

RESOLUTION No. 2008-99-786

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN ADDENDUM TO THE VISA COMMERCIAL PURCHASING CARD WITH SUNTRUST BANK, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 25, 2007, the City Council authorized the City Manager to execute an Agreement for a VISA Commercial Purchasing Card with SunTrust Bank, and

WHEREAS, SunTrust Bank has used the services of third-party software program called "The Works" in the past, and

WHEREAS, SunTrust Bank plans to switch to new software called Enterprise Spend Platform, and

WHEREAS, it is appropriate for the City to enter into an Addendum with SunTrust Bank for this purpose,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The City Manager and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Addendum to the VISA Commercial Purchasing Card with SunTrust Bank, a copy of which is attached hereto as **Exhibit A**.

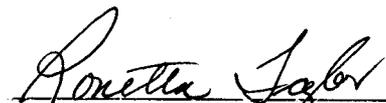
Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to SunTrust Bank, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MAY 28, 2008.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert
SECOND BY: Councilman Bratton

VOTE: 7-0

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilman André Williams	<u>X</u> (Yes)	___ (No)

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City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman Oliver G. Gilbert III
Councilman André Williams

Agenda Cover Page

Date: May 28, 2008

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:

Danny Crew, City Manager

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # _____

Quasi-Judicial

Resolution

2nd Reading

Yes No

Title

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Staff Summary

The City Council approved a resolution on July 25, 2007 authorizing the City Manager to execute an agreement for VISA Commercial Purchasing Card with SunTrust Bank.

Sun Trust is currently using the services of a third party software program for the commercial card program called "WORKS". The WORKS program has limited functionality and will be discontinued in September 2008. The bank is in the process of implementing new software called Enterprise Spend Platform (ESP) which will allow their customers, the City, to access ESP through the internet browser and to manage our purchasing processes, administration and any future tangential services. ESP is more user-friendly and provides more detailed transaction information. The Attached Addendum provides the term of our use of ESP.

Recommendation

We recommend that the City Council approve the attached resolution authorizing the City Manager to execute the addendum to use Sun Trust's Enterprise Spend Platform for the City's Visa Commercial Purchasing Card program.

**K-4) CONSENT AGENDA
RESOLUTION**

ADDENDUM TO VISA PURCHASING CARD AGREEMENT



Recitals

- A. The Company, on behalf of itself and its Affiliate(s), entered into the Visa commercial card agreement with the Bank (the "Card Agreement") pursuant to which the Bank established a Visa commercial card account for the Company and its Affiliates (the "Company Account").
- B. The Company and/or one or more of its Affiliate(s) desire to use the Bank's Enterprise Spend Platform, as defined below.
- C. The Bank agrees to provide Enterprise Spend Platform to the Company or the Affiliate that has signed this Addendum (the "Licensee") subject to the terms and conditions contained herein.

