

MASTER BANKING SERVICES AGREEMENT

This Master Services Agreement (this "**Agreement**") is entered into as of the 28th day of July, 2016 by and between Wells Fargo Bank, N.A. ("**Bank**"), and the City of Clearwater ("**Customer**").

Recitals

WHEREAS, the Customer requested proposals pursuant to its Request for Proposal Number 22-16 issued March 8, 2016 ("**RFP**"); and

WHEREAS, Bank submitted a proposal dated April 20, 2016, including all agreements, service descriptions, and other documents included therewith and appended thereto ("**Proposal**") in response to the RFP; and

WHEREAS, Customer has requested that Bank provide certain banking and treasury management services (collectively, the "**Services**") to Customer; and

WHEREAS, Bank has agreed to provide the Services to Customer, and Customer has agreed to accept the Services, upon the terms and conditions set forth in this Agreement.

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

Agreement

1. Service Documentation. Bank shall provide, and Customer shall accept, the Services pursuant to the terms and conditions of the "**Service Documentation**", which are expressly incorporated herein by reference, and any amendments, which include:

- 1.1 This Agreement;
- 1.2 Bank's Response to Request for Proposal #22-16, dated April 20, 2016 ("**Proposal**");
- 1.3 The Customer's Request for Proposal #22-16, dated March 8, 2016 (the "**RFP**"), which includes:
 - 1.3.1 Customer's Terms and Conditions
- 1.4 The Service Description for each Service (each, a "**Service Description**");
- 1.5 The account agreement for the deposit accounts that Customer maintains at Bank (the "**Deposit Agreement**"); and
- 1.6 User guides, which may include software, software licenses, price schedules, specifications, instructions and notices.

If there is a conflict among the documents that make up the Service Documentation, the documents will govern in the order set forth above. The Deposit Agreement and the Service Descriptions in effect as of the date of this Agreement are included under Tab G of the Bank's Proposal in response to the RFP dated April 20, 2016.

The Service Documentation constitute the entire agreement between Bank and Customer and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service. 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. Bank and Customer will agree upon the Service(s) to be provided. If Customer 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, the terms and conditions thereof shall be deemed to be incorporated herein by reference without the need to either amend this Agreement or to add such service descriptions, pricing or other documents as attachments to this Agreement.

3. Changes to Services or Service Documentation.

Bank may change the Service Description or Services offered at any time upon prior written notification. If Customer discontinues using the affected Service before the change becomes effective, it will not be bound by the change. If Customer continues to use a Service after the change becomes effective, it will be bound by the change.

4. Term and Termination.

Term. The initial term of the Agreement is three (3) years, commencing on October 1, 2016 and shall continue in full force and effect until September 30, 2019, unless otherwise terminated in accordance with the provisions of this Agreement. The City shall be provided with two (2), two (2) year extension options. Said contract extensions will be subject to pricing negotiation mutually agreeable to both parties. Bank shall provide written notice of any request for fee increases no later than 60 days prior to the term expiration date. Extension prices shall be firm for the extension term.

Termination. Unless terminated sooner in accordance with the Service Documentation, this Agreement and all Services will continue in effect until terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other party (unless a Service is terminated sooner in accordance with the Service Documentation). Bank may terminate any Service (a) following notice to Customer of a breach of any provision of the Service Documentation and Customer's failure to cure the breach within fifteen (15) days of the date of such notice, or (b) without notice to Customer if (i) Customer is subject to a petition under the U. S. Bankruptcy Code or (ii) Bank determines in its sole discretion that a material adverse change has occurred in Customer's ability to perform its obligations under the Service Documentation. The termination of a Service will not affect Customer's or Bank's rights with respect to transactions occurring before termination. Bank will not be liable to Customer for any losses or damages Customer may incur as a result of any termination of any Service.

Rights and Remedies. Either party may pursue such rights and remedies at law or in equity as may be available to it as limited or defined in this Agreement.

