

RESOLUTION NO. 94-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH BRANCH BANKING & TRUST (BB&T) TO PROVIDE BANKING/DEPOSITORY SERVICES FOR THE CITY FOR A PERIOD OF THREE (3) YEARS COMMENCING JULY 20, 2011 UNTIL JULY 19, 2014 WITH ANNUAL RENEWALS AT THE CITY'S OPTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Bank of America currently provides the City with banking and depository services; and

WHEREAS, the City solicited Request for Proposals (RFP#264-10) for the provision of full banking services for the City of Riviera Beach; and

WHEREAS, four banking institutions – Bank of America, TD Bank, Wachovia / Wells Fargo, and BB&T – responded to this RFP; and

WHEREAS, a City evaluation committee evaluated the written proposals submitted by the banking institutions; and

WHEREAS, BB&T was the successful bidder and City Council, on April 6, 2011 authorized Staff to negotiate a contract with BB&T; and

WHEREAS, the City desires to enter into an Agreement with BB&T for the provision of banking and depository services for the City in accordance with the terms and conditions specified in the Banking Services Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA,

Section 1. That the Mayor and City Clerk be authorized to execute a Treasury Management Agreement with BB&T to provide primary banking/ depository services for the City for a period of three years commencing July 20, 2011 until July 19, 2014 with annual renewals at the City's option.

Section 2. That the City Manager and Finance Director are authorized to execute all banking documents, including the Commercial Banking Services Agreement, that are necessary to carry out the provision of banking and depository services with BB&T.

Section 3. That the City Manager is authorized to negotiate with BB&T for such additional banking services as the City Manager may from time to time deem appropriate and necessary, at costs which shall be reasonable.

Section 4. This Resolution shall become effective upon its passage and approval by the City Council.

PASSED AND APPROVED THIS 20 DAY OF July, 2011.

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APPROVED:

Thomas A. Masters
THOMAS A. MASTERS
MAYOR

Judy L. Davis
JUDY L. DAVIS
CHAIRPERSON

ATTEST:

Carrie E. Ward
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

Billie E. Brooks
BILLIE E. BROOKS
CHAIR PRO-TEM

Absent
CEDRICK A. THOMAS
COUNCILPERSON

Absent
DAWN S. PARDO
COUNCILPERSON

Shelby L. Lowe
SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: Brooks

SECONDED BY: Lowe

J. DAVIS Aye
B. BROOKS Aye
C. THOMAS Absent
D. PARDO Absent
S. LOWE Aye

REVIEWED AS TO LEGAL SUFFICIENCY
Pamala Hanna Ryan
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 7/11/11

BB&T
TREASURY MANAGEMENT AGREEMENT

THIS AGREEMENT is made as of this 20 day of July, 2011
By and between City of Riviera Beach ("Customer") and
Branch Banking and Trust Company ("Bank").

1. Service

Subject to the terms and conditions contained in this Agreement, the Commercial Bank Services Agreement ("CBSA") and any Attachment which describe specific Treasury Management ("Services") (whether attached hereto or relating to any Service requested subsequent to the date of this Agreement), each of which are incorporated herein by reference, Bank will furnish Customer with those Services that it may request. Customer agrees to pay for all said Services in accordance with this Agreement and the Bank's current fee schedule for such Services. Initiation by Customer of any Services constitutes acceptance of the terms and conditions of this Agreement, the CBSA and any applicable Attachment.

