

**MASTER BANKING SERVICES AGREEMENT**

**THIS MASTER BANKING SERVICES AGREEMENT** (the "Agreement") is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2002 by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipality of the State of Florida (the "City"), and **SUNTRUST BANK**, a state member bank of the Federal Reserve System (the "Bank").

**WITNESSETH**

**WHEREAS**, the City issued Request for Proposals No. 08-01/02 for a Banking Services on December 17, 2001 ("RFP"); and

**WHEREAS**, the Bank responded to the RFP by submitting its proposal for banking services on 1/18/02 (the "Proposal"); and

**WHEREAS**, the Bank shall be providing banking services to the City set forth and delineated in the RFP and the Proposal, and

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Bank hereby covenant and agree as follows:

**Section 1. Purpose and Effect of this Agreement: Delineation of Banking Services**

The Banking Services to be Provided to the City by the Bank shall be consist of:

- (a) Each of the specific requirements, terms and conditions set forth in the RFP, which is incorporated herein by reference in its entirety; and
- (b) Each of the services, terms and conditions set forth in the Proposal, which is incorporated hereby by reference in its entirety.

**Section 2. Controlling Provisions**

In the event of any conflict between the specific provisions of this Agreement and the terms and conditions of the RFP and/or the Proposal, the requirements and/or provisions of the RFP and Proposal shall control, except as provided in Section 4 herein, where this Agreement shall control.

**Section 3. Representations, Warranties, and Covenants**

- (a) The Bank has not employed or retained any person employed by the City to solicit or secure this Agreement and it has not offered to pay, paid, or agreed to pay any person employed by the City and fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

(b) The Bank is aware of the conflict of interest laws of the ordinances and regulations of the City of Miami Beach, Miami-Dade County, and the State of Florida, and covenants that the Bank will fully comply in all material respects with the terms of said laws.

(c) At the request of the Bank, the City agrees to cause its designated officials or their designees to execute such signature cards and other signature and identification verification documents as the Bank deems reasonably necessary for purposes of establishing appropriate security measures in connection with the banking services to be provided hereunder.

#### **Section 4. Indemnification**

The Bank shall indemnify and hold harmless the City, its agents and employees from or on account of any losses, costs and damages, including attorneys' fees and the costs of defense resulting from any breach committed during or on account of any operations connected with this Agreement, or by any act of negligence in connection with the same, or by or on account of any negligent act or omission of the Bank or its subcontractors, agents, servants or employees. The Bank further agrees to indemnify and hold harmless the City, its agents and employees against any claims or liability arising from or based upon the violation of any federal, state, county or city laws, bylaws, ordinances or regulations by the Bank, its agent, servant, or employees.

To the extent possible under Florida law, the City shall indemnify and hold harmless the Bank, its directors, officers, employees and agents from or on account of any losses, costs and damages, including reasonable attorneys' fees and the costs of defense, resulting from any actions or omissions of the Bank taken or omitted to be taken at the request of the City, its employees or agents, or otherwise arising out of any negligent act or omission or failure to exercise reasonable care by the City, its employees or agents. Subject to the aforesaid limitation, the City further agrees to indemnify and hold harmless the Bank, its agents or employees against any claims or liability arising from or based upon the violation of any federal, state, county, or city laws, by-laws, ordinances, or regulations by the City, its agents, servants or employees.

#### **Section 5. Limitation of Liability**

Notwithstanding any other terms or provision of this Agreement, including the preceding Section 4, neither the City nor the Bank shall in any event be liable to the other for any amount in excess of actual losses plus costs and attorneys' fees sustained by the injured party, and in no event shall either the City or the Bank ever be liable hereunder or in any action in tort arising out of the services or relationship to be provided or established hereunder for any indirect, special incidental, punitive or consequential loss or damage of any kind, including lost profits or opportunities or damage to reputation, arising therefrom whether or not advised of the possibility hereof.

#### **Section 6. Term and Termination**

(a) This Agreement shall have a term of three (3) years, with an option to renew at the City's sole discretion, for an additional one (1) year thereafter. The term shall begin to run from ~~the~~

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May 9, 2002

~~first date funds are deposited in the subject account~~ ("Initiation Date"). In the event the City desires to renew this Agreement, as provided in the preceding sentence, it shall notify Bank in writing of its intent to do so.

(b) Absent a significant default or material change in circumstances that impairs the parties' ability to perform hereunder, this Agreement cannot be canceled by either party for one (1) year from the Initiation Date. Thereafter, either party may cancel this Agreement for any reason upon ninety (90) days advance written notice to the non-canceling party.

(c) Bank shall have the right to terminate specific services covered by the exhibits or riders hereto, as stated in each such exhibit or rider.

(d) If either party does not comply with the terms of this Agreement, the non-defaulting party must give a written Notice of Default to the defaulting party setting forth the specific event(s) of default and, furthermore, the action necessary to cure such default(s). If the default(s) is/are not cured or corrected within thirty (30) days of the Notice of Default, this Agreement may be terminated by the non-defaulting party.

