

## **CITY OF FRESNO, CALIFORNIA BANKING SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into effective the 1<sup>st</sup> day of July 2018 ("Effective Date"), by and between the CITY OF FRESNO, a California municipal corporation ("CITY"), and Bank of America, N.A., with offices located at 100 North Tryon Street, Charlotte, NC 29255 ("BANK").

### **RECITALS**

WHEREAS, CITY desires to obtain professional banking services for CITY, and issued a Request for Proposal, dated August 7, 2017 with addenda 1 through 6, "the RFP" attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, BANK responded to the RFP, submitting a proposal, dated September 29, 2017 ("the Proposal"), attached hereto as **Exhibit B** and incorporated herein by reference; and

WHEREAS, The Bank's Negotiated Treasury Services Terms and Conditions Booklet, (the "Terms and Conditions"), that is attached hereto as **Exhibit D** and incorporated herein by reference; and

WHEREAS, BANK is engaged in the business of furnishing treasury banking services and hereby represents that it is professionally capable of performing the services called for by this Agreement; and

WHEREAS, BANK acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6 19; and

WHEREAS, this Agreement will be administered for CITY by its City Controller ("Administrator") or designee.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. BANK shall perform to the satisfaction of CITY, the services described in **Exhibit A**, **Exhibit B** and **Exhibit D**.

(a) CITY shall have the right to have payment of its interest on any CD or time deposit credited to whatever account CITY may select.

(b) Bank may not convert City's account to another type of account without a prior written amendment to this Agreement. Should bank fail to notify City of any change bank might make regarding any service used by CITY, continued usage by CITY shall not constitute an agreement to the change. Notwithstanding the forgoing, the BANK may change, add, or delete any of the terms and conditions (**Exhibit D**) applicable to any or all Services upon 30 days prior notice to the CITY in writing or by electronic means. The CITY'S continued use of or failure to terminate any Service, after the effective date of the change, will indicate the CITY'S agreement to the change.

(c) CITY may close an account at any time. BANK shall honor a CITY check presented for payment over the counter at BANK by a person who does not have an account with BANK without charging the person a fee.

(d) Prior to instituting any change to its collections schedule or funds availability policy, BANK shall notify CITY in writing.

(e) Prior to taking any action in regards to CITY accounts, Bank will endeavor to notify City Controller and City Attorney of any legal process BANK believes to be valid.

2. Effective Date, Time of Performance and Term of Agreement. It is the intent of the parties that this Agreement be effective upon the Effective Date set forth above. The initial term of this Agreement will be for 5 years beginning on the Effective Date and ending June 30, 2023, unless terminated or extended as provided in this Agreement. CITY shall have the option to extend this Agreement upon mutual written agreement of the parties for two consecutive 1-year terms by providing 60 days' notice to BANK prior to the end of the respective initial term or term of extension.

3. Compensation.

(a) BANK's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be paid in accordance with the Pricing Schedule set forth in **Exhibit B**. Such fees and charges include any expenses incurred by BANK in performance of the services.

(b) Detailed account analysis statements shall be rendered monthly. CITY will pay the BANK for each Service you use according to our schedule of charges currently in effect for the CITY, except as we agree otherwise (in writing) from time to time. At the CITY'S request, the BANK will provide the CITY a copy of the current schedule of charges for the applicable Service. All charges are subject to change upon 30 days prior written notice to the CITY (unless otherwise agreed in writing), except that any increase in charges to offset any increase in fees charged to us by any Supplier for services used in delivering any Service may become effective in less than 30 days.

Invoices shall be submitted to:

Corrina Barbarite  
City of Fresno  
Finance Department  
2600 Fresno Street, Room 2156  
Fresno, CA 93721

(c) BANK may not add or delete a service, unless it obtains a prior written amendment to this Agreement by CITY. Notwithstanding the forgoing, the BANK may change, add, or delete any of the terms and conditions (**Exhibit D**) applicable to any or all Services upon 30 days prior notice to the CITY in writing or by electronic means. The CITY'S continued use of or failure to terminate any Service, after the effective date of the change, will indicate the CITY'S agreement to the change. The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an agreed upon increase or decrease in BANK's compensation. Any increase or change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. BANK shall not be entitled to any additional compensation if work is performed prior to a signed written amendment.

#### 4. Termination of Agreement.

(a) CITY 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 CITY to BANK for breach of contract, default, detrimental reliance or any other basis in law or equity; upon 30 calendar days prior written notice of termination to BANK in the manner provided herein.

(b) In addition to CITY's right of termination pursuant to Subsection 4(a), this Agreement may be terminated immediately by CITY upon 7 calendar days prior written notice should BANK fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. BANK will have failed substantially to observe, fulfill, or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such 7 calendar days' prior written notice and this shall constitute a material default and breach of this Agreement.

