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(O-2006-107) 5/2/06

ORDINANCE NUMBER O- 19485 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 10 2006

AN ORDINANCE TO APPROVE AN EXTENSION TO THE MASTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE BANK OF AMERICA FOR DEPOSITORY AND DISBURSEMENT SERVICES

WHEREAS, the City issued a Banking Request for Proposal dated July 2000; and

WHEREAS, the Bank of America [Bank] responded to the City's RFP, and was selected to provide depository and disbursement services, as provided in that certain Master Agreement, dated as of December 1, 2001 [Master Agreement, attached hereto as Exhibit 1];and

WHEREAS, the Master Agreement terminates on December 1, 2006, and the City desires to extend Master Agreement for an additional one year; and

WHEREAS, City Charter section 99 provides that no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a duly noticed public hearing; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the foregoing recitals are true and correct.

Section 2. That the Mayor, the Chief Operating Officer or the Chief Financial Officer, in consultation with the City Attorney, is hereby authorized and directed to cause to be executed an amendment to the Master Agreement to extend its termination date to a date no later than December 1, 2007; provided however that the compensation payable by the City to the Bank

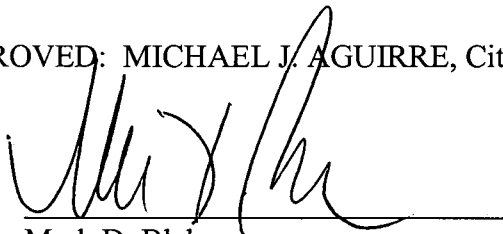
during the extension period shall not exceed the compensation payable to the Bank in accordance with the Master Agreement on the date hereof.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Mark D. Blake  
Chief Deputy City Attorney

MDB:ai  
03/22/06  
Or.Dept:Treas  
O-2006-107

0-19485

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 02 2006.

ELIZABETH S. MALAND  
City Clerk

By *Maurice E. Ketchum*  
Deputy City Clerk

Approved: 5-10-06  
(date)

*JSL*  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

0-19485

## MASTER AGREEMENT

THIS MASTER AGREEMENT is made by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called "CITY" and the Bank of America, herein called "BANK".

NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, CITY and BANK agree as follows:

A. **TERMS OF MASTER AGREEMENT.** The terms of this Master Agreement consist of or include the following documents, which are hereby attached or, by reference, incorporated within the text of this document or Master Agreement as if fully set forth herein:

1. CITY's Banking Services Request for Proposal dated July 2000 hereafter referred to as "RFP".
2. BANK's response to the RFP dated August 25, 2000 which incorporates the CITY's RFP and addenda to the Response hereafter referred to as "Response." The CITY and BANK agree that where the BANK has not provided a specific response to a CITY Request for Proposal requirement in the Response that it is understood that the BANK has agreed to meet that same CITY requirement described in the RFP that is incorporated in the Response.
3. Any additional BANK agreements or documents between BANK and the CITY and hereafter referred to as "Supplemental Agreement".

In the event of any dispute or questions of interpretation, this cover document shall govern, and the terms of the Response shall govern as against the Supplemental Agreement or any additional BANK agreements.

B. **BANKING SERVICES.** The BANK will provide Deposit, Disbursement and Additional Services as described in the Response as may be required by the CITY.

C. **BANK COMPENSATION**

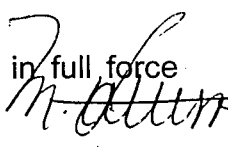
1. Monthly fees for services rendered will be equal to the sum of BANK's unit rate, as

described in BANK 's Response or amended Pricing Addenda, times the actual volume of the services as described in BANK 's monthly billing.