5. Compensation. The City will pay Bank a sum not to exceed \$125,000 annually, ("Compensation") for the Services as set forth in the Proposal dated April 20, 2016, Section D, Appendix A and B and attachments thereto. The Compensation shall constitute full compensation for all Services that are actually performed pursuant to this Agreement. Fees for

the Services will be in accordance with the fee structure outlined in the Proposal. If, during any Customer fiscal year (October 1 – September 30), either party notifies the other party that the Customer's expenditures are likely to exceed the not-to-exceed Compensation, the parties will seek to conform usage to the not-to-exceed Compensation through mutual agreement, amendment, and the Customer may seek additional funding, as necessary, at its discretion. If the parties are unable to make adequate adjustments to avoid potential exhaustion of the not-to-exceed Compensation, either party may terminate this agreement immediately upon written notice as provided for herein. Bank shall submit monthly invoices for any fees not covered by earnings credits, which Customer will promptly pay in accordance with Section 218.70 et. seq., Florida Statutes, "The Local Government Prompt Payment Act". Customer reserves the right to dispute any payments invoiced by Bank in accordance with Section 218.76, Florida Statutes and Customer's Dispute Resolution Process. It is understood that Customer is a tax exempt entity and shall only be responsible for the payment of applicable taxes, if any, if and when it loses tax exempt status.

Compensation due to Bank under this Agreement is subject to the appropriation of such Compensation in each fiscal year of this Agreement, by Customer's governing board. If funds are not appropriated by Customer's governing board, Customer shall not be obligated to pay Compensation due under this Agreement beyond those funds which have been properly appropriated.

6. Confidential Information; Access to Records. Unless otherwise provided in the Service Documentation, all User Guides and software provided to Customer constitute Bank's or its vendor's confidential information ("**Confidential Information**"), and Customer will not acquire any ownership interest in or rights to Confidential Information as a result of Customer's use of any Service. Subject to federal law and the laws of the State of Florida related to public records disclosure, Customer will (a) maintain the confidentiality of the Confidential Information; (b) not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than Customer's employees who have a need to use the Confidential Information in connection with the applicable Service; and (c) not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information. Customer will notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "**Unauthorized Use**") of any Confidential Information. If Customer (or its employees or agents) is responsible for the Unauthorized Use, Customer will, at its expense, if directed by Bank in lieu of Bank taking such action itself, promptly take all actions, including without limitation initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use. Bank acknowledges that the Customer is subject to public records law, including but not limited to Chapter 119, Florida Statutes, and that any of the Customer's obligations under this Section may be superseded by its obligations under and requirements of said laws.

Bank will hold Customer Confidential Information in trust and confidence and shall not disclose to any third party, except for disclosures to Bank representatives in connection with performing the Services or in the performance of this Agreement; as required by law; to federal and state bank examiners, and other regulatory officials having jurisdiction over Bank; or as approved by Customer authorized representatives.

Public Records. Bank acknowledges that information and data it manages as part of the Services may be public records in accordance with Chapter 119, Florida Statutes and Customer public records policies. Bank agrees that prior to providing Services it will implement policies

and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, and regulations. Notwithstanding any other provision of this Agreement, the Bank agrees to charge the Customer requesting public records only such fees as are permitted under Chapter 119, Florida Statutes for locating and producing public records related to this Agreement.

Inspection of Records; Audit. Bank shall retain all records relating to this Agreement for a period of at least seven (7) years following the date of their creation. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, Customer reserves the right to audit contract and pricing records related to this Agreement. None of the foregoing shall provide a right for the Customer to conduct physical audits of Bank's facilities or to access Bank's systems, networks or equipment.

7. Representations and Warranties.

7.1 **Mutual Representations and Warranties.** Each of the parties hereto represents and warrants to the other party that: (i) such party is duly organized and in good standing in all appropriate jurisdictions; (ii) each party is fully authorized to execute and perform under this Agreement and the execution of and performance under this Agreement does not violate any law, regulation, contract or organizational document by which such party is bound; and (iii) the individual(s) executing this Agreement on behalf of such party has full corporate and/or organizational authority to do so;

7.2 Customer warrants it will not use any Service in a manner which violates any federal or state law including without limitation any sanction or control administered by the Office of Foreign Assets Control or Bureau of Export Administration.

