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(O-2006-106)

ORDINANCE NUMBER O- 19486 (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 NEW YORK FOR SECURITIES  
CLEARANCE AND SAFEKEEPING SERVICES

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

WHEREAS, the Bank of New York [Bank] responded to the City's RFP, and was selected to provide securities clearance and safekeeping 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

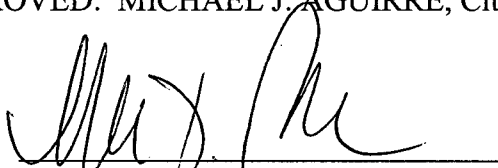
during the extension period shall not exceed the compensation payable to the Bank in accordance with the Master Agreement on the date hereof.

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-2006-106

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 *Maureen E. Ketchum*  
Deputy City Clerk

Approved: 5-10-06  
(date)

*JSL*  
JERRY SANDERS, Mayor

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

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

0-19486

**MASTER AGREEMENT**

THIS AGREEMENT is made by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called the "City" and BNY Western Trust Company, herein called the "Bank."

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

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

1. The City's Banking Services Request for Proposal dated July 2000 and hereafter referred to as "RFP."
2. The Bank's response to the RFP dated August 2000, to include pricing diskettes, e-mail and mailed or faxed correspondence, and hereafter referred to as "Response."
3. The Bank Addenda agreement titled Global Custody Agreement and here after referred to as Addenda "A" to Response.

In the event of any dispute or questions of interpretation, this cover document, the RFP, the Response, Addenda "A" and any related agreement with the Bank ("Bank Agreements") shall be the priority sequence of the governing document, and the services to be performed as set forth in the RFP as against the Response or Addenda "A" and any other agreements shall govern. In the event of any dispute or questions or interpretation of terms and conditions, this cover document, Addenda "A", other Bank Agreements, the RFP and the Response, shall be the priority sequence of the governing document, and the terms and conditions as set forth in this cover document

as against the Addenda shall govern and by way of example Addenda "A" as against any other Bank Agreement or the RFP or the Response shall govern.

B. **BANKING SERVICES.** The Bank will provide banking services as described in the RFP and the Response as may be required by the City.

C. **BANK COMPENSATION**

1. Monthly fees for all services rendered will be equal to a flat rate of \$4,000 per month.
2. The City will not pay any other costs for services, or other fees without prior approval from the City Treasurer, Chief Investment Officer or their authorized representative from the City Treasurer's office. The City shall not be liable for services or supplies that have been ordered directly by any department other than an authorized representative of the City Treasurer's Office.
3. The flat fee monthly price contained herein shall remain in effect until December 31,2005.
4. Payment shall be due and payable monthly within thirty (30) business days of receipt. Bank will allow the City to discount 2% of the total monthly charge when the City remits payment to the Bank within 20 business days after receipt of the monthly bill.
5. The 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 bill for each fiscal year.

D. **RELATED AGREEMENTS.** If, in the performance of this agreement and the furnishings of banking services required or furnished under this Agreement, the City

through its City Treasurer, signs any bank-offered document pertaining to the furnishing of such services, it is understood by the City and the Bank and agreed that if any terms in those bank documents are contrary to this 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.

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 that are not explicitly addressed in the Response, Addenda "A", or the Master Agreement to the extent set forth herein, shall be governed by the related bank agreements or any addenda to those agreements.

E. **TERM OF AGREEMENT.** This Agreement shall remain in full force and effect for five (5) years or until terminated <sup>a commencing on</sup> December 1, 2001 *M. J. [Signature]*  
*OK for [Signature]*

-unilaterally by the City upon 24 hours written notice to the Bank in the event of the Bank's insolvency or act of misfeasance or malfeasance.

-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.

-by the City or the 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 Agreement.

F. **ADMINISTRATION.** The Bank's Los Angeles Office located at 700 South Flower Street, will be the office of Account and its officers assigned to manage the account relationship.