2. The CITY will not pay any costs for services, or other fees without prior approval from the CITY Treasurer, Deputy Treasurer, Chief Investment Officer or their authorized representative from the CITY Treasurer's office. The CITY shall not be liable for services or supplies which have been ordered directly by any department other than the authorized representatives of the offices of the Auditor and Comptroller or the CITY Treasurer.
3. Unit prices contained herein shall remain fixed until June 30, 2006. The CITY shall not be liable for any increase above these limits, with the exception of any pass-through regulatory fees, without prior written approval of the CITY Treasurer.
4. Bank will waive charges for the month of July or an alternate month the City prefers during each of the five fiscal years of the contract.
5. In addition, the Bank agrees to waive the monthly account analysis fees for the month of July 2001 for the first contract year.
6. Payment shall be due and payable monthly within thirty (30) days of the CITY's receipt of the BANK's billing for the prior month to include all requested supporting documentation.
7. BANK will be responsible for providing the CITY with an accurate statement of fees due the BANK for the month. Any errors by the BANK in billing the CITY for services rendered during the CITY's fiscal year become final and conclusive within 30 days of receipt by the CITY of the June monthly billing for each fiscal year.
8. BANK will provide the City with a 4% discount on fees for early payment within 15 business days of receipt of Bank billing.
9. BANK will provide the City with a 6% discount on billing fees for the prior month when the City permits an auto debit to the City's account for the agreed fees to occur on the 25<sup>th</sup> of the month following the analysis billing month.

**D. RELATED AGREEMENTS.**

1. If, in the performance of this agreement and the furnishings of banking services required or furnished under this Master Agreement, the CITY through its CITY Treasurer, signs any BANK offered document pertaining to the furnishing of such services, it is understood by CITY and BANK and agreed that if any terms in those BANK documents are contrary to this Master Agreement, either as to the terms or the costs of services (including fees or penalties), the terms conditions, and fees established in this Master Agreement shall govern. The Master Agreement, as supplemented, represents the entire agreement between the parties hereto with respect to the subject matter thereof and supersedes all other written and oral agreements with respect to such subject matter.
2. It is the intent of the parties, the CITY and the BANK, that the provisions of the Master Agreement shall prevail over any conflicting provisions of any related BANK agreements or any addenda whenever added. Both parties agree to this since they do not anticipate amending any conditions of the Master Agreement. Both parties further agree that any dispute that may arise concerning the rights and responsibilities of each party shall be governed exclusively by the terms of the Master Agreement. Matters which are not explicitly addressed in the Master Agreement, Response, or Supplemental Agreement, shall be governed by the related BANK agreements or any addenda to those agreements.

**E. TERM OF MASTER AGREEMENT.** This Master Agreement shall remain in full force and effect for five (5) years or until terminated: *A commencing on December 1, 2001* 

1. unilaterally by the CITY upon 24 hours written notice to the BANK in the event of BANK's insolvency or act of misfeasance or malfeasance;
2. unilaterally by the CITY upon 30 days written notice to the BANK in the event of a downgrade in the credit rating of the BANK by any of the nationally recognized credit rating services or an event that would severely impact the operations of the

CITY, e.g. strike or natural disaster; or

3. by the CITY or BANK upon 90 days written notice of either party. The CITY unilaterally reserves the right to extend the contract for periods of 30 days up to a maximum of 90 days after the contract termination under the same terms and conditions of this Master Agreement.

F. **ADMINISTRATION.** BANK's Government Services Office located at 555 South Flower St., Suite 800 Los Angeles, CA 90071-2385, will be the Branch of Account and its officers assigned to manage the account relationship.

1. **Third Party Agreements.** The parties may mutually arrange for third party services for courier and other services not normally provided by the BANK but that are reasonably necessary for the delivery of the CITY's banking service needs.
2. **Agency and Bonding Requirements.** Couriers and messengers will be bonded in an amount agreeable to the BANK and the CITY as per the Response.
3. **Assignment.** BANK shall not assign, transfer, or sell the rights to provide any banking services without the written consent of the CITY.
4. **Timeliness.** The BANK shall perform in the times set forth in the Response and in the Supplemental Agreement.

G. **AMENDMENTS.** Amendments to this Master Agreement shall be effective only when in writing and signed by the BANK and CITY. The CITY Treasurer is authorized to execute reasonably necessary amendments to this agreement to perform the purpose and intent of this Master Agreement.

