaser, and no other corporate, shareholder or other proceedings on the part of the Purchaser are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Purchaser, and (assuming the due authorization, execution and delivery of this Agreement by the Seller) this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(C) Non-Contravention. Neither the execution and delivery of this Agreement nor the consummation by the Purchaser of the transactions contemplated hereby will violate any provision of the charter or bylaws or similar governing documents of the Purchaser or, assuming that the consents, approvals, filings and registrations referred to in Section 3.01(D) are received or made (as applicable), applicable Law.

(D) Consents and Approvals. No consents or approvals of, or filings or registrations with, any Governmental Entity or of or with any other third party by and on behalf of the Purchaser are necessary in connection with the execution and delivery by the Purchaser of this Agreement and the consummation by the Purchaser of the transactions contemplated hereby, except for such filings, consents and approvals that have been made or obtained or will be made or obtained prior to Closing.

(E) Securities Matters.

(1) The Purchaser is either (i) an "accredited investor" as defined in Rule 501 under the Securities Act with total assets in excess of \$25,000,000 or (ii) a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act. The Purchased Shares are being acquired by the Purchaser for its own account and without a view to the public distribution or sale of such Shares.

(2) The Purchaser understands that (i) the Purchased Shares are being sold in a transaction not involving any public offering within the meaning of the Securities Act, and accordingly, such Shares are "restricted securities" within the

meaning of Rule 144; (ii) such Shares have not been and will not be registered under the Securities Act; (iii) if, prior to the expiration of the holding period specified in Rule 144, it decides to offer, resell, pledge or otherwise transfer such Shares, such Shares may be offered, resold, pledged or transferred only (a) in compliance with Rule 144 or otherwise pursuant to an exemption from registration under the Securities Act or (b) to the Company or one of its Subsidiaries, in each case in accordance with any applicable securities laws of any state of the United States; and (iv) the Purchaser will, and each subsequent holder is required to, provide the Company and its transfer agent with such certificates and other information as they may reasonably require to confirm that the transfer complies with the foregoing restrictions.

**(3)** The Purchaser understands that none of the Seller or the Company is making any representation as to the availability of Rule 144 or Rule 144A under the Securities Act for the offer, resale, pledge or transfer of any Shares, or that any Shares purchased by the Purchaser will ever be able to be sold.

**(4)** The Purchaser understands that the Purchased Shares will, until the expiration of the applicable holding period set forth in Rule 144, unless sold in compliance with Rule 144, bear a legend to substantially the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD, OFFERED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.”

**(5)** The Purchaser acknowledges and agrees that it (i) is a sophisticated investor; (ii) does not require the assistance of an investment advisor or other purchaser representative to purchase the Purchased Shares; (iii) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Purchased Shares; (iv) has the ability to bear the economic risks of its prospective investment for an indefinite period of time; (v) can afford the complete loss of such investment; and (vi) recognizes that the investment in the Purchased Shares involves substantial risk.

**(6)** The Purchaser understands that the Seller may have access to information about the Company that is not generally available to the public, and acknowledges and agrees that, to the extent the Seller has any such information, such information need not (and shall not) be provided to the Purchaser by the Seller. The Purchaser further understands that the Seller is a federal agency and that the Purchaser’s ability to bring a claim against the Seller under the federal securities laws may be limited.



(7) The Purchaser acknowledges that it is not relying on any advice or recommendation from the Seller or the Company, or any investigation or examination that the Seller may have conducted, with respect to the Shares or the Company, and the Seller has not made any representation, warranty or covenant, express or implied, to it with respect thereto and the Seller shall not have any liability to it with respect thereto.

