

## **CONTRACTOR AGREEMENT Banking Services**

**THIS CONTRACTOR AGREEMENT** (“Agreement”) is made this 4<sup>th</sup> day of December 2023, between the **City of Greenacres, Florida**, a municipal corporation herein referred to as the “CITY”, and **BankUnited, N.A.**, a corporation authorized to do business in the State of Florida, herein referred to as the “CONTRACTOR”.

### **RECITALS**

WHEREAS, the CITY issued Request for Proposal # 23-010 for Banking Services for the City (“RFP” hereafter);

WHEREAS, CONTRACTOR submitted a proposal to perform the services described and set out in the RFP;

WHEREAS, the CITY desires to accept CONTRACTOR’S proposal in order for CONTRACTOR to render the services to the CITY as provided herein;

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the services hereunder in a professional and competent manner;

WHEREAS, the CITY finds awarding the RFP to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

#### **1. Term**

1.1 The term of this Agreement shall be for five (5) years beginning on December 14, 2023. In accordance with the RFP, at the end of the five (5) year period, this Agreement may be extended for up to two (2) additional two (2) year terms upon mutual written consent of the parties. Pricing may be adjusted upon each annual renewal based on the percent change in the Consumer Price Index, All Urban Consumers, for the Miami-Fort Lauderdale Region from June to June of each prior and renewal year, as published by the United States Department of Labor. Notwithstanding the term, the parties may terminate this Agreement as stated herein.

#### **2. Scope of Work**

2.1 CONTRACTOR agrees to conduct banking services for the CITY as set forth in the RFP and CONTRACTOR’S proposal response dated August 3, 2023, which RFP and CONTRACTOR’S proposal are incorporated herein by reference.

2.2 CONTRACTOR’S services hereunder shall be governed by the following documents, which comprises the Agreement in its entirety:

- A. This instant Agreement between the City of Greenacres and BankUnited, N.A. for Banking Services;
- B. City of Greenacres’ RFP No. 23-010 (Exhibit “A”)
- C. BankUnited’s response to the City of Greenacres’ RFP No. 23-010 dated August 3, 2023; (Exhibit “B”)
- D. Schedule of Agreed Upon Banking Fees dated December 4; (Exhibit “C”)

E. BankUnited Electronic Instructions Disclosure Statement and Agreement, (Exhibit "D").

2.3 The CONTRACTOR represents to the CITY that the services to be performed under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR'S trade in general and that the CONTRACTOR'S services shall conform to the highest standards and in accordance with this Agreement.

2.4 The CONTRACTOR represents that it is a national banking association licensed to do business in the State of Florida and further warrants its capability and experience to perform the services provided for herein in a professional and competent manner.

### **3. INDEPENDENT CONTRACTOR AND USE OF AGENTS OR ASSISTANTS**

3.1 It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services, and activities under this Agreement an independent contractor and not an employee, agent, or servant of the CITY. All persons engaged in any work, service or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform and work, and in all manner in which it and its employees perform the work, and in all respects CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY.

3.2 In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of CITY'S Purchasing Agent. Any subcontractor authorized to perform under this Agreement shall be required to possess the same insurance coverages as enumerated herein for the CONTRACTOR.

3.3 To the extent reasonably necessary to enable the CONTRACTOR to perform its duties hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties. All costs of the services of, or expenses incurred by, such agents or assistance shall be paid by the CONTRACTOR.

### **4. PROJECT MANAGEMENT**

4.1 Both parties shall appoint a Project Manager who shall meet to coordinate, review, and insure performance by the CONTRACTOR under this Agreement. The project manager appointed by the CITY will oversee the daily administration of the tasks to be performed by the CONTRACTOR under this Agreement.

### **5. EQUIPMENT**

5.1 Where applicable, the CONTRACTOR shall provide the equipment necessary to complete the various services to be performed hereunder. In the event CONTRACTOR requires equipment from the CITY, the CONTRACTOR shall meet and confer with the CITY before services commences. In the event the CITY'S equipment is to be utilized, any costs chargeable to the CONTRACTOR shall be agreed upon in advance of the commencement of services.

**6. FEE AND ORDERING MECHANISM**

6.1 For services to be rendered under this Agreement, the CITY shall issue a purchase order as authority for the CONTRACTOR to proceed with its services. Authorization through an approved order is required prior to commencing any services. City shall not be responsible for payment for any services performed without prior authorization via a purchase order, including pre and post diagnostics.