H. **REPORTING AND LIABILITY.** BANK shall perform the services agreed upon as described in the and/or Supplemental Agreement and shall furnish the required reports and other forms exercising the same degree of care used in processing items and data and compiling reports for its own use except when prevented from doing so by strikes, mechanical or electrical breakdown or other causes beyond its control. In no event shall BANK be liable for any loss, destruction, mutilation, damage or theft of any documents or

items resulting from any cause whatsoever except those resulting from the negligence, willful misconduct, or fraudulent act of BANK or its employees.

- I. **CUSTODIAN OF DATA.** All computerized media (whether transmitted by mainframe or personal computer, magnetic tape, magnetic disc, etc.) And other printed media required for the storage and maintenance of CITY's data owned by the CITY will be returned to the CITY except as otherwise provided by the CITY. BANK will act as custodian of CITY's data and upon cancellation notice from the CITY will furnish CITY with any or all said data or property within a reasonable period of time as agreed upon by the BANK and CITY.
- J. **BANK'S OBLIGATION TO MAINTAIN RECORDS.** This Master Agreement, and the performance by CITY hereunder, shall not relieve BANK of any obligation imposed by law or contract, regarding the maintaining of records or other matters from not employing adequate audit, account and review practices customarily followed by a similar business.
- K. **AUDIT AND INSPECTION OF RECORDS BY CITY.** At any reasonable time upon reasonable notice during normal business hours, and as often as the CITY deems necessary, BANK shall make available to the CITY for examination all of BANK's data and records with respect to Entries transmitted pursuant to this Master Agreement and BANK will permit the CITY to audit, examine, and make excerpts or transcripts from such data and records. For every Entry transmitted by the CITY to BANK pursuant to this Master Agreement, BANK shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years following the date of transmittal.
- L. **CITY PROVISIONS WITH RESPECT TO HIRING CITY EMPLOYEES.** In accordance with Council Policy Number 300-11, the CITY has the right to unilaterally and immediately terminate this Master Agreement if the BANK employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or in connection with the selection of the BANK. The CITY will provide the BANK with a list of those CITY employees to whom this



provision applies.

M. **CITY REQUIREMENTS WITH REGARD TO PRODUCT ENDORSEMENT.** The BANK agrees to comply with the CITY's Administrative Regulation 95.65, Product Endorsement. Advertisements referring to the CITY as a user of a product or services requires prior written CITY Manager approval.

N. **CITY REQUIREMENTS FOR MAINTAINING A DRUG-FREE WORKPLACE.** The BANK agrees to comply with Council Policy 100-7, CITY's Drug-Free Workplace/CITY Contractor Policy.

O. **CITY EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS.** The BANK agrees to comply with the CITY's Equal Opportunity Program as specified below:

**Equal Opportunity Contracting**

BANK shall submit to the CITY Treasurer statistical information as requested in the CITY of San Diego Contract Activity Report indicating the amount of sub-contracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report. BANK agrees to issue payment to each of the firms listed within 14 days after CITY release of funds or be assessed a penalty of 2% of the amount due each firm for each month or portion of a month in which payment is not made.

**Equal Employment Opportunity**

BANK and each of its subconsultants will comply with Title VII of the Civil Rights Acts of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. BANK will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth.

Upon request by the CITY of San Diego, the BANK will submit a current Work Force

Report and, if required, an Equal Employment Opportunity (EEO) Plan which sets forth the actions that the BANK will take to achieve the CITY's goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women and people with disabilities.

Further, the BANK will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Master Agreement so that such provisions will be binding upon each subconsultant.

### **Local Business and Employment**

BANK acknowledges that the CITY of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. BANK will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Master Agreement from local residents and firms as opportunities occur. BANK agrees to hire qualified residents and firms whenever feasible.

BANK understands that failure to comply with the above requirements, and/or submitting false information in response to these requirements, may result in withholding progress payments until BANK complies with the above, or termination of the Master Agreement, and/or suspension from participating in future CITY contracts as a prime or subconsultant, for a period of not less than one (1) year. For additional or subsequent violation, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this section shall prohibit BANK from participating in future CITY contracts until all penalties have been satisfied.

### **P. NON-DISCRIMINATION REQUIREMENTS.**

1. **Compliance with the CITY's Equal Opportunity Contracting Program** The BANK and each of its Subconsultants shall comply with the CITY's Equal Opportunity Contracting Program Consultants Requirements which is attached

hereto as Exhibit E and incorporated herein by this reference.