(8) Neither the Purchaser nor any person or entity controlling, controlled by or under common control with it, nor any person or entity having a beneficial interest in it, nor, to the knowledge of the Purchaser, any director, officer, agent, employee or Affiliate thereof: (i) is a person or entity listed in the annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism); (ii) is named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control (OFAC); (iii) is a Designated National other than an “unblocked national” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515; (iv) is a non-U.S. shell bank (as set forth in Section 313 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)) or is providing banking services indirectly to a non-U.S. shell bank; (v) is a senior non-U.S. political figure or an immediate family member or close associate of such figure or an entity owned or controlled by such a figure; (vi) is a person with whom a U.S. citizen or entity is prohibited from transacting business, whether such prohibition arises under U.S. law, regulation, executive order, anti-money laundering, antiterrorist, financial institution and asset control laws, regulations, rules or orders, or as a result of any list published by the U.S. Department of Commerce, the U.S. Department of Treasury, or the U.S. Department of State, including any agency or office thereof; (vii) is a person who has funded or supported terrorism or a suspected terrorist organization or who has engaged in, or derived funds from, activities that relate to the laundering of the proceeds of illegal activity; or (viii) is a person or entity that would cause the Company to violate any Law (including bank or other financial institution regulatory laws, regulations or orders) to which the Company is subject by reason of such person’s or entity’s purchase of the Purchased Shares (categories (i) through (viii), each, a “Prohibited Investor”).

(9) The Purchaser has met and will continue to meet all of its obligations under the Bank Secrecy Act, as amended (31 U.S.C. Section 5311 et seq.) and its implementing regulations, if applicable.

(10) The funds used to purchase the Purchased Shares were legally derived from legitimate sources and not from any Prohibited Investor.

(F) Availability of Funds. Purchaser has, and will have as of the Closing, sufficient funds available to consummate the transactions contemplated hereunder.

## IV COVENANTS.

**4.01. Forbearances of the Seller.** From the date hereof until the Closing, without the prior written consent of the Purchaser, the Seller will not:

(A) directly or indirectly transfer, sell, assign, distribute, exchange, pledge, hypothecate, mortgage, encumber or otherwise dispose of, or engage in or enter into any hedging transactions with respect to, any of the Purchased Shares or any portion thereof or interest therein (other than pursuant to the Securities Purchase); or

(B) agree, commit to or enter into any agreement to take any of the actions referred to in Section 4.01(A).

Notwithstanding the foregoing, the Seller may undertake any of the actions set forth in Section 4.01(A) with an Affiliate of the Seller so long as this Agreement is assigned to such Affiliate in accordance with Section 7.07 of this Agreement. For the avoidance of doubt, until the Closing, except as expressly set forth in this Section 4.01, the Seller shall continue to be able to exercise all rights and privileges with respect to the Purchased Shares.

**4.02. Further Action.** Each of the Seller, the Purchaser and the Company (A) shall each execute and deliver, or shall cause to be executed and delivered, such documents and other instruments and shall take, or shall cause to be taken, such further action as may be reasonably necessary to carry out the provisions of this Agreement and give effect to the transactions contemplated by this Agreement, and (B) shall refrain from taking any actions that could reasonably be expected to impair, delay or impede the Closing or the consummation of the transactions contemplated by this Agreement.

## V CONDITIONS TO THE CLOSING.

**5.01. Conditions to Each Party's Obligations.** The respective obligations of each of the Purchaser and the Seller to consummate the Securities Purchase are subject to the fulfillment, or written waiver by the Purchaser and the Seller, prior to the Closing, of each of the following conditions:

(A) Regulatory Approvals. All regulatory approvals required to consummate the Securities Purchase shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated.

(B) No Injunctions or Restraints; Illegality. No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Securities Purchase shall be in effect. No Law shall have been enacted, entered, promulgated or enforced by any Governmental Entity which prohibits or makes illegal the consummation of the Securities Purchase.

**5.02. Condition to Obligations of the Seller.** The obligation of the Seller to consummate the Securities Purchase is also subject to the fulfillment, or written waiver by the Seller, prior to the Closing, of the following conditions:

**(A)** Other Events. None of the following shall have occurred with respect to the Company or any of its Subsidiaries:

**(1)** the Company or any of its Subsidiaries shall have (a) dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) become insolvent or unable to pay its debts or failed or admitted in writing its inability generally to pay its debts as they become due; (c) made a general assignment, arrangement or composition with or for the benefit of its creditors; (d) instituted or have instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition shall have been presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition shall have resulted in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; (e) had a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (f) sought or shall have become subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (g) had a secured party take possession of all or substantially all its assets or had a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (h) caused or shall have been subject to any event with respect to it which, under the applicable laws of any jurisdiction, had an analogous effect to any of the events specified in clauses (a) to (g) (inclusive); or (i) taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

