

## MASTER BANKING SERVICES AGREEMENT

This Master Banking Services Agreement (this “**Agreement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between Wells Fargo Bank, N.A. (“**Bank**”), a national banking association authorized to do business in the State of Florida and City of Oakland Park, Florida (“**City**”), a municipal corporation of the State of Florida.

### Recitals

WHEREAS, City issued RFP No. 022321 for the provision of banking and treasury management services on January 20, 2021, (the “**RFP**”) to which the Bank submitted its response dated February 23, 2021 (the “**Bank’s Response**”);

WHEREAS, on the basis of the Bank’s Response, City has determined to engage the Bank to provide certain banking and treasury management services (each, a “**Service**” and collectively, the “**Services**”) all as provided in the RFP and the Bank’s Response;

WHEREAS, Bank has agreed to provide the Services to City, and City has agreed to accept the Services, upon the terms and conditions set forth in the Bank’s Response and set out in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which, each of Bank and City expressly acknowledge, each of Bank and City hereby agree as follows:

1. Entire Agreement. Bank shall provide, and City shall accept, the Services pursuant to the terms and conditions of the “**Service Documentation**” which includes the following documents which are attached and incorporated herein in their entirety:
  - 1.1 This Agreement;
  - 1.2 The “Pricing Schedule” attached as **Exhibit A**;
  - 1.3 Bank’s Response to City’s Request for Proposal dated February 23, 2021 (the “**Bank’s Response**”) which includes Bank’s response to the RFP and all exhibits and addendum which are incorporated by reference herein, including the Service Description for each Service (each, a “**Service Description**”), and the commercial account agreement for the deposit accounts that City maintains at Bank (the “**Deposit Agreement**”), collectively attached as **Exhibit B**;
  - 1.4 City’s RFP dated January 20, 2021 (the “**RFP**”) (attached as **Exhibit C**)

If there is a conflict among the documents that make up this Agreement, the documents will govern in the order set forth above. The Service Descriptions and Deposit Agreement in effect as of the date of this Agreement are attached to the Bank’s Response. This Agreement constitutes the entire agreement between Bank and City and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service and the transactions contemplated hereunder. No course of dealing or waiver of any right on one occasion will constitute a modification of the above referenced documents or be a waiver of that right on a subsequent occasion.

2. Services; Additional Services. If City requests and Bank agrees to provide additional services after the date of this Agreement, which are governed by additional service descriptions, pricing or other documents outside of the scope of the Services and the Pricing Schedule, the parties shall document such amendments or revisions in a mutually-agreed writing specifying the Service Documentation being modified in order to preserve the order of priority set forth above.

3. Changes to Services or Service Descriptions/Deposit Agreement. Except as otherwise set forth herein, Bank may change (or add to) the terms in the Service Descriptions and Deposit Agreement at any time. If an enhancement to a Service or other change requires a change to a Service Description or Deposit Agreement, Bank will post an updated Service Description or Deposit Agreement on the CEO portal. Notwithstanding the above, Bank will not make a material change to the Services affecting similarly situated customers (the materiality of such change to be determined in Bank's reasonable discretion) that would negatively affect City's ability to use the Services provided to City under this Agreement, without providing City with reasonable prior notice of such change and obtaining City prior consent, which City agrees will not be unreasonably withheld; provided however, that such consent will not be required for any modifications that are required by applicable law, rule, or regulation, that are immaterial in nature, or that are material but do not negatively affect City's use of the Services, in which case, Bank will provide City with prior reasonable notice of such modification when required by applicable law. If City continues to use a Service after the change takes effect, City will be bound by the change, except as otherwise agreed to by Bank and City. If City discontinue using the affected Service before the change becomes effective, City will not be bound by the change. Under no circumstances shall the City be bound to changes in the Service Description or Deposit Agreement that conflict with this Agreement; should a conflict exist, the order of precedence provision shall control.

As used in this Agreement, the term "Applicable Law" means all applicable laws (including common or customary laws), statutes, constitutions, policies, decrees, judgments, treaties, regulations, directives, by-laws, rulings, orders or operating circulars governing our activities and/or any transaction effected under this Agreement, including, but not limited to, the funds transfer system and clearing and settlement house rules.

