



DATE: DECEMBER 12, 2017
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: STEVEN ADAMS, CITY MANAGER *SA*
RE: ITEM 11.A – SUPPLEMENTAL INFORMATION

Please find attached the draft banking agreement for the proposed CCA contract. The City Attorney's edits have been included and are now under review by the financial institution. Staff is requesting authority to approve changes to address their comments and execute the agreement unless any of the changes impact policy decisions, in which case the agreement would be brought back to the Council.

Staff was also notified that the California Public Utilities Commission (CPUC) has introduced a Resolution that will be voted on in January and could delay the City's CCA launch by at least six months if approved. Kelly Foley is working with the Mayor on advocacy efforts to oppose it and will brief the City Council at the Council meeting.

Let us know if you have any questions in the meantime.

Thank you.

attachment

DEPOSIT ACCOUNT CONTROL AGREEMENT



This Deposit Account Control Agreement is offered as a sample and may not be appropriate in your case. Consult with your legal counsel as to the terms and conditions you require.

This Deposit Account Control Agreement (this "Agreement") is entered into as of _____, 2017, by and among the City of King, a California municipal corporation ("Client"), _____ ("Lender") _____ and **City National Bank**, a national banking association ("CNB").

RECITALS

A. Pursuant to the authority granted by the California Public Utilities Code section 366.2(c)(12) or its successors, on November 14, 2017, the Client adopted an ordinance authorizing the implement a Community Choice Aggregation ("CCA") program within its jurisdiction.

B. The Client determined that a full service CCA agreement is the optimal manner in which to serve the customers of the City CCA.

C. Lender has conclusively demonstrated possession of all resources required to fully provide the required CCA services to the City CCA.

D. The Client initiated a request for professional services and at the conclusion of that process selected Lender to provide full CCA services to the City CCA.

E. The Client and Lender have entered into a full service agreement to provide the required CCA service for the City CCA.

F. In order to effectuate the purpose of the full service agreement between the Client and Lender, the Client has granted Lender limited authority to access and utilize City CCA funds within deposit account number(s) _____ [maintained by Client with CNB at the office indicated below].

AGREEMENT

1. Control of Account by Lender; the Client's Rights in Account

1.1 Pursuant to the mandatory requirements of the Payment Protocols established and agreed to by the Client and Lender, Lender shall be entitled, for purposes of this Agreement, at any time to give CNB instructions as to the withdrawal or disposition of funds for the operation and maintenance of the City CCA, including payment of the City CCA's costs and expenses.. CNB shall, and is fully entitled to, rely upon any such reasonable instructions from Lender which comply with the requirements of the Payment Protocols..

1.2 Provided the Client complies with the requirements of the Service Terms and Conditions, the Client shall be entitled to present items drawn on or otherwise to withdraw or direct the disposition of funds from the Account.

1.3 Lender's power under this Agreement to give CNB reasonable instructions as to the withdrawal or disposition of any funds from time to time credited to the Account, as to any other matters relating to the Account, includes, without limitation, the power to give stop payment orders for any items being presented to the Account for payment. Lender shall have a reasonable factual basis for instructing CNB to stop payment of any item presented to the Account for payment. The Client confirms that CNB shall follow such reasonable instructions from Lender even if the result of following such instructions from Lender is that CNB dishonors items presented for payment from the Account. The Client further confirms that CNB will have no liability to the Client for the wrongful dishonor of such items in following such reasonable instructions from Lender.

2. CNB's Responsibility

2.1 CNB shall have no duty to inquire or determine whether the Client's obligations to Lender are in default or whether Lender is entitled, under any separate agreement between Lender and Client, to give any instructions relating to the Account. CNB shall have no responsibility or liability to Lender for complying with any order or instruction, whether oral or written, concerning the Account, except to the extent such compliance would violate (i) the provisions of this Agreement, or (ii) written instructions or orders previously received from Lender, but only if CNB had reasonable opportunity to act thereon and only to the extent Lender had reasonable losses or liabilities resulting from any failure to comply with instructions. CNB shall not have any liability to Client or Lender for losses or liabilities resulting from any failure to comply with instructions relating to the Account or delay in complying with such instructions if the failure or delay is due to circumstances beyond CNB's reasonable control. Without limiting the foregoing, in no event shall CNB have any liability for indirect, punitive, exemplary or consequential loss or damages, including without limitation lost profits, whether or not any claim for such loss or such damages is based on tort or contract or CNB knew or should have known the likelihood of such damages in any circumstances.

2.2 CNB may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

3. Rights Reserved by CNB

3.1 CNB expressly reserves, all of its present and future rights (whether described as rights of setoff, chargeback or otherwise, and whether available to CNB under the law or under any other agreement between CNB and Client concerning the Account or otherwise) with respect to (a) items deposited to the Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such item; (b) overdrafts on the Account; (c) automated clearing house entries; (d) claims of breach of the Uniform Commercial Code's transfer or presentment warranties made against CNB in connection with items deposited to the Account; and (e) CNB's usual and customary charges for services rendered in connection with the Account, to the extent that, in each case, Client has not separately paid or reimbursed CNB therefor.

