

BANKING AGREEMENT BETWEEN
CITY OF LAUDERHILL
AND
TD BANK, N.A.

THIS AGREEMENT is made and entered into this ____ day of _____ 2017, by and between the City of Lauderhill, a municipal corporation with principal offices located at 5581 West Oakland Park Blvd., Lauderhill, FL 33319 (the “City”) and TD Bank, N.A., a national banking association, with principal offices located at 2035 Limestone Road, Wilmington, Delaware 19808 (the “Contractor”) to provide for Banking Services for the City of Lauderhill.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

1) The Work

1.1 The Contractor shall perform all work for the City required by the contract documents as set forth below:

1.1.1 Contractor shall furnish all labor, materials and equipment necessary to provide Banking Services for the City of Lauderhill.

1.1.2 Contractor shall provide Banking Services for the City of Lauderhill in accordance with the Contracts Documents contained herein.

1.1.3 Contractor shall comply with any and all Federal, State and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or sub-Contractors, if any, with respect to the work and services described herein.

2) Insurance

2.1 Contractor shall obtain at Contractor’s expense all necessary insurance in such form and amount as specified in the original bid or proposal document or as required by the City’s Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Worker’s Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City’s Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contract will ensure that all subcontractors comply with the

above guidelines and will retain all necessary insurance in force throughout the term of this agreement.

- 2.2 Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

3) Contract Term

The work to be performed under this Agreement shall be commenced after City execution of this Agreement. The term of the Agreement shall be for a three (3) year period, with the option to renew the Agreement for one (1) additional (2) two-year period, subject to a performance review conducted by the City, and the determination that the work performed has been satisfactory to the City.

4) Contract Pricing

The Contract pricing shall be in accordance with the pricing shown in RFP submittal superseded in part by revised Proposal pricing dated _____, 2016, which is included herein as a Contract Document.

5) Payments

The City shall pay the Contractor on a monthly basis, upon receipt of a properly executed invoice document. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218.

6) Non Discrimination & Equal Opportunity Employment

During performance of Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex. Religion, age, national origin, marital status, sexual orientation, or disability if qualified. Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of this nondiscrimination clause.

7) Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment tax Act, the provisions of Internal Revenue Code, State Worker's Compensation Act, and State Unemployment Insurance Law. Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. Contractor agrees that it is a separate and independent enterprise from City, that it had full opportunity to find other business, that it had made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between Contractor and City and City will not be held liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

8) Signatory Authority

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

9) Severability: Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

10) Merger; Amendment

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understanding between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

11) No Construction against Drafting Party

Each party to this Agreement expressly recognized that this Agreement results from the negotiation process in which each party was represented by counsel and

contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

12) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-730-3011, clerk@lauderhill-fl.gov, 5581 W. OAKLAND PARK BLVD. LAUDERHILL, FL 33313.

(1) If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency as provided by section 119.0701(1)(b), Florida Statutes, the Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

Protection of Trade Secrets or Other Confidential Information

(1) If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 812.081, Florida Statutes, or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as "confidential" when submitted to the City.

(2) If the City receives a public records request for contract-related materials designated by the Contractor as "confidential," the City will provide only the portions of the

contract-related materials not designated as “confidential.” If the requester asserts a right to examine contract-related materials designated as “confidential,” the City will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated “confidential.”

(3) If the City is served with a request for discovery of contract-related materials designated “confidential,” the City will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The City will provide materials designated “confidential” only if the Contractor fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as “confidential” from disclosure.

Retention of Records

Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract, and all other records made in relation to the Contract, for five (5) years after expiration or termination of the Contract.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF LAUDERHILL, signing by and through its City Manager, and CONTRACTOR, signing by and through its Vice President, duly authorized to execute same.

CITY OF LAUDERHILL

Charles Faranda, City Manager

Date

ATTEST:

City Clerk

Approved as to form and legal sufficiency

W. Earl Hall, City Attorney

Date

TD Bank, N.A.

ATTEST:

Corporate Secretary

Signature

Type/Print Name of Corporate Secy.

Pamela Ramkalawan, Vice President

Type/Print Name of Vice President

(CORPORATE SEAL)

Date

NOTARY ACKNOWLEDGEMENT

STATE OF _____:

COUNTY OF _____:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Pamela Ramkalawan the person (s) described in and who executed the foregoing instruments and acknowledgement before me that he/she executed the same.

WITNESS my hand and official seal this day of _____, 2017.

Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- ☐ Personally known to me or
☐ Produced Identification

Type of I.D. Produced

- ☐ DID take an oath, or
☐ DID NOT take an oath