**(2)** a Governmental Entity in any jurisdiction shall have (a) commenced an action or proceeding against the Company or any of its Subsidiaries; or (b) issued or entered a temporary restraining order, preliminary or permanent injunction or other order applicable to the Company or any of its Subsidiaries, which in the case of (a) and (b) shall have had or shall be reasonably expected to have a Company Material Adverse Effect;

**(3)** any fact, circumstance, event, change, occurrence, condition or development shall have occurred that, individually or in the aggregate, shall have had or shall be reasonably likely to have a Company Material Adverse Effect; or

**(4)** any Regulatory Event not otherwise existing on the date hereof.

**(B)** Representations and Warranties of the Purchaser. The representations and warranties set forth in Article III of this Agreement shall be true and correct in all material respects as though made on and as of the Closing Date.

(C) Performance Obligations. The Purchaser shall have performed in all respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(D) Closing Certificates.

(1) The Purchaser shall deliver to the Seller a certificate, dated the Closing Date, signed on behalf of the Purchaser by a senior executive officer thereof certifying to the effect that the conditions precedent to the Closing set forth in Section 5.01, Section 5.02(B) and Section 5.02(C) have been satisfied.

(2) The Company shall deliver to the Seller a certificate, dated the Closing Date, signed on behalf of the Company by a senior executive officer thereof certifying to the effect that the conditions precedent to the Closing set forth in Section 5.02(A) have been satisfied.

(E) Receipt of Payment. The funds due from all Other Purchasers shall have been received by the Escrow Agent referenced in Section 2.02(B)(3).

## VI TERMINATION.

### 6.01. Termination Events.

(A) This Agreement may be terminated at any time prior to the Closing:

(1) by mutual written agreement of the Purchaser and the Seller; or

(2) by the Seller, upon written notice to the Purchaser, in the event that the Closing Date does not occur on or before May 15, 2014 or such later date, if any, as Seller shall agree to in writing; *provided, however*, that the right to terminate this Agreement pursuant to this Section 6.01(A)(2) shall not be available if Seller's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing Date to occur on or prior to such date.

**6.02. Effect of Termination**. In the event of termination of this Agreement as provided in Section 6.01, this Agreement shall forthwith become void and have no effect, and none of the Seller, the Purchaser, any Affiliates of the Purchaser or any officers or directors of the Purchaser or any of its Affiliates shall have any liability of any nature whatsoever hereunder, or in connection with the transactions contemplated hereby, except that this Section 6.02 and Sections 7.03, 7.04, 7.05 and 7.06 shall survive any termination of this Agreement.

## VII MISCELLANEOUS.

**7.01. Waiver; Amendment**. Any provision of this Agreement may be waived, amended or modified at any time by an agreement in writing signed by each of the Seller, the Purchaser and the Company. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will

operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege.

**7.02. Counterparts.** This Agreement may be executed by facsimile or other electronic means and in counterparts, all of which shall be considered an original and one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

**7.03. Governing Law; Choice of Forum; Waiver of Jury Trial.**

**(A)** This Agreement and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be enforced, governed, and construed in all respects (whether in contract or in tort) in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdictions and venue of the United States District Court of the District of Columbia and the United States Court of Federal Claims for any and all civil actions, suits or proceedings arising out of or relating to this Agreement or the transactions contemplated hereby, and (b) that notice may be served upon (i) the Purchaser at the address and in the manner set forth for notices to the Purchaser in Section 7.05 and (ii) the Seller at the address and in the manner set forth for notices to the Seller in Section 7.05, but otherwise in accordance with federal law.

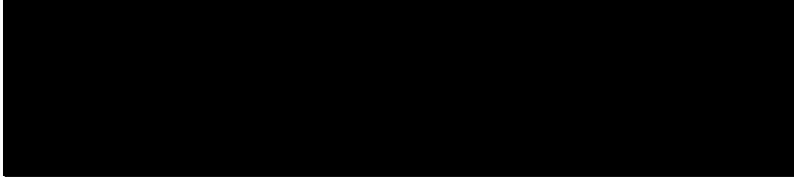
**(B)** To the extent permitted by applicable Law, each of the parties hereto hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Agreement or the transactions contemplated hereby.