4. Term.

This Agreement shall have an initial term of five (5) years beginning on \_\_\_\_\_ and ending on \_\_\_\_\_, with the parties having the option to renew for five (5) additional one (1) year terms. Bank and City must mutually agree to any renewal, which shall be on terms and conditions mutually agreed upon by Bank and City in writing. In the event Service is scheduled to end because of the expiration of this Agreement, Bank shall continue to deliver Service upon the request of the City. The extension period shall not extend for more than 90 days beyond the expiration date of this Agreement, unless otherwise agreed to by both parties. The Bank shall be compensated for the Services at the rate in effect when this extension clause is invoked by the City.

5. Termination of Agreement.

The City shall have the right to terminate this Agreement immediately for the following reasons:

- 5.1 Bank fails to promptly provide the Services to City in accordance with the Service Documentation;
- 5.2 Bank violates any law, rule or regulation in connection with the provision of the Services to City;
- 5.3 Bank fails to cooperate in good faith upon receiving any reasonable request for information or service from the City that is in accordance with the Bank's policies and procedures;

- 5.4 Bank's officers or employees engage in improper actions, which in the reasonable opinion of City adversely affect City's interest, or endanger the structure of Bank (such as a spin-off or merger which materially affects the Services provided to City in accordance with the terms of the Service Documentation);

The City shall have the right to terminate this Agreement at any time for any reason by giving 30 days prior written notice, when it is in the best interest of the City. If this Agreement is terminated by the City, as provided herein, the Bank shall be paid for the work completed as of the date of termination. The Bank shall have the right, in its best interest as determined by Bank, to terminate this Agreement for convenience by giving written notice to City at least one hundred and eighty (180) days prior to the effective date of such termination. In the event this Agreement is terminated for convenience, Bank shall be paid for any services performed through the termination date specified in the written notice of termination.

6. Pricing/Payment.

6.1 Bank shall perform the Services for the agreed upon pricing as set forth in the Response. Except as otherwise agreed to between City and Bank, Bank may debit City's account(s) with Bank for any fees not covered by earnings credits or it may send an invoice to City for such amounts, which City will promptly pay. Pricing for the Services will remain fixed for the initial term of the Agreement. Upon execution of this Agreement, Bank shall waive the first eight (8) months of analysis fees as well as waive the implementation fees for Payment Manager®, E-Box, lockbox, and account reconciliation, if implemented within the first 12 months of execution of this Agreement.

6.2 The City shall have the option of using either a non-interest bearing account (NIB) or a Government Advantage Interest Checking account (GAIC), and can switch between them as the interest rate environment changes. The NIB account shall receive an initial managed earnings credit rate (ECR) of 0.25% (25 basis points). The GAIC account shall receive an initial managed ECR of 0.25%, and an initial managed interest rate of 0.17% (17 basis points) on excess balances not used to offset fees. The Bank sets the ECR internally each month after evaluating a combination of factors, including the 91-Day Treasury Bill rate, the Fed Funds rate, sweep rates, and other market indicators.

6.3 Set Off Rights: As described in the Service Documentation, Bank shall have the right to set off or deduct funds from City accounts for obligations incurred under this Agreement. Bank agrees that it will make written demand for such payments three (3) days or more in advance of any withdrawal of funds from a City account to cover any such obligation. The Bank may comply with the requirement to provide written demand by providing City with a monthly account analysis statement. Should City dispute any charge, it will provide written notice to Bank and Bank will work in good faith with City to resolve such dispute before withdrawing funds from City accounts to cover such obligation.