6.2 Upon satisfactory completion of each cycle under an approved purchase order, CONTRACTOR shall invoice CITY at the address shown on the purchase order based on the pricing set forth in the CONTRACTOR'S proposal.

**7. MAXIMUM COSTS**

7.1 Unless authorized by this Agreement, the CONTRACTOR expressly acknowledges and agrees that it shall not be entitled to any additional costs without prior written approval from CITY.

**8. BILLING**

8.1 The CONTRACTOR shall submit invoices upon 100% completion of scheduled work referencing the purchase order number. The invoices shall be signed by the CONTRACTOR'S representative.

8.2 The CONTRACTOR shall be paid within thirty (30) days receipt of approved invoice for services.

**9. AUDIT BY CITY**

9.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the City, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR'S performance specific to the City accounts under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to per performed under this Agreement.

**10. COPIES OF DATA/DOCUMENTS**

10.1 Copies or original documents prepared by the CONTRACTOR in relation to services associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

**11. OWNERSHIP**

11.1 Where applicable, each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

**12. WRITTEN AUTHORIZATION REQUIRED**

12.1 The CONTRACTOR shall not make changes in the Scope of Services or perform any additional services or provide any additional material under this Agreement without first obtaining written amendment from the CITY for such additional services or materials. Additional labor or materials provided without written amendment shall be done at the CONTRACTOR'S risk and without payment.

**13. DEFAULTS, TERMINATION OF AGREEMENT**

13.1 If the Project Manager deems that the CONTRACTOR is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to

satisfactorily perform on the services specified in this Agreement, the Project Manager may give written notice to the CONTRACTOR specifying defaults to be remedied within ten (10) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures and be made pursuant to paragraph 23 of this Agreement.

- A. If the CONTRACTOR does not remedy defaults within ten (10) days or commence steps to remedy default to the reasonable satisfaction of the Project Manager, the CITY may provide for such services from another CONTRACTOR and the CITY may withhold any money due or which may become due to the CONTRACTOR for such services related to the claimed default; or
- B. If after ten (10) days the CONTRACTOR has not remedied defaults or commenced steps to remedy defaults to the satisfaction of the Project Manager, the CITY may elect to terminate this Agreement.

13.2 Notwithstanding paragraph 13.1, the CITY reserves the right and may elect to terminate this Agreement at any time upon thirty (30) days' notice. At such time, the CONTRACTOR would be compensated only for services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down or other costs incurred due to termination of this Agreement.

#### **14. INSURANCE**

14.1 Prior to the effective date of this contract, CONTRACTOR shall be required to submit to the Purchasing Office, a copy of its Certificate of Insurance, reflecting, at a minimum, the following coverages:

Professional Liability Insurance: The limits of liability provided by such policy shall be no less than one million dollars (\$1,000,000.00).

Worker's Compensation Insurance to apply for all employees in compliance with the Workers Compensation Law of the State of Florida and such state where work is performed and all applicable federal laws.

Comprehensive General Liability Insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and/or Operations.
- Independent Contractors.
- Broad Form Property Damage.
- Broad Form Contractual Coverage applicable to this specific Agreement.
- Personal Injury Coverage with employee and contractual exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability Insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office and must include:

- Owned vehicles.

- Hired and non-owned vehicles.
- Employers' non-ownership.

CONTRACTOR agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event CONTRACTOR does not own automobiles, CONTRACTOR agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

14.2 All insurance, other than Worker's Compensation shall specifically include the CITY as an "Additional Insured" on a primary, non-contributing basis.

14.3 Coverage must be maintained during the full term of this Agreement. If there is a cancellation of or change to the policy submitted as proof of coverage, it is the responsibility of the CONTRACTOR to insure it or the Insurance carrier, notifies the City at least thirty (30) days before expiration of or any changes to the policy.

14.4 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement.

14.5 The CONTRACTOR shall deliver to the CITY the required certificate(s) of insurance and endorsement(s) before the CITY signs this Agreement.

14.6 The CONTRACTOR'S failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another CONTRACTOR without the CITY incurring any liability to the CONTRACTOR.

## **15. WAIVER OF BREACH**

15.1 The waiver of either parts of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

## **16. INDEMNITY**

16.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suite, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses and expert fees) which in whole or in part arise out of or are connected with, or which are alleged to have arisen out of or to have been connected with, the CONTRACTOR'S performance of this Agreement (including performance by its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed). In no event will CONTRACTOR be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to CONTRACTOR, and regardless of the form of the claim or action or the legal theory on which it is based.