**7.04. Expenses.** If requested by the Seller, the Company shall pay all reasonable out of pocket and documented costs and expenses associated with this Agreement and the transactions contemplated by this Agreement, including, but not limited to, the reasonable fees, disbursements and other charges of the Sellers's legal counsel and financial advisors.

**7.05. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given on the date of delivery if delivered personally or telecopied or emailed (upon telephonic confirmation of receipt), on the first Business Day following the date of dispatch if delivered by a recognized next day courier service, or on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

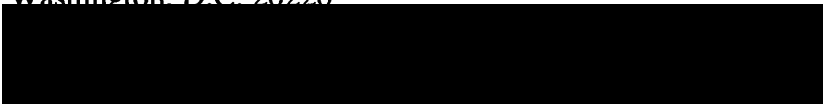
If to the Purchaser to:

F.M.S. BANK - 1 - 0 - 4  
520 SHERMAN ST.  
Fort Morgan, CO 80701



If to the Seller to:

United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220



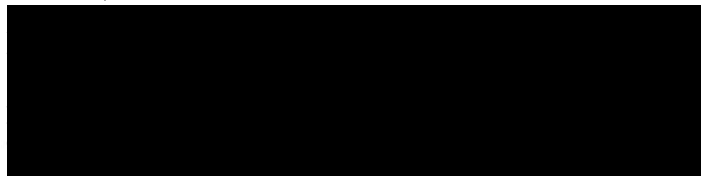
With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064



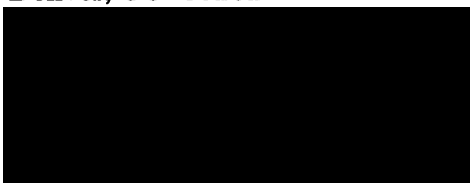
If to the Company:

Bankers' Bank of the West Bancorp, Inc.  
1099 18th Street, Suite 2700  
Denver, CO 80202



With a copy to:

Lewis Roca Rothgerber LLP  
1200 17th Street, Suite 3000  
Denver, CO 80202



**7.06. Entire Understanding; No Third Party Beneficiaries.** This Agreement (together with the documents, agreements and instruments referred to herein) represents the entire understanding of the parties with respect to the subject matter hereof and supersedes any and all other oral or written agreements heretofore made with respect to the subject matter hereof; *provided, however*, that the Company, the Purchaser and the Other Purchasers have entered into the following agreements to which the Seller is not a party: (i) Passivity Commitment for CPP Preferred Stock, (ii) Agreement Among Purchasers and (iii) the Escrow Agreement with the Escrow Agent. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, any rights or remedies hereunder.

**7.07. Assignment.** Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be null and void; *provided, however*, that the Seller may assign this Agreement to an Affiliate of the Seller. If the Seller assigns this Agreement to an Affiliate, the Seller shall be relieved of its obligations and liabilities under this Agreement but (i) all rights, remedies, obligations and liabilities of the Seller hereunder shall continue and be enforceable by and against and assumed by such Affiliate, (ii) the Purchaser's obligations and liabilities hereunder shall continue to be outstanding and (iii) all references to the Seller herein shall be deemed to be references to such Affiliate. The Seller will give the Purchaser notice of any such assignment; *provided*, that the failure to provide such notice shall not void any such assignment.

**7.08. Severability.** Any term or provision of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid, illegal or unenforceable the remaining terms and provisions of this Agreement. or affecting the validity, legality or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable, in all cases so long as neither the economic nor legal substance of the transactions contemplated hereby is affected in any manner materially adverse to any party or its shareholders. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**FMS BANK**

By: 

Name: JOHN A. SNEED

Title: CEO

**UNITED STATES DEPARTMENT OF THE  
TREASURY**

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

Name: Timothy J. Bowler

Title: Acting Assistant Secretary for Financial  
Stability




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**FMS BANK**

By: \_\_\_\_\_  
Name:  
Title:

**UNITED STATES DEPARTMENT OF THE  
TREASURY**

By:   
Name: Timothy J. Bowler  
Title: Acting Assistant Secretary for Financial  
Stability

For the purposes of Section 2.02, Section 4.02, Section 5.02(D), Section 7.01 and Section 7.04 of this Agreement:

**BANKERS' BANK OF THE WEST BANCORP,  
INC.**

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

Name: William A. Mitchell, Jr.

Title: President