Bank agrees that notwithstanding the various provisions in Service Documentation that permit the Bank to set off or deduct funds from any of City's accounts under differing scenarios, Bank shall not set off or deduct funds from the following specified accounts for obligations incurred under this Agreement provided that these accounts are being used consistent with the purpose identified in the account opening process:

Payroll Account

Utility Lockbox Account  
False Alarm Lockbox Account  
Deposit Account  
Special Events Account

In the circumstance in which the City's specified account(s) above do(es) not have sufficient balances to pay the unpaid fees associated with the specified account(s) then the City will have 10-business days to fund the specified account(s) prior to the Bank having the right to exercise its right of set off on the City's specified accounts. For the sake of clarity, there shall be no restriction or limitation on the Bank's right to setoff or deduct funds from the City's Operating Account for obligations incurred under this Agreement.

7. Bank's Liability/Indemnification.

7.1 Bank will only be liable to City for City's direct monetary losses due to Bank's negligence or intentional misconduct resulting from or relating to this Agreement, except to the extent caused by the negligent acts, omissions, or willful misconduct of the City, its officers, employees, agents, or employees. Except as expressly provided otherwise in the Service Documentation, neither party to this Agreement will be liable to the other party for any special, consequential, incidental (including without limitation court costs and attorneys' fees), indirect, or punitive losses or damages, whether any claim is based on contract or tort, or whether the likelihood of such losses or damages was known to the other party and regardless of the form of the claim or action.

7.2 During the term of this Agreement, Bank will indemnify, defend and hold harmless City and its officers, directors, employees, agents and assigns (the "Indemnified Parties") from and against all claims, losses, demands, liability, judgments, awards, interest, attorney's fees and costs (collectively, "Losses") arising out of, or resulting from the performance of the services provided hereunder which are, in each case, directly caused in whole or in part by the negligent or intentional acts or omissions of Bank or any of its officers, directors, employees, agents, or subcontractors, except to the extent such Losses are caused by the negligence or intentional misconduct of any Indemnified Party.

7.3 During the term of this Agreement, Bank will indemnify, defend and hold harmless the Indemnified Parties against any allegation that materials or services provided by the Bank under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual, property or proprietary right of any third party. Notwithstanding the foregoing, Bank shall have no liability for such infringements or violations if the alleged claim or infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product or service without Bank's written approval, (iii) any modifications made to the product of service by the Bank pursuant to the City's specific instructions, (iv) any intellectual property right owned by or licensed to the Bank, or (v) any use of the product or service by the City that is not in conformity with the terms of any applicable license agreement.

7.4 If any Indemnified Party determines to seek indemnification from Bank under 7.2 or 7.3 above, the Indemnified Party shall provide written notice of the suit, claim or action to Bank as soon as practicable but in any event not later than ten (10) business days following the Indemnified Party's receipt of notice of such suit, claim or action. Said written notice shall specify in detail: (i) the facts constituting the basis for the allegations and (ii) if known, the aggregate amount of Losses for which a claim is being made, or to the extent that such Losses are not known or have not been incurred at the

time such claim is made, an estimate, to be prepared in good faith and accompanied by supporting documentation, of the aggregate potential amount of such Losses.

8. In the case of any suit, claim or action for which indemnification is sought by Indemnified Party under 7.2 or 7.3 above, the Indemnified Party shall permit Bank to assume and control the defense or settlement of such suit, claim or action at Bank's expense. The Indemnified Parties and Bank shall reasonably cooperate in the investigation, pre-trial activities, trial, compromise, settlement, discharge and/or defense of any suit, claim or action for which indemnification is sought under 7.2 or 7.3 above, and the records and employees of the Indemnified Parties shall be made reasonably available to Bank with respect to such defense. Miscellaneous.

8.1 The Service Documentation will be governed by substantive federal laws, regulations and rules and, to the extent such laws, regulations and rules are not applicable, those of the State of Florida, without regard to conflicts of laws principles. Any portion of the Service Documentation which is inconsistent with applicable laws, regulations or rules will be deemed modified and applied in a manner consistent therewith, and Bank will incur no liability to City as a result of the inconsistency or modification and application. If any portion of the Service Documentation is deemed unenforceable, it will not affect the enforceability of the remaining Service Documentation. Venue for any action arising out of or relating to this Agreement shall lie in state or federal courts in or for Broward County, Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

