

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, (1) APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND SUNTRUST BANK, WITH RESPECT TO THE 2016 THEFT OF FUNDS THAT OCCURRED FROM ONE OF THE CITY'S SUNTRUST ACCOUNTS, INCLUDING, AMONG OTHER TERMS, A PAYMENT BY SUNTRUST BANK TO THE CITY IN THE AMOUNT OF \$536,258.00; (2) APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE TREASURY MANAGEMENT MASTER AGREEMENT BETWEEN THE CITY AND SUNTRUST BANK, DATED FEBRUARY 1, 2013, FOR THE PROVISION OF VARIOUS BANKING SERVICES, INCORPORATING THE TERMS OF THE SETTLEMENT AGREEMENT; (3) APPROVING A TERM SHEET FOR A GLOBAL SETTLEMENT AGREEMENT AMONG THE CITY, SUNTRUST BANK, STR MARKETPLACE, LLC., AND BANK OF AMERICA, N.A., WITH RESPECT TO THE 2016 THEFT OF FUNDS, INCLUDING, AMONG OTHER TERMS, A PAYMENT BY STR MARKETPLACE, LLC TO THE CITY IN THE AMOUNT OF \$900,000.00; (4) AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE GLOBAL SETTLEMENT AGREEMENT (CONSISTENT WITH THE TERM SHEET APPROVED HEREIN), IN A FORM ACCEPTABLE TO THE CITY ATTORNEY; AND (5) RATIFYING ALL ACTIONS UNDERTAKEN BY THE CITY MANAGER WITH RESPECT TO THE RECOVERY OF THE CITY'S FUNDS STOLEN FROM THE CITY'S SUNTRUST ACCOUNT.

WHEREAS, the City has been a customer of SunTrust Bank ("SunTrust") for over two decades; and

WHEREAS, on November 14, 2012, the Mayor and City Commission adopted Resolution No. 2012-28055, approving an agreement between the City of Miami Beach, Florida ("City") and SunTrust, pursuant to RFP No. 53-11/12, for the provision of various banking services for a five (5) year term, with five (5) additional one (1) year renewal options, at the City's option; and

WHEREAS, pursuant to City Commission Resolution No. 2012-28055, the City and Suntrust executed a Treasury Management Master Agreement, with the initial term commencing on January 1, 2013, and expiring on December 31, 2017 (the "Agreement"); and

WHEREAS, pursuant to the Agreement, the City currently has over 27 bank accounts with SunTrust and maintains an average daily balance with SunTrust ranging from \$92 million to \$170 million; and

WHEREAS, between July 29, 2016 and October 27, 2016, the City was a victim of a theft of a total of \$3,686,712 stolen from the City's General Depository Account (-6568) maintained by SunTrust (the "Account"), which funds were stolen through the use of fraudulent and unauthorized Automated Clearing House (ACH) debits from the Account; and

WHEREAS, a majority of the debits were to a Bank of America account held by a Texas firm, STR Marketplace, LLC, that runs an online marketplace for "personal seat licenses" for seats at professional sporting events; and

WHEREAS, on or about May 31, 2017, an individual in New York was criminally charged with committing the offenses of bank fraud and aggregated identity theft, in violation of federal law, based on the individual's fraudulent use of the City's funds from the Account to purchase personal seat licenses and re-sell individual seat tickets through online services such as Craigslist and StubHub; and

WHEREAS, the City has worked diligently to mitigate its damages from the theft and has recovered \$2,063,086 to date; and

WHEREAS, in connection with a pending forfeiture proceeding related to the criminal prosecution referenced above, the United States Department of Justice has seized two bank accounts with a total of \$112,510, and the City has filed a petition for remission of property in connection therewith; and

WHEREAS, despite the City's best efforts, it has to date been unable to recover \$1,623,626 that was stolen from the Account; and

WHEREAS, on July 10, 2017, the City notified SunTrust of potential claims due to the foregoing bank fraud; and

WHEREAS, although SunTrust has denied any liability to the City relating to the bank fraud matter, in recognition of SunTrust's community presence in the City of Miami Beach, and its longstanding relationship with the City, both SunTrust and the City desire to facilitate a commercial resolution of the foregoing issues; and