7.3 If Customer employs an agent in connection with its use of any Service, Customer represents and warrants to Bank that (a) Customer's governing body has duly authorized the agent and (b) Customer will exercise appropriate controls to ensure each agent so authorized does not exceed the authority so granted to it. Any communication to Bank regarding Customer's use of a Service from Customer's agent will be deemed to be a communication from Customer, and Customer authorizes Bank to communicate with Customer's agent regarding any such communication or Service.

7.4 Neither Bank nor any software vendor makes any express or implied representations or warranties with respect to the Services or any software used in connection with the Services including without limitation any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

7.5 **Independent Bank Status and Compliance with the Immigration and Control Act.** Bank shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of Customer. Bank acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et. seq., and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

8. Liability and Indemnification; Insurance.

8.1 Bank will perform each Service in accordance with reasonable commercial standards applicable to Bank's business; laws, regulations and operating circulars governing the activities of Bank; applicable funds transfer system(s) and clearinghouse rules; and the Service Documentation.

8.2. Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, transfer instruction, payment order, transaction or instruction that (a) exceeds the available balance in Customer's account, unless otherwise provided in the Service Documentation; b) is not in accordance with the Service Documentation or Bank's applicable policies, procedures or practices as made available to Customer; c) Bank has reason to believe may not have been duly authorized, should not be honored for its or Customer's protection, or involves funds subject to a hold, dispute, restriction or legal process; or d) would possibly result in Bank violating any applicable rule or regulation of any federal or state regulatory authority including without limitation any Federal Reserve guidelines such as the limitations on Bank's intra-day net funds position.

8.3 All uses of Services through Customer's ID codes, passwords, token cards, PINs, or passcodes (each, a "Code") will be deemed to be authorized by and binding on Customer. Customer's failure to protect Codes may allow an unauthorized party to (a) use the Services, (b) access Customer's electronic communications and financial data, and (c) send or receive information and communications to Bank. Customer assumes the entire risk of unauthorized use of Codes and unencrypted electronic transmissions.

8.4 Customer will promptly furnish written proof of loss to Bank and notify Bank if it becomes aware of any third party claim related to a Service. Customer will cooperate fully (and at its own expense) with Bank in recovering a loss. If Customer is reimbursed by or on behalf of Bank, Bank or its designee will be subrogated to all rights of Customer.

8.5 Bank will have no liability for failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond Bank's reasonable control. If Bank determines that any funds transfer or communications network, Internet service provider, or other system(s) it has selected to provide a Service is unavailable, inaccessible or otherwise unsuitable for use by Bank or Customer, Bank may, upon notice to Customer, suspend or discontinue the affected Service.

8.6 Except in the case of Bank's negligence or intentional misconduct, Customer will reimburse and hold Bank, its directors, officers, employees and agents harmless from all losses or damages that arise out of: (a) an act or omission of any agent, courier or authorized representative of Customer; and (b) if the Service includes a license or sublicense of any software to Customer, the use or distribution of the software by Customer or any person gaining access to the software through Customer that is inconsistent with the license or sublicense. Bank agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the Customer, its officers, employees and agents from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any persons or property, or in any way relating to or arising from the breach of this Agreement, negligence or willful misconduct of the Bank, except to the extent any such suit, action, claim, injury or damages shall have been occasioned by the breach of this Agreement, negligence or willful misconduct of Customer.

Nothing stated in this Agreement shall be construed to be (i) a waiver of Customer's sovereign immunity, as set out in Section 768, Florida Statutes, or (ii) an acknowledgement or agreement by Bank that any claim or cause of action is subject to a sovereign immunity defense.

8.7 Bank will only be liable to Customer for Customer's direct monetary losses due to Bank's negligence or intentional misconduct. 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.

8.8 Insurance. Bank shall comply with the insurance requirements set forth in Exhibit "A", attached hereto and incorporated herein.

9. Miscellaneous.

9.1 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 Customer 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.

9.2 Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank will use the most recent address for Customer in Bank's records, and any notice from Bank will be effective when sent. Customer will use the address where Customer's relationship manager or other manager is located and address any notice to the attention of such manager. Any notice from Customer will be effective when actually received by Bank. Bank will be entitled to rely on any notice from Customer that it believes in good faith was authorized by an authorized representative of Customer and, except as expressly stated in the Service Documentation, will have no obligation to verify the signature (including an electronic signature). Each party will have a reasonable time after receipt of any notice to act on it.