(e) The City, from time to time, during normal Bank business hours and with at least two (2) business days prior notice to Bank, shall have the right to request from Bank copies of books and records, at the City's expense, relating solely to City's accounts or services provided to City hereunder to ensure that all aspects of this Agreement are being met. Bank reserves the right to reasonably restrict access to those books and records disclosure of which will violate banking law or regulations or invade the privacy of any bank customer or account.

#### **Section 7. Changes**

(a) The City may, from time to time, request reasonable changes in the Services to be performed by Bank hereunder. Such changes, as mutually agreed upon between City and Bank, shall be incorporated in written amendment to this Agreement and signed by both parties prior to their effectiveness.

(b) The parties reserve the right to change, alter, amend, delete or otherwise modify the terms of this Agreement or the Services provided hereunder in the event of a change in applicable laws, regulations, as a result of any court or regulatory agency order or as otherwise may reasonably be required to ensure continued compliance with all applicable banking laws and regulations.

(c) The fees and charges set forth herein for the Services to be provided to City will begin on the Initiation Date and shall not be increased for a period of \_\_\_ years thereafter. Should this Agreement extend beyond the \_\_\_ year period, prices for said Services shall be renegotiated at that time and shall require the consent of both parties hereto. Such consent shall not be unreasonably withheld.

**Section 8. Equal Employment Opportunity; Non-discrimination**

The Bank will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, national origin, sexual orientation, or disability. The Bank shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to race, color, religion, sex, national origin, sexual orientation, or disability, in accordance with federal, state, and City law.

**Section 9. Waiver**

No waiver of a breach of any provisions of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

**Section 10. Severability**

Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under laws of the State of Florida or the City, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent they cannot be so modified, then same shall be deemed severable, and in either event, the remaining terms and provisions in this Agreement shall remain unmodified and in full force and effect.

**Section 11. Governing Law**

This Agreement shall be construed and enforced according to the Laws of the State of Florida.

**Section 12. Exhibits**

The following documents are attached hereto and incorporated by reference herein:

- A. RFP
- B. Proposal

Additional exhibits, including service agreements, may be added from time to time as mutually agreed upon in writing by the parties, and any service agreement may be terminated separately and severally without affecting the continued enforceability of all other provisions of this Agreement as to non-terminated Services.

**Section 13. Notices**

All written notices, demands and other communications required or provided for hereunder or under any of the Exhibits hereto shall be sent by certified mail, return receipt required, postage

prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to the following address and person bearing the following title for each party hereto or such other addressee or person as shall be designated by a party in a written notice given in the matter required hereby:

City:

City of Miami Beach  
Miami Beach, Florida  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: Director of Finance

Bank:

SunTrust Bank  
Institutional Banking  
777 Brickell Avenue, 4th Floor  
Miami, Florida 33131  
Attn: Senior Vice President

All notices sent pursuant hereto shall be deemed received by the applicable party within the time sent including, but limited to, the following:

- (a) Facsimile transmission are deemed received as of the acknowledgment date on the printed confirmation or within one business day;
- (b) Notices sent by courier shall be deemed received when delivered by said courier to the indicated address;
- (c) Overnight delivery is deemed received on the next business day;
- (d) Certified U.S. mail shall be controlled by the signature upon the receipt therefor.

**Section 14. Federal Reserve**

In recognition of the fact that some of the services to be provided by the Bank hereunder require the related performance of services by the Federal Reserve System, the City agrees that the Bank shall not be liable for loss or damage of any kind resulting from any delay in the performance of or failure to perform the Bank's responsibilities hereunder due to delays or failures by the Federal Reserve System so long as the Bank exercises its best efforts to correct the problem.

**Section 15. Assignment**

Neither party shall assign this Agreement or any interest herein, or delegate any of its duties hereunder, without the other party's prior written consent, except that it is agreed by the City that the Bank may delegate certain services to be provided through independent contractors, as described in any subsequent Exhibits hereto.

**Section 16. Miscellaneous**

It is understood that charges by the Bank will be incurred only when applicable Services commence. Should SunTrust Bank be acquired by another financial institution, the City reserves the right to cancel the existing Agreement upon thirty (30) days advance written notice to Bank.

**IN WITNESS WHEREOF**, the parties have executed this Agreement and initialed each of the Exhibits thereto as of the day and year as cited below.

**CITY OF MIAMI BEACH, FLORIDA**

Attest:

Authorized signature on behalf of the City of Miami Beach, Florida

\_\_\_\_\_  
(Name) Date

[Signature]  
(Name) City Mgr. Date

**SUNTRUST BANK**

Mercedes Villaverde  
Witness

By: [Signature]  
Kintrey Newlin  
Its: First Vice President

Mercedes Villaverde  
Witness

Attest: [Signature] 11/18/02  
Name Date

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

[Signature] 11-6-02  
City Attorney Date