

# Exhibit "A"

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement") is made and entered into this 31st day of October, 2017 (the "Effective Date"), by and between the City of Miami Beach (the "City") on the one hand, and SunTrust Bank ("SunTrust") on the other hand (collectively the "Parties" and each a "Party").

### RECITALS

WHEREAS, the City maintains a number of deposit banking accounts at SunTrust and a list of such accounts is attached hereto as Exhibit A (the accounts listed on Exhibit A are hereby, the "Accounts");

WHEREAS, the Accounts were opened and are governed by, among other agreements, the Request for Proposal, RFP NO. 53-11/12, *For the Provision of Various Banking Services to the City of Miami Beach, for a Five-Year Period with Five One-Year Renewal Options*, sought by the City and responded to by SunTrust (the "Contract");

WHEREAS, the original term of the Contract was from January 1, 2013 to December 31, 2017 but has five (5) one-year renewal option periods that may be exercised by the City (each an "Option Period");

WHEREAS, the City alleges it suffered a loss related to or arising out of Automated Clearing House ("ACH") debits that occurred in the Accounts between July 29, 2016 and October 27, 2016 (the "Transactions");

WHEREAS, the City believes it has or may have claims, causes of action, counterclaims or defenses which could be brought or asserted by the City against SunTrust related to or arising out of alleged fraudulent or unauthorized ACH debits that occurred in the Accounts between July 29, 2016 and October 27, 2016 (the "Claims");

WHEREAS, a dispute has arisen between the Parties as to which Party is responsible for the Transactions (the "Dispute");

WHEREAS, to avoid the further expenditure of time, effort and money, and without determining the validity or invalidity of the position of each of the Parties with respect to the Dispute, each of the Parties desires fully and finally to compromise, settle and resolve all claims and causes of action between them as set forth herein; and

WHEREAS, SunTrust acknowledges that the City is entering into this Settlement Agreement, in reliance upon SunTrust's agreement to release STR Marketplace, LLC and Bank of America, N.A. with respect to the Transactions, as outlined in the Non-Binding Term Sheet for a Proposed Global Settlement among STR Marketplace, LLC, the City, SunTrust, and Bank of America, N.A. presented to the City Commission at its October 31, 2017 meeting.

## TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of these premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, covenant and agree as follows:

### **1. Election of Option Period and Modification of the Contract.**

1.1. The City agrees to exercise two (2) one-year Option Periods of the Contract which will renew the Contract for two (2) years until December 31, 2019 (the "Exercised Option Periods"). The extension of the Contract under the Exercised Option Periods will continue to be governed by the same terms as the original period of the Contract except for the changes listed in section 1.2 below.

1.2. The Parties agree that the Contract will be modified for the period of November 1, 2017 until the end of the Exercised Option Periods as follows:

1.2.1. SunTrust will agree to convert all the Accounts to hybrid accounts in which the balances of the Accounts are subject to being analyzed to potentially cover the fees and expenses incurred for the Accounts (known as earnings credit analysis) and if such balances are in excess of that needed to cover the fees and expenses for the Accounts, to earn interest on the Accounts for the balances exceeding the balances needed to cover the fees and expenses for the Accounts;

1.2.2. SunTrust will apply a 60 basis points earnings credit to the Accounts for any balances used to cover the fees and expenses incurred for the Accounts; and

1.2.3. SunTrust will offer 50 basis points interest on any balances in the Accounts that exceed the balances needed to cover the fees and expenses for the Accounts as described in section 1.2.2. above.

1.2.4. The rate for the earnings credit and interest stated in sections 1.2.2 and 1.2.3 are in lieu of, and not in addition to, any other rate of earnings credit or interest called for in the Contract.

### **2. Payment of Additional Interest.**

Within sixty (60) days of the Effective Date, SunTrust will deposit a total of Five Hundred Thirty-Six Thousand Two Hundred Fifty-Eight Dollars and Zero Cents (\$536,258.00) into one of the Accounts which amount is an approximation of the total amount of additional interest for the period of January 1, 2017 through October 31, 2017 that would have been paid had the balances entitled to interest in the Accounts been paid interest at 50 basis points minus the amount of interest actually paid in the Accounts during the period. The City agrees and affirms that other than this payment and any interest paid prior to the Effective Date, the City is not entitled to any additional interest on the Accounts for any period prior to November 1, 2017.