2. **Non-Discrimination Ordinance.** The BANK shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The BANK shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The BANK understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the BANK and any Subconsultants, vendors and suppliers.
3. **Compliance Investigations.** Upon the CITY's request, the BANK agrees to provide to the CITY, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that the BANK has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the BANK for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the CITY pursuant to the CITY's *Nondiscrimination in Contracting Ordinance* (Municipal Code sections 22.3501-22.3517.) The BANK understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the BANK up to and including contract termination, debarment, and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. BANK further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination Ordinance* apply only to violations of said *Nondiscrimination Ordinance*.

Q. **DRUG FREE WORKPLACE.** The BANK agrees to comply with the CITY's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by Council

Resolution No. R-277952 and incorporated into this Master Agreement by this reference. The BANK shall certify to the CITY that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E (7)].

1. **BANK's Notice to Employees.** The BANK shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
2. **Drug-Free Awareness Program.** BANK shall establish a drug-free awareness program to inform employees about all of the following:
  - a. The dangers of drug abuse in the work place.
  - b. The policy of maintaining a drug-free work place.
  - c. Available drug counseling, rehabilitation, and employee assistance programs.
  - d. The penalties that may be imposed upon employees for drug abuse violations.
3. **Posting the Statement.** In addition to Section S (1) above, the BANK shall post the drug-free policy in a prominent place.
4. **Subconsultant's Agreements.** The BANK further certifies that each contract for Subconsultant Services for this Agreement shall contain language that binds the Subconsultant to comply with the provisions of Section Q of this Master Agreement, as required by Sections 2.A. (1) through (3) of Council Policy 100-17. BANK and Subconsultants shall be individually responsible for their own drug-free work place program.

R. **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** The Bank shall defend, indemnify and hold harmless the City against the negligent acts or omissions of the Bank, or its agents or contractors, in discharging its duties and obligations under this Agreement for services, including any losses to the City due to any unauthorized or

improper wire transfer initiated or controlled by the Bank.

**S. MANDATORY NON-BINDING MEDIATION.**

1. If a dispute arises out of, or relates to this Master Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation in accordance with the rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.
2. **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
3. **Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in banking aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
  - a. If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party

shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

- b. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frames.
- c. If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be agreed upon.

4. **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

- a. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
- b. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

#### **T. NOTICES**

- 1. In all cases where written notice is required under this Master Agreement, service

shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Master Agreement. For the purpose of this Master Agreement, unless otherwise agreed in writing, notice to the CITY shall be addressed to:

Office of the Treasurer  
Attn: Chief Investment Officer  
1010 2<sup>nd</sup> Ave, 6<sup>th</sup> Floor West Tower, MS 606A  
San Diego, CA 92101

With copy to:

City Auditor and Comptroller  
City of San Diego  
202 "C" Street, Suite 9B  
San Diego, California 92101  
Attn: Ed Ryan

and notice to the BANK shall be addressed to:

California Government Banking Department  
Client Manager for the City of San Diego  
Bank of America, N.A.  
555 South Flower St., Suite 800  
Los Angeles, CA 90071-2385

2. **Compliance with Controlling Law.** BANK shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Master Agreement. The laws of the State of California shall govern and control the terms and conditions of this Master Agreement.
3. **Jurisdiction, Venue, and Attorney's Fees.** The venue for any suit or proceeding concerning this Master Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.

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IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its City Treasurer, pursuant to Section 45 of the City Charter authorizing such execution, and by BANK.

Dated 12/19/2001

THE CITY OF SAN DIEGO  
a municipal corporation

By M. Vattimo  
Mary E. Vattimo, City Treasurer

By Alec P. Bigelson  
Alec P. Bigelson  
Vice President  
Bank of America, N.A.

I HEREBY APPROVE the form and legality of the foregoing Master Agreement this 19<sup>th</sup>  
day of December, 2001

CASEY GWINN, City Attorney

By Stuart H. Swett  
STUART H. SWETT  
SENIOR Deputy City Attorney

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