

**ATTACHMENT D
PARTICIPATION AGREEMENT
BETWEEN**

**BANK OF AMERICA, N.A.
BANC OF AMERICA MERCHANT SERVICES, LLC
AND
CITY OF DELRAY BEACH**

This Participation Agreement is entered into between Bank of America, N.A., Banc of America Merchant Services (together "Contractor") and City of Delray Beach, Florida, ("Participant" as defined in the Scope of Work, Attachment A to the Master Contract with the Department of Financial Services). The Master Contract together with the Merchant Services terms and conditions and other attachments and incorporated documents are collectively referred to herein as the "Master Contract". Signatures on incorporated documents do not serve to negate the prevailing provisions of the Master Contract.

I. PARTICIPATION TERMS AND CONDITIONS

- A. All defined terms in the Master Contract apply to this Participation Agreement.
- B. By signing this Participation Agreement, the Participant and the Contractor agree to be bound by the terms of this Participation Agreement, and the Master Contract, in the performance of their obligations. By signing below, Participant represents that a copy of the Master Contract has been provided or made available to it.
- C. If Participant is an Agency Participant, Participant hereby authorizes Contractor to share any and all information related to the Master Contract, excluding personally identifiable information of a cardholder, it has or obtains pursuant to this Participation Agreement and the Master Contract with representatives of the State of Florida and the specific Agency of the State of Florida to which it reports. If a Participant is a Local Government Participant, Participant hereby authorizes Contractor to share with the Department information that is required in the Dashboard under the Master Contract, excluding personally identifiable information of a cardholder.
- D. The parties shall retain copies according to their retention schedules under applicable law.
- E. Participants who elect specialized services that are subject to additional agreement terms offered as optional services under the Master Contract, are subject to those terms; however additional agreement terms do not serve to negate the prevailing provisions of the Master Contract.

II. MERCHANT SERVICES TERMS AND CONDITIONS

Participant will provide Contractor with updated business and financial information concerning Participant, including evidence of required licenses and other information and documents Contractor may reasonably request from time to time. All material marked Confidential that Contractor receives from Participant will be used only by Contractor, or Card Organizations or other third parties necessary to perform services under this Participation Agreement or related services and reporting. At any reasonable time, Contractor or any Card Organization may audit Participant's records relating to this Participation Agreement. Florida law, as applied to agreements made without reference to conflict of law provisions, governs the Master Contract and this Participation Agreement.

III. FEES TO BE PAID TO CONTRACTOR

- A. The Participant agrees to pay the Contractor all fees and charges in Attachment B of the Master Contract.
- B. Such fees and charges will be billed monthly to the Agency and Local Government Participants via an invoice process, unless a Local Government Participant elects to have the Contractor debit their Settlement Account.

IV. EFFECTIVE DATE AND TERMINATION

- A. This Participation Agreement will become effective on the date it is signed by all parties.
- B. Unless earlier terminated by one of the parties, this Participation Agreement remains in full force and effect until the earlier of (i) termination of the Master Contract or (ii) any date provided here: N/A, not to exceed the expiration or termination of the Master Contract.
- C. In the absence of a default by the other party, either party may terminate this Participation Agreement at any time by giving the other party ninety (90) days prior written notice. Either party may terminate this Participation Agreement after a default by the other party as provided in the Master Contract.
- D. In the event of non-payment of fees because of insufficient funds in the Settlement Account or non-payment of an invoice for forty (40) days or more, Contractor may cease processing following 10 days' notice from Contractor according to the Master Contract. If Participant is an Agency Participant, payment shall be pursuant to section 215.422, F.S. If Participant is a Local Government Participant, payment shall be pursuant to legal requirements applicable to a Local Government Participant.

V. NOTICES

- A. Any notice required or permitted to be given under this Participation Agreement or the Master Contract from one party to the other will be in writing and will be given and deemed to have been given when actually received, if hand delivered, delivered by telephonic facsimile transmission equipment and confirmed by telephone with and original mailed or hand-delivered thereafter or mailed by certified or registered mail with postage prepaid to the party or their successor at the address specified as follows:
1. Participant; City of Delray Beach, 100 NW 1st Avenue, Delray Beach, FL, Attn: Finance
 2. Contractor;
 3. Routine notices given by Contractor to Participant, such as transaction details, changes in terms required by systems updates or Payment Card Organization changes and any reasonable notice required by the Contractor's services agreement or addenda, schedules, and attachments, may be delivered by electronic mail to the address provided by Participant above.
- B. Either party may change the address to which notices are to be delivered by giving to the other party not less than ten (10) Business Days prior written notice thereof.

VI. ELECTION OF OPTIONAL SERVICES

Participant hereby elects to receive the following optional services pursuant to the terms and conditions contained in the various service addenda which are incorporated by reference in the Master Contract and attached thereto. The terms and conditions contained in a particular addenda shall not apply to Participant unless and until Participant elects, by indicating herein, or by future written election signed by the parties, to utilize such optional service.

- ☐ Account Updater
- ☐ Data File Manager
- ☐ Dynamic Currency Conversion
- ☐ MobilePay
- ☐ PayPoint
- ☐ TransArmor

VII. MISCELLANEOUS PROVISIONS

- A. This Participation Agreement, incorporating the terms of the Master Contract, contains the entire understanding of the parties and supersedes any and all previous discussions, proposals, or agreements, if any, between the parties with respect to the subject matter hereof.
- B. This Participation Agreement may not be amended except by an instrument in writing signed by an authorized representative of each of the parties.
- C. Limitation of liability shall be according to PUR 1000-20 as modified in the Master Contract.
- D. This Participation Agreement is binding on the parties and their successors and assigns.

Participant's

Name: City of Delray Beach

Select One: ☐ Agency Participant ☒ Local Government Participant

By: Cary D. Glickstein

Printed Name: Cary D. Glickstein

Title: Mayor

Date: 8/20/2013

Attest: Michelle D. Nubin, City Clerk

Contractor's Name: Bank of America, N.A.

By: Ed Sykes

Printed Name: Ed Sykes

Title: SVP

Date: 9/3/2013

Contractor's Name: Banc of America Merchant Services, LLC

By: Ed Sykes

Printed Name: Ed Sykes

Title: SVP

Date: 9/3/2013