### **3. Releases.**

3.1. In consideration of the agreements by SunTrust as outlined in sections 1 and 2 above and for other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the City, for itself, its officers, managers, employees, attorneys, agents, representatives, successors, assigns and any other legal representatives, does hereby release, acquit and forever discharge SunTrust, and its current and former predecessors, successors, acquiring entities, acquired entities, assigns, parents, affiliates and subsidiaries and each of its current and former directors, officers, employees, attorneys, agents, and any other legal representatives, of and from any and all actions, causes of action, claims, rights, suits, proceedings, demands, relief, liabilities, controversies, damages, losses and expenses (including attorney's fees), whatsoever, in law or equity, which the City, either now has, had, or may hereafter claim to have against those persons or entities by reason of any matter, act, omission, cause or event that has occurred prior to the Effective Date and that relate to or arise out of the Transactions, the Claims, or the Dispute. This release does not apply, however, to any claims that the City may have under or arising out of the Settlement Agreement.

3.2. In consideration of the agreements by the City as outlined in section 1 above and for other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, SunTrust, for itself, its officers, employees, attorneys, agents, representatives, successors, assigns and any other legal representatives, does hereby release, acquit and forever discharge the City, and its officers, managers, employees, attorneys, agents, representatives, successors, assigns and any other legal representatives, of and from any and all actions, causes of action, claims, rights, suits, proceedings, demands, relief, liabilities, controversies, damages, losses and expenses (including attorney's fees), whatsoever, in law or equity, which SunTrust, either now has, had, or may hereafter claim to have against those persons or entities by reason of any matter, act, omission, cause or event that has occurred prior to the Effective Date and that relate to or arise out of the Transactions, the Claims, or the Dispute. This release does not apply, however, to any claims that SunTrust may have under or arising out of the Settlement Agreement.

### **4. Additional Terms.**

4.1. The Settlement Agreement was negotiated between the Parties at arm's length. Each Party had ample opportunity to consult with independent legal counsel. No Party will be entitled to have any language contained in the Settlement Agreement construed against any other Party based upon the identity of the drafter.

4.2. The Settlement Agreement sets forth the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior agreements, negotiations and understandings regarding such subject matter except as herein specifically set forth in this settlement. The Settlement Agreement shall not be altered or modified except by written consent of the Party or Parties against whom enforcement of the alteration or modification is sought.

4.3. The Parties agree that the Settlement Agreement represents a compromise settlement of disputed claims and that nothing in the Settlement Agreement is intended to be, nor shall it be construed as, an admission of wrongdoing by any Party.

4.4. Each Party to the Settlement Agreement herein represents and warrants that: (a) the person executing the Settlement Agreement on its behalf is duly authorized to bind the Party purporting to be bound thereby; (b) all formalities and approvals required to authorize the entry into and performance of the Settlement Agreement have been undertaken; and (c) the entry into and performance of the Settlement Agreement is not barred, prohibited or impaired by any law, rule, regulation, contract, judgment, order, or decree by which that Party is bound.

4.4. The Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to its conflict of laws rules.

4.5. The Settlement Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on and as of the day and year written below.

CITY OF MIAMI BEACH

By: \_\_\_\_\_

Print: \_\_\_\_\_

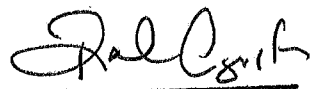
Title: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney RRP

10-26-17  
\_\_\_\_\_  
Date

SUNTRUST BANK

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**Exhibit A**

LIST OF ALL ACCOUNT NUMBERS

**List of bank accounts on file with City's Finance Department; City's bank account information is confidential and exempt from public records disclosure pursuant to Section 119.071(5) of the Florida Statutes.**