16.2 The CONTRACTOR'S obligation to indemnify, defend, and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement. No claim may be made by

the CITY under the CONTRACTOR's obligation to indemnify, defend, and hold harmless unless said claim is brought within two (2) years after the termination or expiration of this Agreement.

16.3 The CONTRACTOR'S failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

## **17. ENTIRE AGREEMENT**

17.1 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. **This Agreement consists of the terms and conditions herein stated and the RFP and CONTRACTOR'S proposal. In the event of a conflict between the aforementioned documents, the terms of this Agreement shall prevail with the RFP next taking precedence.**

## **18. ASSIGNMENT**

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. Neither Party shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY'S prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations, and provisions.

## **19. SUCCESSORS AND ASSIGNS**

19.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

## **20. WAIVER OF TRIAL BY JURY**

20.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

## **21. GOVERNING LAW**

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be exclusively in Palm Beach County, Florida.

## **22. TIME IS OF THE ESSENCE**

22.1 Time is of the essence in the completion of tasks and services as specified herein. The CONTRACTOR and the CITY agree that the ongoing performance and completion of all tasks and services specified in this Agreement are of vital importance to the CITY and the CITY will suffer irreparable harm and injury of a nature not capable of being calculated with reasonable certainty if they are not timely completed.

22.2 The CITY may recover from the CONTRACTOR any amounts paid by the CITY for damages suffered to third parties as a result of the CONTRACTOR'S failure to complete the tasks and services as required in this Agreement.

**23. NOTICES**

23.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date personally delivered to the address indicated below; or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office to the address indicated below; or on the next day following delivery by a nationally recognized overnight courier to the address indicated below. Should the CITY of the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

FOR CITY:  
PURCHASING AGENT  
CITY OF GREENACRES  
5800 MELALEUCA LANE  
GREENACRES, FL 33463

FOR CONTRACTOR:  
EMSLEY HYLTON  
BANKUNITED, N.A.  
7765 NW 148<sup>TH</sup> STREET  
MIAMI LAKES, FL 33016

**24. SEVERABILITY**

24.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

**25. FORCES OF NATURE**

25.1 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest. Any delays beyond the control of wither party shall automatically extend the time schedule as set forth in this Agreement by the period of any such delay.

**26. COUNTERPARTS**

26.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed version of this Agreement.

**27. PUBLIC ENTITY CRIMES**

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statues, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

**28. PREPARATION**

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

## **29. PALM BEACH COUNTY IG**

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

## **30. SCRUTINIZED COMPANIES**

30.1 As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into the Contract Documents, the Contractor certifies that it and any authorized subcontractors are not participating in a boycott of Israel. The City and Contractor agree that the City will have the right to immediately terminate the Contract Documents if the Contractor and/or any authorized subcontractors is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

## **31. E-VERIFY**

31.1 Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

- A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- B. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- C. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- D. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- E. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- F. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

## **32. PUBLIC RECORDS**

32.1 Public Records: The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- A. Keep and maintain public records required by the CITY to perform the service.
- B. Upon request from the CITY'S custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time 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 for the duration of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.

D. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

**33. 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 AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF GREENACRES, ATTN: CITY CLERK, AT (561) 642-2006, CITYCLERK@GREENACRESFL.GOV, 5800 MELALEUCA LANE, GREENACRES, FL 33463.**

**34. EQUAL OPPORTUNITY EMPLOYMENT**

34.1 CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

IN WITNESS WHEREOF the parties hereto have made and executed this Contractor Agreement on the day and year first above written.

CITY OF GREENACRES, FLORIDA

By: \_\_\_\_\_  
Joel Flores, Mayor

ATTEST:

\_\_\_\_\_  
Quintella Moorer, City Clerk

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Glen J. Torcivia, City Attorney

CONTRACTOR:

By: *Emsley Hylton*

[Corporate Seal]

Print Name: Emsley E Hylton

Title: SVP; Director of Government Banking

STATE OF Florida )  
COUNTY OF Lake )

The foregoing instrument was acknowledged before me this 10 day of November, 2023, by Emsley Hylton who was physically present, as SVP Director of Government (title), of Banking United (name of entity) which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following FL DL as identification.

Notary Public

*Sharon Sullivan*  
Print Name: SHARON SULLIVAN

My commission expires: Nov 20, 2026