4. **Statements**

4.1 In addition to the original deposit account statement for the Account which is provided to the Client, CNB will send a duplicate statement to Lender. The Client hereby authorizes CNB to provide any **additional information** relating to the Account to Lender upon Lender's request without the Client's further consent. CNB shall provide the Client with a copy of any additional information relating to the Account requested by and given to Lender.

5. **Notice of Adverse Claims**

5.1 CNB represents to the Client and Lender that CNB has not received notice of any lien, encumbrance or other claim to the Account from any other person and has not entered into, and covenants with the Client and Lender that it will not enter into, any agreement with any other person by which CNB is obligated to comply with instructions from such other person as to the disposition of funds from the Account or other dealings with the Account. CNB will use commercially reasonable efforts, subject to applicable law, to promptly notify both the Client and Lender if any other person claims that it has a property interest in the Account or seeks to enter into a deposit account control agreement or similar agreement with respect to the Account.

6. **Returned Items.** The Client and Lender understand and agree that CNB will pay returned items by debiting the Account. The Client agrees to pay the amount of any returned item immediately upon demand to the extent that there are not sufficient funds in the Account to cover such amount on the day of the debit. Lender agrees that Lender will pay any such amount that is not paid in full by the Client within ten (10) days after demand on the Client by CNB, up to the amount of any proceeds received by Lender under this Agreement.

7. **Costs; Indemnity**

7.1 The Client will be responsible for CNB's customary charges and for the repayment of any checks, drafts or other orders for the payment of funds deposited into the Account that are returned unpaid for any reason. Lender agrees that Lender will pay any such amount that is not paid in full by the

Client within twenty (20) days after demand on the Client by CNB, up to the amount of any proceeds received by Lender under this Agreement.

7.2 The Client will indemnify CNB, its officers, directors, employees, and agents against claims, liabilities and expenses arising out of this Agreement (including all fees and costs incurred by CNB in complying with reasonable instructions or requests given by Lender hereunder, and including reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the claims, liabilities or expenses are caused by CNB's negligence, willful misconduct or violation(s) of federal or state law.

7.3 Lender will indemnify CNB, its officers, directors, employees and agents against claims, liabilities, and expenses arising out of CNB's following of any instruction or request from Lender in connection with this Agreement, (including all fees and costs incurred by CNB in complying with such instructions or requests, and including reasonable attorney's fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff) except to the extent the claims, liabilities, or expenses are caused by CNB's gross negligence or willful misconduct.

8. Termination; Survival

8.1 The Client or Lender may terminate this Agreement by written notice to CNB. CNB may terminate this Agreement on thirty (30) days' prior written notice to Lender and the Client. Client may not terminate this Agreement except with written consent of Lender and on thirty (30) days' prior notice to Lender and CNB.

8.2 Those sections entitled "CNB's Responsibility", "Returned Items", and "Costs; Indemnity", will survive termination of this Agreement.

9. **Termination of Lender Operations.** Upon notice from the Client or Lender that Lender has terminated its operations as a corporation lawfully doing business within the State of California or that the Client has terminated its agreement with Lender to operate and maintain the City CCA, CNB shall immediately revoke Lender's access to the Account. Further, the Client shall have sole authority to withdraw or direct the disposition of all funds within the Account.

10. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to principles of conflict of laws.

11. **Entire Agreement.** This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. This Agreement will control over any conflicting agreement between CNB and the Client.

12. **Amendments.** No amendment of, or waiver of a right under, this Agreement will be binding unless it is in writing and signed by the Client, Lender and CNB.

13. **Severability.** To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

14. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of CNB, Lender and the Client and their respective successors and assigns.

15. **Notices.** A notice or other communication to a party under this Agreement will be in writing and will be sent to the party's address set forth below or to such other address as the party may notify the other parties.

Lender: _____

Attention: _____
Facsimile: _____

CNB: City National Bank

Attention: _____
Facsimile: _____

with copy to: City National Bank, Legal Services Division
555 S. Flower St.; 18th Floor
Los Angeles, CA 90071
Attention: Deposit Account Control Agreement Unit
Facsimile: (213) 673-9503

and copy to Exception Item Processing (EIP)
1801 W. Olympic Blvd, 3rd Floor
Los Angeles, Ca 90006
Attention: Deposit Account Control Agreement Unit.
Facsimile (213) 427-5229

Client: Steven Adams, City Manager
City of King
212 South Vanderhurst Avenue
King City, CA 93930
Phone: (831) 385-3281

To the extent that CNB is precluded from making demand or giving notice hereunder by reason of the commencement of a bankruptcy or similar proceeding, then such demand or notice shall be deemed to have been made or given at the commencement of such proceeding.

16. **No agency, etc.**

Nothing contained in this Agreement shall create any agency, joint venture or partnership relationship between or among the Client, Lender and CNB.

17. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same agreement.

The foregoing is hereby acknowledged and agreed to, effective as of the date set forth above.

CLIENT:

_____, a

By: _____

Its: _____

LENDER:

_____, a

By: _____

Its: _____

CNB:

City National Bank, a national banking association

By: _____

Its: _____