2. Customer's Duties. Customer shall:

- a) Perform and observe all conditions, covenants and restrictions as set forth in this Agreement and any Attachments, and if required by a particular Service, maintain, at a minimum, a Deposit Account at Bank subject to the CBSA.
- b) Pay any bill rendered by Bank within 30 days after the billing date and grant to the Bank a right of set-off in all of Customer's deposit accounts for any bills, costs or expenses owed to Bank under this Agreement or any Attachment.
- c) Warrant that Customer is fully authorized to effect transaction concerning any account, whether or not in Customer's name, that at Customer's request is the subject of, or is affected by, any Service.
- d) Carefully examine any statement, notification or confirmation of a transaction and notify the Bank within 30 days of the statement date of any errors, discrepancies or fraudulent transactions. Customer agrees that the Bank will not be liable for any erroneous, unauthorized or fraudulent transaction resulting from the Customer's failure to safeguard any security or access device used in connection with any Services or its failure to reasonably supervise its employees or agents entrusted with the security or access device. Customer agrees to conduct a detailed background check of all employees or agents having authority to implement any cash management transaction and to periodically check such others' work. The Customer further agrees that the Bank will not be liable for any erroneous, fraudulent or unauthorized transaction which was not otherwise caused by the Bank's gross negligence or willful misconduct.
- e) Indemnify and hold Bank, its affiliates, subsidiaries, officers, directors and employees harmless against any claim, loss, damage, deficiency, penalty, cost or expense resulting from: (a) any breach or default by the Customer in the performance or observance of this or any other Agreement; (b) any negligence or willful misconduct of the Customer; (c) incorrect, incomplete, or inaccurate data or information furnished by Customer to Bank; (d) any action taken by Bank (i) at the direction of Customer or its agent, (ii) at any direction authenticated by any device, symbol, or code assigned to or chosen by Customer in connection with a Service (unless Bank has actual knowledge that such direction is unauthorized), or (iii) in accordance with the procedures set forth in any Attachment.

3. Bank's Duties. Bank shall:

- a) Instruct Customer and its personnel in the proper use and operation of the Service(s) furnished herewith.
- b) Exercise ordinary care in the performance of Bank's obligations under this Agreement and any Attachment, including the maintenance of the confidentiality of Customer's account and of any identification device, symbol, or code utilized by Customer in obtaining a Service.

Payments Client Support
Questions call 1-800-774-8179

- c) Not be responsible for any liability, loss or damage resulting from any delay in its performance of, or from any failure to perform, its responsibilities under this Agreement or any Attachment, or for any error in transmission which: (i) was not caused by the Bank's gross negligence or willful misconduct; (ii) results from any malfunction, including data related processing, that may occur in Customer's computer software or computer system; or (iii) from an act of God; a natural catastrophe or event, whether or not abetted or aggravated by human or unnatural agencies; the unavailability, interruption, or malfunction of communications facilities or utilities; acts of, delays, or failures to act by other banks or financial institutions, intermediaries or their personnel; and criminal acts by persons other than Bank personnel; or any other circumstances beyond the Bank's control.
- d) Consistent with any security procedures agreed upon between Bank and Customer, confirm the identity of any person executing a transaction pursuant to this Agreement or any Attachment. The Bank, otherwise, may rely upon any written or verbal instruction by any person if the bank reasonably believes such authority is genuine and shall not be liable or responsible for any action taken or not taken in accordance thereof.
- e) Indemnify and hold Customer harmless against any loss, damage, deficiency, penalty, cost or expense claims brought against Customer to the extent that such claims arise out of the Bank's gross negligence or willful misconduct. Any liability of Bank to Customer shall be limited to direct losses suffered by Customer, not to exceed the sum of the fees and charges then imposed for Services purchased by Customer hereunder for a period of one year.

EXCEPT AS PROVIDED IN THIS AGREEMENT, THE BANK MAKES NO REPRESENTATION OR WARRANTY, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT AND UNDER ANY CIRCUMSTANCES SHALL BANK BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, EVEN IF THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. Term.

- a) The initial contract period shall be for three (3) years effective July 20, 2011, and ending July 19, 2014, with two (2) renewal options of two (2) years each.
- b) This Agreement shall remain in full force and effect on the same terms and conditions as expressed herein, or as may be amended, until such time as it is terminated by either party as provided herein. Subject to section 4(c) and 4(d), either party may terminate this Agreement or any Service by giving thirty (30) days prior written notice to the other party. The liabilities of the parties shall cease on the effective date of termination, except as to events that shall have previously occurred.
- c) All Services are provided subject to applicable laws and rules. In the event Bank reasonably determines it is no longer able to provide a Service due to a change in laws or rules, this Agreement or a specific Service may be terminated immediately upon written notice by Bank to Customer.
- d) In the event of Customer's failure to perform or observe any of the conditions, covenants, and restrictions herein set forth, or if in the good faith opinion of Bank the Customer is involved in illegal or unethical business practices or is financially unstable and/or the prospect of payment or performance has been impaired, then in addition to any other available remedies, Bank may terminate this Agreement or any Service immediately by giving written notice to Customer.

