

**THIRD AMENDMENT
TO BANKING SERVICES AGREEMENT**

THIS THIRD AMENDMENT TO BANKING SERVICES AGREEMENT (“Amendment #3”) is made and entered into as of this 1st day of July 2024, by and between the CITY OF FRESNO, a municipal corporation (“City” or “Client”), and BANK OF AMERICA, N.A., with offices located at 100 North Tyron Street, Charlotte, NC 29255 (“Bank”).

WHEREAS, on July 1, 2018, City and Bank entered into a Banking Services Agreement, as amended, including by that certain Amendment #1 and Contract Extension letter dated April 25, 2023, (“Agreement”); and

WHEREAS City and Bank now desire to further amend the Agreement and to extend its term.

NOW, THEREFORE, for valuable consideration, the parties agree as follows:

1. **Definitions:** Capitalized terms used but not defined in this Amendment #3 will have the definitions and meanings given to them in the Agreement.
2. **Representations:** Each party represents and warrants to the other party that this Amendment #3 has been duly authorized by all necessary action(s) and is binding on such party in accordance with its terms.
3. **Amendment:**
 - a) **Term Extension:** The term of the Agreement is hereby extended for one (1) year beginning on July 1, 2024, and ending on June 30, 2025.
 - b) **Section 4 Termination** is hereby amended by deleting subsections (a) and (g), each in its entirety and replacing it with the following:
“(a) CITY and BANK may terminate this Agreement without cause or for any reason (including, without limitation, if CITY determines there is insufficient funding available for the services), and without any liability whatsoever of one party to the other for breach of contract, default, detrimental reliance or any other basis in law or equity; upon 90 calendar days prior written notice of termination to the other party in the manner provided herein. Notwithstanding the foregoing, the CITY and BANK hereby agree that BANK may terminate any Paymode® (or Bank renamed) services only, including, but not limited to, the Bank’s Paymode X, Paymode X Connect or Paymode X Concentrator products (collectively, the “Paymode Services”) upon 30 calendar days prior written notice to the CITY.” “(g) In addition to the termination sections as set forth herein, Bank shall have the right to terminate any Service for cause as set forth in the Suspension and Termination Section of the Negotiated Treasury Terms and Conditions Booklet that is attached as Exhibit D to the Banking Services Agreement.”
 - c) **Section 7 Indemnification** is hereby deleted in its entirety and replaced with the following:
“7. **Indemnification:** Notwithstanding anything in the Agreement to the contrary, to the extent permitted by law, Client will indemnify Bank against and hold Bank harmless from third party claims arising in connection with the Paymode Services, which may include liabilities, claims, costs, expenses and damages of any nature (including Security Breach expenses and Legal Expenses). This obligation will continue after any Paymode Services that Client is using are terminated. This section does not apply to any cost or damage caused by Bank’s gross negligence or intentional misconduct.” Client and Bank further acknowledge and agree that, notwithstanding anything in the Agreement to the contrary, in no event shall Bank’s indemnification of and liability to the Client pursuant to this Agreement exceed two million dollars in the aggregate.
 - d) Sections 8, 9, 10, 11, 12, 13 covering insurance are hereby deleted in their entirety and replaced as follows:

“Insurance:

8. **Minimum Limits of Insurance.** BANK, or any party the BANK subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

- (i) **COMMERCIAL GENERAL LIABILITY:**

\$1,000,000 per occurrence for bodily injury and property damage;
\$1,000,000 per occurrence for personal and advertising injury;
\$2,000,000 aggregate for products and completed operations; and,
\$2,000,000 general aggregate.

(ii) COMMERCIAL AUTOMOBILE LIABILITY:

\$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

(iv) EMPLOYERS' LIABILITY:

\$1,000,000 each accident for bodily injury;
\$1,000,000 disease each employee; and,
\$1,000,000 aggregate.

(v) PROFESSIONAL LIABILITY (Errors and Omissions)

\$2,000,000 per claim/occurrence; and,
\$4,000,000 policy aggregate.

