



The Master Commercial Banking Services Agreement between the Iowa Finance Authority and the selected Bank (Bank) shall contain, at a minimum, the following provisions:

1. **Public Funds.** The moneys deposited or maintained in the Accounts from time to time under this Agreement are and will be "public funds" within the meaning of Chapter 12C of the Iowa Code. During the term of this Agreement, Bank will maintain its status as an approved depository, as designated by the Treasurer of the state of Iowa under Iowa Code Chapter 12C. During the term of this Agreement, Bank will comply with all laws, rules and regulations governing or applicable to public funds and public deposits, including, without limitation, Chapter 12C and the Treasurer's administrative rules.

2. **Termination for Convenience.** Following thirty (30) days written notice, the Authority may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the Bank. Termination for convenience can be for any reason or no reason at all. In the event of termination of this Agreement for any reason by either party, (1) the Authority shall pay only those amounts, if any, due and owing to Bank for services actually and satisfactorily rendered up to and including the date of termination of this Agreement; and (2) the bank shall cooperate in good faith with the Authority and its employees, agents, and contractors during the transition period between the notification of termination and the complete transition of the Bank's duties hereunder to any successor bank or service provider hired by the Authority. The Bank shall perform all such acts and duties as the Authority may request until all duties of the Bank have been completely transitioned to a successor bank or service provider, as determined by the Authority.

3. **Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Authority may withhold compensation or payments to Bank, in whole or in part, without penalty or liability to the Authority, (and without any work stoppage by Bank), in the event the Authority determines that the Bank has failed to perform any of its duties or obligations as set forth in this Agreement to the reasonable satisfaction of the Authority. In addition, the Authority may withhold from any amount due the Bank hereunder such sums as the Authority determines to be necessary to protect the Authority against potential liability. No interest shall accrue or be paid to the Bank on any compensation or other amounts withheld or retained by the Authority under this Agreement.

4. **Erroneous Payments and Credits.** The Bank shall promptly pay or refund to the Authority the full amount of any overpayment or erroneous payment within five (5) business days after either discovery by the Bank or notification by the Authority of the overpayment or erroneous payment. In the event Bank fails to timely pay or refund any amounts due the Authority under this Section, the Bank shall pay the Authority interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Authority may, in the Authority's sole discretion, elect to have the Bank apply any amounts due to the Authority under this Section against any amounts payable by the Authority under this Agreement.

5. Insurance. [The Master Agreement shall contain negotiated insurance requirements to be met by the Bank.]

6. Records Retention and Right to Audit and Inspect. The Bank shall maintain books, documents and records that sufficiently and properly document Bank's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. The Bank shall permit the Authority, the Auditor of the State of Iowa or any authorized representative of the Authority and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of the Bank relating directly or indirectly to the Bank's performance under this Agreement. The Bank shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. The Bank shall require its subcontractors to agree to the same provisions of this section. The Bank shall allow the Authority, or anyone designated by the Authority, to inspect the Bank's facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

Compliance with this clause does not relieve Bank of any obligation to retain records in accordance with other laws or regulations of federal, state, or local governmental units.

7. Subcontractors. The Bank shall disclose all subcontractors used by the Bank in performing under this Agreement or any subordinate agreement to the Authority. The Bank shall remain responsible for performance under this Agreement and all subordinate agreements and shall be fully responsible and liable for all acts or omissions of any such subcontractor. Any action of a subcontractor, which, if done by Bank, would constitute a breach of this Agreement, shall be deemed a breach by Bank and have the same legal effect.

8. Agreement Not Exclusive. This Agreement is not exclusive. Authority may obtain banking services from other financial institutions without violating this Agreement.

9. Incorporation of Documents.

9.1 Incorporation. The Authority's Request for Proposal dated _____ ("RFP") and the Bank's proposal in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of the Bank's proposed exceptions or modifications to the sample contract(s) attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Bank, except that any exceptions or modifications made by Bank to the sample contract(s) attached to the RFP shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of the Bank or the Authority hereunder, unless expressly stated herein.

9.2 Order of Precedence. In the case of any inconsistency or conflict between the specific provisions of this Agreement, the RFP, the response by Bank to the RFP (excluding any proposed exceptions or modifications made by Bank to the sample contract(s) attached to the RFP), and any individual service agreements, any inconsistency or conflict shall be resolved by giving preference as follows:

9.2.1 First, to the specific provisions of this Agreement and the attachments hereto;

9.2.2 Second, to the RFP;

9.2.3 Third, to the Response by Bank to the RFP (excluding any proposed exceptions or modifications made by Bank to the sample contract(s) attached to the RFP);

9.2.4 Fourth, to any individual service agreements.

10. Indemnification.

10.1 The Bank and its successors and permitted assigns shall indemnify and hold harmless the Authority, and its employees, officers, board members, agents, representatives, and officials (“Indemnitees”) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General’s Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

10.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of Bank, including, without limitation, the furnishing or making by Bank of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

10.1.2 Any act or omissions of the Bank, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of the Bank, its officers, employees, agents, board members, contractors or subcontractors or any other person in connection with the services provided hereunder; or

10.1.3 The Bank’s performance or attempted performance of this Agreement; or

- 10.1.4** Failure by Bank or its employees, agents, officers, directors, contractors or subcontractors to comply with all applicable local, state, federal and international laws, rules, ordinances and regulations; or
 - 10.1.5** Any failure by Bank or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to social security, worker's compensation, employee income and other taxes, fees or costs required by the Bank to conduct business in the State of Iowa; or
 - 10.1.6** Any alleged or actual infringement, misappropriation or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including, without limitation, any patents, trademarks, trade dress, trade secrets, or copyrights of a third party.
- 10.2** The Bank's indemnification obligations under this Agreement are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
- 10.3** The Bank's duties as set forth in this Section shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Authority or any other Indemnitee.
- 10.4** Neither the State of Iowa nor the Authority shall indemnify Bank for any reason.

11. Obligations of Joint Entities. If the Bank is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12. Sovereign Immunity. The Authority does not waive sovereign immunity by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity and all defenses available to it under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

13. Attorney's Fees and Expenses. Subject to the other terms and conditions of this Agreement, in the event the Bank defaults in any obligations under this Agreement, the Bank shall pay to the Authority all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Authority) incurred by the Authority in enforcing this Agreement or any of its rights and remedies with respect thereto.