1. **Notices.** All notices and other communications shall be in writing (which include telex, telegraph, or facsimile transmission) and shall be sent or delivered to the following:

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

BNYWesternTrust Company  
700 South Flower St, Suite200  
Los Angeles, CA 90017-4104

G. **Third Party Agreements.** The parties shall 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 needs.

H. **Agency and Bonding Requirements.** The Bank will be bonded in an amount agreeable to the Bank and the City as per the Response.

I. **Coupon Payments and Maturities.** The Bank shall provide immediate credit for funds received.

J. **Assignment.** The Bank shall not assign, transfer, or sell the rights to provide any banking services without the written consent of the City.

K. **Timeliness.** The Bank shall perform in the times set forth in the RFP and in the Response.

- L. **AMENDMENTS.** Amendments to this Agreement shall be effective only when in writing and signed by the Bank and the City. The City Treasurer is authorized to execute reasonably necessary amendments to this agreement to perform the purpose and intent of this Agreement.
- M. **INDEMNITY.** The Bank shall defend, indemnify and hold harmless the City against the negligent acts or omissions of the Bank, its agents, officers or contractors, other than DTC and the Federal Reserve Bank and their respective officers, agents and contractors, in discharging its duties and obligations under this Agreement for services, including by way of example any losses to the City due to any unauthorized or improper wire transfers initiated by the Bank.
- N. **REPORTING AND LIABILITY.** The Bank shall perform the services agreed upon as described in the RFP and Response 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 the 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 the Bank or its employees.
- O. **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 the City's data owned by the City will be returned to the City except as otherwise provided by the City. The Bank will act as custodian of the City's assets and data and upon cancellation notice from the City will furnish the City with any or all said assets, data or property within a reasonable period of time as agreed upon by the Bank and the City.



P. **BANK'S OBLIGATION TO MAINTAIN RECORDS.** This Agreement, and the performance by the City hereunder, shall not relieve the 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.

Q. **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.

R. **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 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.

S. **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.

T. CITY REQUIREMENTS FOR MAINTAINING A DRUG-FREE WORKPLACE. The Bank agrees to comply with Council Policy 100-7, the City's Drug-Free Workplace/City Contractor Policy.

U. CITY EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS.

The Bank agrees to comply with the City's Equal Opportunity Program as specified below:

**1. Equal Opportunity Contracting**

The 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. An invoice should accompany this information from each subconsultant/subcontractor/vendor/service provider listed in the report. The Bank agrees to issue payment to each of the firms listed within 14 days after the City's 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.

**2. Equal Employment Opportunity**

The 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. The 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 Agreement so that such provisions will be binding upon each subconsultant.

### **3. Local Business and Employment**

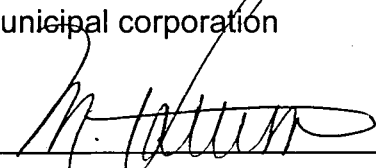
The Bank acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all the City contracts. The Bank will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated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

The 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 the Bank complies with the above, or termination of the 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 the Bank from participating in future City contracts until all penalties have been satisfied.

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 BNY Western Trust Company.

THE CITY OF SAN DIEGO  
a municipal corporation

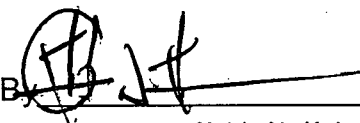
Dated 12/11/2001

By 

Mary E. Vattimo, City Treasurer

BNY Western Trust Company

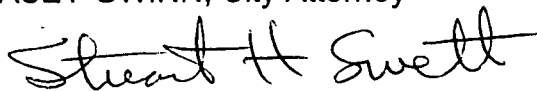
Dated 12/11/2001

By 

Keith N. Kuhn  
Chairman & CEO

I HEREBY APPROVE the form and legality of the foregoing Agreement this 11th day of December, 2001

CASEY GWINN, City Attorney



By

STUART H. SWETT

Senior Deputy City Attorney