(vi) CYBER LIABILITY insurance with limits not less than:

\$2,000,000 per claim/occurrence; and,
\$4,000,000 policy aggregate.

9. Umbrella or Excess Insurance. In the event BANK purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents, and volunteers.

10. Deductibles and Self-Insured Retentions. BANK shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and BANK shall also be responsible for payment of any self-insured retentions.

(i) At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

11. Other Insurance Provisions/Endorsements:

a. The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

i. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. BANK shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 04 13 and CG 20 37 04 13 or by blanket endorsements with coverage as broad as CG 20 10 04 13 and CG 20 37 04 13.

ii. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

iii. For any claims relating to this Agreement, BANK's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of BANK's insurance and shall not contribute with it. BANK shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement

that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

b. The Professional Liability (Errors and Omissions): During the term of this Agreement the BANK agrees to maintain Error and Omissions Insurance coverage for the claims arising from the negligent acts, errors or omissions for services or operations performed by the BANK under this Agreement. The Bank shall ensure both that (1) any policy retroactive date is on or before the date of the commencement of this Agreement; and (2) any policy has a reporting period of at least two years after the date of the completion or termination of this Agreement. The BANK agrees that, for the time period defined above, any changes that reduce coverage will be presented to CITY for review.

c. The Cyber Liability insurance shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to Insured and for claims involving any professional services for which PROFESSIONAL SERVICES is engaged with the City for such length of time as necessary to cover any and all claims.

d. BANK shall endeavor to provide thirty(30) calendar days written notice upon termination or modification of coverage by certified mail, return receipt requested, to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, BANK shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY,

BANK shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days post renewal of the expiring policy.

The fact that insurance is obtained by BANK shall not be deemed to release or diminish the liability of BANK under this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by BANK. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of BANK, its principals, officers, agents, employees, persons under the supervision of BANK, vendors, suppliers, invitees, consultants, sub consultants, subcontractors, or anyone employed directly or indirectly by any of them.

e. SUBCONTRACTORS. If BANK subcontracts any or all of the Services to be performed under this Agreement, BANK will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

12. Verification of Coverage. BANK shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker.

13. Notwithstanding any provision hereto to the contrary, BANK shall have the right to assume in whole or part, through a program of self insurance, any and all risks otherwise required by this Agreement to be insured against."

- e) Section 14 Limitation of Liability is hereby deleted in its entirety and replaced with the following:
"14 Limitation of Liability. In no event will either party be liable for any indirect, special, consequential or punitive loss, damage, cost or expense of any nature or any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption to Client's data, loss of operation time or loss of contracts, even if advised of the possibility of such loss, damage, cost or expense.

f) Section 31 Precedence of Documents is supplemented with the following added at the end of the Section:
“In the event of any conflict among any of the Exhibits and Attachments, Exhibit D Terms and Conditions shall control.”

4. Ratification:

All of the terms of the Agreement not expressly modified herein shall continue in full force and effect and are hereby ratified by the Parties, and this Amendment #3, whose terms shall prevail in the event of any inconsistency with the Agreement, may be executed in counterparts and delivered by fax or other electronic means.

5. Authority. Client and Bank each represents and warrants that this Amendment #3 has been duly authorized by all necessary action and is binding on such party in accordance with its terms.

6. Counterparts. This Amendment #3 may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

7. Severability. Should any provision of this Amendment #3 be deemed illegal or otherwise unenforceable, that provision shall be severed, and the remainder of this Amendment #2 shall remain in full force and effect. The waiver of any right or election of any remedy in one instance, by either party, shall not affect any rights or remedies in another instance. A waiver shall be effective only if made in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this Amendment #3 by their duly authorized representatives as of the date first set forth above.

CITY OF FRESNO,
A municipal corporation

BANK OF AMERICA N.A.
A national banking association

By: _____
Georgeanne A. White
City Manager

By: Angela L. Hershey

Name: Angela L. Hershey

Title: SVP, Sr. Client Manager

Date: 07/17/2024

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: [Signature] 7/17/24
Brandon M. Collet Date
Chief Assistant City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date