#### 8.2 Notice

All written notices required in this Agreement shall be sent by hand delivery, overnight mail, or certified mail, return receipt requested, and if sent to the City, shall be mailed to:

Andrew Thompson  
City of Oakland Park  
Finance Director  
3650 NE 12th Avenue  
Oakland Park, FL 33334

If sent to the Bank, shall be mailed to:

Vincent Mattio  
Wells Fargo Bank, N.A.  
100 South Ashley Drive, 8<sup>th</sup> Floor  
MAC: Z0307-085  
Tampa, FL 33602

8.3 This Agreement may be executed in any number of counterparts, which when taken together shall constitute one complete original of this Agreement. This Agreement may be executed and delivered via facsimile or any electronic means, such as email.

8.4 City and Bank agree that this Agreement and the Service Documentation set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein and therein.

**PUBLIC RECORDS:** The City is a public agency subject to Chapter 119, Florida Statutes. The Proposer shall comply with Florida's Public Records Law. Specifically, the Proposer shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
- B. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Florida Statutes, or as otherwise provided by law;
- C. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- D. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**Renee M. Shrout, CMC  
City Clerk  
City of Oakland Park  
3650 NE 12th Avenue  
Oakland Park, FL 33334  
954-630-4298  
[renees@oaklandparkfl.gov](mailto:renees@oaklandparkfl.gov)**

8.5 Contractor will promptly return or destroy the Disclosing Party's Confidential Information upon the earlier to occur of the Disclosing Party's written request, or the termination of the Confidentiality Period. Contractor is not obligated to return or destroy Confidential Information that (i) it is required by law or regulation to retain, but then only for the time period required, (ii) is commingled with other information or documents of the Contractor if it would pose a substantial administrative burden to destroy such Confidential Information, or (iii) is contained in an archived computer system or backup made by the Contractor in accordance with its standard security or disaster recovery procedures, provided in

each case that: (A) such retained documents will eventually be erased or destroyed in the ordinary course of records management and/or data processing procedures; and (B) that the Contractor remains fully subject to the obligations of confidentiality in this Agreement until the earlier of the eventual destruction, or the expiration of the confidentiality obligations set out in this Agreement.

Upon completion of this Agreement, transfer, at no cost, to City all public records in possession of Bank or keep and maintain public records required by City to perform the service.

- 1) If Bank transfers all public records to City upon completion of the contract, Bank must destroy any duplicate confidential information or records that are exempt from public records disclosure.
- 2) If Bank keeps and maintains public records upon completion of this Agreement, Bank must meet all applicable requirements for retaining public records.
- 3) All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City.

8.6 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

8.7 Severability. In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

8.8 No Partnership or Joint Venture. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between City and Bank or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.

8.9 No Third-Party Beneficiaries. There are no third-party beneficiaries created or entitled by this Agreement, and only the specific parties hereto shall have any rights or standing to enforce this Agreement or any provision thereof.

8.10 Use of Name. Bank will not use the name, insignia, symbols, or images of City or any of its employees, or any variations or combination thereof for any purpose whatsoever without City's prior written consent.

8.11 Assignment. This Agreement shall not be assigned in whole or in part by either party without the express written consent of both parties, which consent shall not be unreasonably withheld or delayed; however, that Bank may assign this Agreement without City's consent in connection with a merger, acquisition, or corporate restructuring involving all or substantially all of the assets of Bank; provided that any assignee shall be in compliance with the terms of this Agreement as of the date of such assignment.

Each of the parties hereto agrees to be bound by the terms and conditions of this Agreement, as of the above written date.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

City of Oakland Park

Wells Fargo Bank, N.A.

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

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

Name: \_\_\_\_\_

Name: Vincent Mattio

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

Title: Senior Vice President

## **EXHIBIT A**

Pricing Schedule that Reflects RFP pricing and modification agreed to by City Finance Director and V. Mattio via e-mail on April 20, 2021

## **EXHIBIT B**

Bank's Response to City's Request for Proposal dated February 23, 2021

**EXHIBIT C**

City's RFP No. 022321 dated January 20, 2021