5. Miscellaneous.

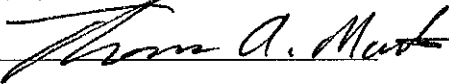
Bank may amend this Agreement and any Attachment, including any provision as to fees, by giving Customer prior written notice of the amendment, but this Agreement may not otherwise be amended or assigned except in writing signed by both parties.

- a) Any notice under this Agreement shall be deemed given: (i) to Bank when such notice is received at its Payment Solutions Division, Attn: Payments Client Support, 5130 Parkway Plaza Boulevard, 500-96-01-05, Charlotte, NC 28217-1964, or at such other location as Bank may hereafter provide to Customer in writing; (ii) to Customer when mailed, postage prepaid, or delivered to Customer's current address, as shown on Bank's records.

- b) All information, whether printed, written or oral, furnished by either party shall be held in confidence and used only for the purpose of furnishing or utilizing Services rendered herewith and in compliance with the CBSA.
- c) This Agreement, together with the CBSA and any applicable Attachments contain the entire understanding of the parties and supersedes any previous discussions, proposals, or agreement, whether oral or written. In the event of any conflict between a provision set forth in this Agreement and a provision contained in an Attachment, the latter provision shall prevail. This Agreement shall not supersede or govern any other banking or lending relationship between the parties.
- e) The invalidity of any provision of this Agreement, either in its entirety or in any particular circumstance, shall not impair the validity of the remaining provisions or the validity of such provision in any other circumstance. This Agreement shall be governed, as to both interpretation and performance by the laws of the State in which Bank's main office is located, without regard to its conflict of laws provisions.
- e) Either party has the option of requiring that all disputes that may arise between the Customer and Bank, or any affiliate of the Bank, related to this Agreement, any Attachment or Services, or any products or investments provided to Customer shall be decided by arbitration held in the city where the Bank's main office is located. The parties are also advised that: (i) Arbitration is final and binding on the parties; (ii) The parties are waiving their rights to seek remedies in court, including the right to jury trial; (iii) Pre-arbitration discovery is generally more limited than and different from that in court proceedings; (iv) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrator is strictly limited; and (v) The panel of arbitrators may include arbitrators who were or are affiliated with the banking or securities industry. Any arbitration shall be conducted under the Rules of the American Arbitration Association ("AAA"), except that arbitration of disputes involving a Broker-Dealer affiliate of the Bank may be conducted under the Rules of the National Association of Securities Dealers ("NASD") or an Exchange or self-regulatory organization of which the Broker is a member. In matters involving the Broker as a party, the Customer may elect in the first instance whether arbitration shall be by the AAA, NASD, an Exchange or other self-regulatory organization of which the Broker is a member, but if the Customer fails to make such election, by registered letter to the Broker at the Broker's main office, before the expiration of ten days after receipt of a written request from the Broker to make such election, then the Broker may make such election.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and to be effective as of the day and year first above written. Customer hereby acknowledges receipt of copies of this Agreement and any applicable Attachments and consents to the terms and conditions contained therein. *Customer further acknowledges and consents to the pre-dispute arbitration clause contained in the paragraph 5(e) above.*

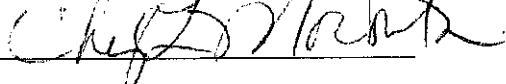
CUSTOMER *

Signed: 

By: Thomas A. Masters

Title: Mayor

BANK

Signed: 

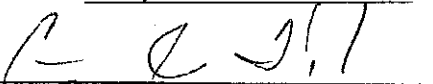
By: Cheryl Moronta

Title: Vice President

* Individual signing as "Customer" above must be an authorized individual appearing on the **BB&T Resolution and Agreement for Deposit Account**.

FORWARD COMPLETED DOCUMENT TO YOUR PAYMENT SOLUTIONS SALES REPRESENTATIVE:

Name: Cheryl Moronta Fax # / Email Addr: cmoronta@bbandt.com



**Carrie E. Ward, MMC
City Clerk**