(c) In the event of termination pursuant to Section 4(a) or not due to the material default of BANK, BANK shall be paid compensation for services satisfactorily performed prior to the effective date of the notice of termination.

(d) Upon the breach of this Agreement by BANK, CITY may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by

appropriate court action to enforce the terms of the Agreement to recover direct damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience. In no event will the Bank be liable for indirect, consequential, incidental or punitive damages.

(e) In the event of termination by CITY, BANK shall process all CITY checks that have been issued by CITY prior to the effective date of termination. In this instance, CITY shall ensure there is on deposit with BANK an amount of funds sufficient to pay outstanding checks issued by CITY prior to termination of this Agreement.

(f) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(g) Suspension/Termination of Contract. In addition to the termination sections as set forth above, either party may terminate any or all services for cause with 30 days written notice. Both parties have the right to immediately terminate any service for cause as set forth in the Suspension and Termination Section of the Negotiated Treasury Terms and Conditions Booklet (**Exhibit D**).

5. Confidential Information. Subject to law, rule or regulation, any reports, information, or other data prepared or assembled by BANK pursuant to this Agreement shall not be made available to any individual or organization by BANK without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, BANK shall not, without the prior written consent of CITY disclose to anyone any Confidential Information; other than its affiliates, employees, officers, directors, legal counsel and agents. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY. The BANK is entitled to retain one copy of all Confidential Information pursuant to its document retention policies and guidelines.

BANK shall notify CITY in advance (if permitted by law) of its intention to disclose information concerning CITY's account and the reason(s), in the event that BANK concludes that such disclosure is necessary to protect CITY, CITY'S account, or the interests of the BANK. This section shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as BANK represents to CITY that BANK is skilled in providing treasury banking services and shall perform in accordance with the standards of similar banking financial institutions to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of BANK to do and perform its

work in a skillful manner and BANK agrees to thus perform its services. Acceptance of its services by CITY shall not operate as a release of BANK from said standard of care and performance.

7. Indemnification. To the furthest extent allowed by law, BANK shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, costs and direct/actual damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the gross negligence, recklessness or willful misconduct of BANK, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

This section shall survive termination or expiration of this Agreement.

8. Minimum Limits of Insurance. PROFESSIONAL SERVICES, or any party the PROFESSIONAL SERVICES 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 applying separately to the work performed under the Agreement.

(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 PROFESSIONAL SERVICES purchases an Umbrella or Excess insurance policy (ies) to meet the "Minimum Limits of Insurance," this insurance policy (ies) shall "follow form" and 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. PROFESSIONAL SERVICES shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and PROFESSIONAL SERVICES 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. PROFESSIONAL SERVICES 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.

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, PROFESSIONAL SERVICES' 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 PROFESSIONAL SERVICES' insurance and shall not contribute with it. PROFESSIONAL SERVICES 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) insurance shall at all times during the term of this agreement the PROFESSIONAL SERVICES 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 PROFESSIONAL SERVICES under this Agreement. The PROFESSIONAL SERVICES 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 PROFESSIONAL SERVICES 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. All policies of insurance required herein shall endeavor to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. PROFESSIONAL SERVICES is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, PROFESSIONAL SERVICES 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,

PROFESSIONAL SERVICES 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.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by PROFESSIONAL SERVICES shall not be deemed to release or diminish the liability of PROFESSIONAL SERVICES, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROFESSIONAL SERVICES. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of PROFESSIONAL SERVICES, its principals, officers, agents, employees, persons under the supervision of

PROFESSIONAL SERVICES, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

e. SUBCONTRACTORS - If PROFESSIONAL SERVICES subcontracts any or all of the services to be performed under this Agreement, PROFESSIONAL SERVICES 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. PROFESSIONAL SERVICES 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, PROFESSIONAL SERVICES 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.

14. Limitation of Liability. In no event will either party be liable for any indirect, consequential or punitive loss, damage, cost or expense of any nature (even if advised of the possibility of such loss, damage, cost or expense) including, without limitation, any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption to the other party's data, loss of operation time or loss of contracts, unless any of the aforementioned injuries occurs as the direct result of the other party's intentional misconduct in performing its obligations under this Agreement.

15. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by Administrator.

(b) Records of BANK's expenses pertaining to the services performed hereunder shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a rolling period of seven (7) years from the date of a transaction, or, if longer, for any period required by law. In addition, all books, documents, papers, and records of BANK pertaining to this agreement and the services performed hereunder shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

(c) Upon the CITY'S written request, the Bank shall provide an annual report on all Community Reinvestment Act funds spent within Fresno city limits.



16. Recycling Program. In the event BANK maintains an office or operates a facility (ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, BANK at its sole cost and expense shall operate and maintain a recycling program per California SB 1018.

17. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY's execution of this Agreement, BANK shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, BANK shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by BANK in such statement.

(b) BANK shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). BANK shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, BANK shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, BANK shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) BANK shall not employ an individual who, within 12 months immediately preceding such employment did, in the individual's capacity as a CITY official, officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the Administrator or City Council in connection with the selection of, or award of this Agreement to, BANK.

(e) BANK represents that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

Neither BANK, nor any of BANK's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. BANK and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third

party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, BANK shall remain responsible for complying with Section 12(b), above.

(f) If BANK should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, BANK shall include the provisions of this Section 12 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 12 shall survive expiration or termination of this Agreement.

18. Nondiscrimination. BANK shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, and ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, BANK agrees as follows:

(a) BANK will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) BANK will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. BANK will endeavor to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. BANK agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Upon the written request from the City of Fresno, the Bank shall (if permitted by law, rule, regulation, court and/or administrative order), provide an annual declaration to the City of Fresno stating that there were final judgments filed in a court of law as a result of a court order or settlement of a discrimination claims during the

previous contract year, or a declaration stating that there were no settlements/payments associated with judgments made for discrimination claims during the previous contract year.

19. Independent Contractor.

(a) In the furnishing of the services provided for herein, BANK is acting solely as an independent contractor. Neither BANK, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which BANK shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that BANK is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between BANK and CITY. BANK shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, BANK shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, BANK and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. BANK shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, BANK shall be solely responsible for employment and tax withholding for and payment of BANK's employees, including, without limitation, compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment. It is acknowledged that during the term of this Agreement, BANK may be providing services to others unrelated to CITY or to this Agreement.

20. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

21. Binding. Subject to Section 17, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each

parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

22. Assignment.

(a) This Agreement is personal to BANK and there shall be no assignment by BANK of its rights or obligations under this Agreement without first discussing the assignment with the City Manager or his/her designee. Notwithstanding the above, the Bank may assign to one of its affiliates without the consent of the CITY.

(b) BANK hereby agrees not to assign the payment of any monies due BANK from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due BANK directly to BANK.

23. Compliance With Law. BANK shall post collateral in accordance with Sections 53649 through 53668 of the California Government Code, and shall further comply with all depository regulations and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, applicable to financial institutions.

24. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

25. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

26. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

27. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

28. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be

resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

29. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal reasonable expenses.

30. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

31. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

Any such reference on such forms purporting to do so is null and void. The terms and conditions of this Agreement shall take precedence over any such standard form of the BANK.

32. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

33. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

34. Dispute Resolution and No Right to Setoff.

(a) The parties may agree in writing to mediation or arbitration (binding or non-binding), in the event of a dispute between the parties related to this Agreement. BANK acknowledges that CITY expressly does not agree to binding arbitration for the resolution of disputes between the parties related to this Agreement and BANK requires CITY's signature on BANK'S set-up forms, user documentation, or other documents required by BANK pursuant to this Agreement that may contain such a requirement. Both parties expressly reserves its right to a trial without jury in any action or proceeding which may arise in connection with this Agreement

(b) The BANK may exercise the right to setoff under certain circumstances to use funds in the CITY'S account to pay any debts you owe the BANK,

either before or after any default. In no event shall BANK have the right to a setoff and BANK shall not debit CITY's accounts for attorney's fees with respect to collection of overdrafts, adverse claims, legal process, freezing CITY's account, or any other fees or amounts owed to BANK. (If the BANK has a final legal judgment stating that the City owes the Bank legal fees, then the BANK can debit the City's account in the amount of those legal fees).

35. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and BANK.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

By: Michael A. Lima  
Michael A. Lima, Controller,  
Finance Department

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: Brandon M. Collet Date \_\_\_\_\_  
Sr. Deputy City Attorney

ATTEST:  
YVONNE SPENCE, MMC  
City Clerk

By: Yvonne Spence  
Deputy

Addresses:

CITY:  
City of Fresno  
Attention: Corrina Barbarite, Treasury  
Officer  
2600 Fresno Street, Room 2156  
Fresno, CA 93721-3622  
Phone: (559) 621-7005  
FAX: (559) 457-1310

Attachments:

1. Exhibit A - Request for Proposal [and Addenda, if applicable]
2. Exhibit B - Proposal [and revisions, if applicable]
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Terms and Conditions

BANK OF AMERICA, N.A.,  
a national banking association

By: Patty Ramirez  
Name: Patty Ramirez

Title: Director; Sr Client Manager  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

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

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

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

CONSULTANT:

Bank of America, N.A.  
Attention: Patty Ramirez  
275 Valencia Ave  
CA7-701-01-73  
Brea, CA, 92823-6340  
Phone: 714-577-1494