WHEREAS, without any admission of liability whatsoever and with a reservation of all rights, SunTrust has submitted a proposal to the City, the terms of which are memorialized in the Settlement Agreement, attached as Exhibit "A" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the proposed Settlement Agreement (and Amendment No. 1 to the Master Treasury Agreement, attached as Exhibit "B" to the Commission Memorandum accompanying this Resolution) provides for the following:

- an extension of the term of the Agreement for banking services for a period of two (2) years, pursuant to the City's renewal option as provided in RFP No. 53-11/12 and City Commission Resolution No. 2012-28055; and

- an adjustment of the City's Earning Credit Rate (ECR), which serves as a monthly credit against bank fees the City is otherwise obligated to pay; and
- an increase of forty-five (45) basis points with respect to the interest rate the City earns on the excess balance on various accounts maintained at SunTrust; and
- the retroactive application of the increased interest rate to specified accounts, effective as of January 1, 2017; and
- a mutual release of claims relating to the foregoing bank fraud matter; and

WHEREAS, the proposed Settlement Agreement would result in the City recovering the amount of \$536,258.00, and establishes the framework for the City to recover additional amounts each month during the renewal term, with the monthly earnings depending on the volume of transactions and the average monthly balance in the accounts; and

WHEREAS, the Administration has benchmarked the SunTrust proposal, and Administration recommends the approval of the Settlement Agreement and Amendment No. 1 as being in the City's best interest, particularly in view of the competitive terms and retroactive nature of the proposal to Jan. 1, 2017; and

WHEREAS, the Administration has also negotiated a proposed settlement with STR Marketplace, LLC, whereby STR Marketplace, LLC agrees to make a lump sum payment to the City in the amount of \$900,000 to settle all claims among the parties with respect to the 2016 theft of funds; and

WHEREAS, the proposed Term Sheet for a Global Settlement Agreement among the City, STR Marketplace, LLC., Bank of America and SunTrust, is attached as Exhibit "C" to the Commission Memorandum accompanying this Resolution, and provides for the \$900,000 payment to the City, and a mutual release of all claims among the parties relating to the 57 ACH transactions at issue; and

WHEREAS, the City's proposed settlement with STR Marketplace, LLC depends in part on SunTrust's agreement to release any claims SunTrust may have against STR Marketplace and Bank of America, N.A.; and

WHEREAS, in further support of the City's Settlement Agreement with SunTrust, and continued relationship with SunTrust Bank, SunTrust has agreed to provide the mutual releases requested by STR Marketplace and Bank of America, in an effort to facilitate the City's recovery of \$900,000 from STR Marketplace and bring closure to all parties with respect to the 2016 theft of funds;

WHEREAS, of the total \$3,686,712 stolen from the City's account, the Administration recommends that the Mayor and City Commission approve the foregoing settlements, as these settlements will result in the City having recovered the total amount of \$3,499,344, not including any amounts the City intends to pursue in the pending criminal forfeiture proceeding (with a maximum potential recovery of \$112,510), and also not including any additional monthly earnings accruing to the City as a result of the adjusted ECR and interest rate that will be

applied to the City's accounts through the Settlement Agreement with SunTrust.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby (1) approve and authorize the Mayor and City Clerk to execute a Settlement Agreement between the City of Miami Beach, Florida and SunTrust Bank, with respect to the 2016 theft of funds that occurred from one of the City's SunTrust accounts, including, among other terms, a payment by SunTrust Bank to the City in the amount of \$536,258.00; (2) approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Treasury Management Master Agreement Between the City and SunTrust Bank, dated February 1, 2013, for the provision of various Banking Services, incorporating the terms of the Settlement Agreement; (3) approving a Term Sheet for a Global Settlement Agreement among the City, SunTrust Bank, STR Marketplace, LLC, and Bank of America, N.A., with respect to the 2016 theft of funds, including, among other terms, a payment by STR Marketplace, LLC to the City in the amount of \$900,000.00; (4) authorizing the Mayor and City Clerk to execute the Global Settlement Agreement (consistent with the term sheet approved herein) in a form acceptable to the City Attorney; and (5) ratifying all actions undertaken by the City Manager with respect to the recovery of the City's funds stolen from the City's SunTrust account.

PASSED AND ADOPTED this _____ day of _____, 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *RA* Date 10-26-17