9.3 The Services rely upon a robust network of Bank assets, employees and third-party resources located in the United States and around the world to provide service to Bank's customers. Bank reserves the right to perform services using this model and to add and delete service providers at Bank's discretion. Bank has rigorous vendor engagement policies and procedures. Bank takes responsibility for the actions of the providers with whom it enters into contracts to provide services to Bank's customers.

9.5 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.

9.6 Time is of the essence with respect to all provisions of the Service Documentation that specify a time for performance; provided, however, that the foregoing shall not be construed to limit a party's grace period allowed in the Service Documentation.

9.7 Compliance with Laws. Each party shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of this Agreement.

9.8 Public Entities Crimes. Bank is directed to the Florida Public Entities Crime Act, §287.133, Florida Statutes, and represents to Customer that Bank is qualified to transact business with public entities in Florida.

9.9 Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

9.10 Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Florida. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts located in Pinellas County, Florida.

9.11 Waiver. No waiver by either party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of same.

9.12 Entire Agreement. This Agreement (including the Service Documentation incorporated) constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations or agreements either oral or written.

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

WELLS FARGO BANK, N.A.

By: Victoria B. Parker

Name: Victoria B. Parker

Title: Sr. Vice President

(If approved by Council)

CITY OF CLEARWATER, FLORIDA

Countersigned:

- George N. Cretekos

George N. Cretekos
Mayor

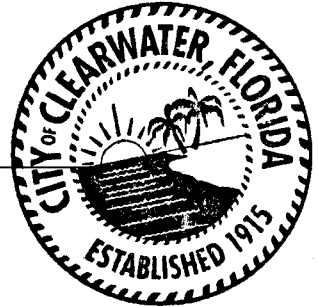
By: William B. Horne II
William B. Horne II
City Manager

Approved as to form:

Laura Mahony
Laura Mahony
Assistant City Attorney

Attest:

Rosemarie Call
Rosemarie Call
City Clerk



Wells Fargo Bank, N.A.

Attest:

Print Name: _____
Secretary

By: Victoria B. Parker
Print Name: Victoria B. Parker
Title: Sr. Vice President

Insurance Requirements

The Contractor shall, at its own cost and expense, acquire and maintain (and cause any subcontractors to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. Specifically the Contractor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** including but not limited to, premises operations, products/completed operations, products liability, contractual liability, independent contractors, personal injury and advertising injury and \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$2,000,000 products/completed operation aggregate.
- b. **Commercial Automobile Liability Insurance** for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 combined single limit.
- c. **Statutory Workers' Compensation Insurance** in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 each employee each accident, \$100,000 each employee by disease and \$500,000 aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, and contractors, if any.
- d. **Professional Liability/Malpractice/Errors or Omissions Insurance** coverage appropriate for the type of business engaged in by the Contractor with minimum limits of \$1,000,000 per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- b. **Cyber Liability** coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate; such coverage shall meet or exceed the requirements for notification and monitoring under Florida Statute 501.171.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

To the extent that a subcontractor is engaged, Contractor will require subcontractor to provide evidence of insurance that meets or exceeds the insurance requirements outlined herein.

Other Insurance Provisions:

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Vendor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on the Commercial General Liability Insurance policy.

Exhibit A

In addition, in the event of a claim involving the City, a copy of the policy/policies will be made available by the Contractor for viewing in a secure, controlled environment, mutually agreed upon by the City and Contractor. Policy copies shall not be released unless required to do so under subpoena.

- b. Contractor agrees that no policy shall expire, be canceled, non-renewed, terminated, reduced or materially changed to affect the coverage available without thirty (30) days advance written notice to the City if it results in non-compliance with the insurance requirements contained herein.
- c. Contractor's insurance as outlined above shall be primary and non-contributory coverage for Contractor's negligence.
- d. The General Liability and Automobile Liability policies required by this agreement (or contract) shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, elected officials, officers, employees, and volunteers for any claims arising out of the work of the Contractor.
- e. Contractor shall defend, indemnify, save and hold the City harmless from any and all claims, suits, judgments and liability for death, personal injury, bodily injury, or property damage arising directly or indirectly including legal fees, court costs, or other legal expenses.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.