Terms and Conditions

1. Request for ESP; Non-Exclusive License; Confidentiality

- (A) By signing this Addendum, the Licensee requests that the Bank provide the Licensee with Enterprise Spend Platform ("ESP") which allows the Licensee to access ESP through the use of an Internet browser and to manage the Licensee's Card purchasing processes, administration and any present or future tangential services as may be offered to the Licensee by the Bank from time to time. Details regarding ESP's functionality and certain formatting and other technical requirements that are relevant are provided in the ESP reference materials ("Materials"), as updated by the Bank from time to time, or as may be separately disclosed by the Bank to the Licensee from time to time. The Licensee's use of ESP is subject to the terms and conditions set forth in the Card Agreement, this Addendum and any other documents described in the Card Agreement or this Addendum. By signing this Addendum, the Licensee acknowledges receipt of a copy of, and agrees to be bound by, all of those terms and conditions. To the extent of a conflict between the terms of the Card Agreement and this Addendum, the terms of this Addendum will control. All defined terms shall have the meaning as set forth in the Card Agreement unless otherwise defined in this Addendum.
- (B) The Licensee's rights granted under this Addendum are limited to a nonexclusive, revocable license for use solely in connection with ESP for the Licensee's internal business purposes (not for any third party's benefit) during the term of the Card Agreement. The Licensee may not transfer or assign any of its rights with respect to the license, and the license will be automatically revoked if this Addendum and/or the Card Agreement is terminated. The Licensee may not (i) sublicense, sell, lease, distribute or (except with respect to its employees or agents) provide access to ESP to any third party, (ii) use ESP in a service bureau, time-sharing, outsourcing or similar arrangement, (iii) use ESP in any manner that is not expressly permitted by this Addendum, (iv) modify, decompile, reverse engineer, disassemble or create derivative works from ESP or (v) take any actions or engage in any conduct that violates the Bank's rights (or those of its third party providers) with respect to ESP. All rights not expressly granted hereunder are expressly reserved by the Bank.
- (C) Section 1 (n) of the Card Agreement is hereby supplemented to provide that "Confidential Information" as defined in the Card Agreement will include all Trade Secrets and Confidential Business Information of the Bank and any third party information that the Bank is obligated to hold in confidence, including, but not limited to, Trade Secrets and Confidential Business Information of any such third party. As used herein, "Trade Secrets" mean trade secrets as defined under Florida law, as amended from time to time, and will include without limitation and without regard to form, technical or non-technical data, a formula, a pattern, a compilation, a program, a software program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, or a list of actual or potential customers or suppliers, business and contractual relationships, or any information similar to the foregoing which: (a) derives economic value, either actual or potential, from not being generally known and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As used herein, "Confidential Business Information" means any valuable, secret business information other than Trade Secrets, that is either designated or identified as confidential at the time of the disclosure. In accordance with the foregoing, all software that the Bank provides to Company, whether owned by the Bank or any third party provider, will be considered "Confidential Information" pursuant to the Card Agreement and this Addendum.
- (D) Subject to Section 1. (C) above, the parties agree that any data or information other than Personally Identifiable Information related to Card usage through ESP belong equally to each party, and nothing in this Agreement shall prohibit either party from disclosing or using such data or information in its aggregate form.

2. Security Procedures.

- (A) Upon the Licensee's written request, the Bank will provide passwords to those individuals designated by the Licensee as users of ESP on the Licensee's behalf ("End Users"). The Licensee and the End Users are solely responsible for all its use of ESP and for maintaining the confidentiality of its passwords, account numbers and other information. The Licensee and End User will immediately notify the Bank in the event a password or account number has been compromised. The Licensee has sole responsibility for any transactions that occur prior to the Bank's receipt of such notice and thereafter for a reasonable period of time for the Bank to act upon the notice. Passwords may be changed by the Bank upon the Licensee's or End User's request. The Licensee agrees that the Bank may give the new password to anyone the Bank believes in good faith is the Licensee's End User. The Licensee agrees that these security procedures are commercially reasonable.

- (B) The Licensee will not, and will not permit any employee, agent or other third party to take any action that would interfere with effective operation of ESP or violate any applicable law or regulation in connection with this Addendum or the Card Agreement.
- (C) The Licensee shall indemnify and hold harmless the Bank and its officers, directors, and employees from any claim or damage incurred by the Bank as the result of Licensee's breach of this Section 2.

3. Implementation.

Licensee shall be implemented on ESP using the Licensee Requirements provided by the Licensee to the Bank. "Licensee Requirements" include the Licensee's specific approval processes, including, but not limited to, purchasing rules, spending limits, approval routing requirements, and other specifications regarding the Licensee's account. Licensee is responsible for confirming the accuracy of the Licensee Requirements implemented on ESP. Within ten (10) days after the close of the first billing cycle during which transactions are posted through ESP, Licensee shall review the Licensee Requirements and deliver written notice to the Bank either: (a) confirming that the Licensee Requirements are accurately implemented on ESP or (b) specifically describing the Licensee Requirements that are not accurately implemented on ESP. Failure to deliver timely notice shall be deemed confirmation that the Licensee Requirements are accurately implemented and accepted by the Licensee.

4. Limited Warranty; Disclaimers; Limitation of Liability; Indemnification.

- (A) The Bank warrants that, in all material respects, ESP will comply with the functionality and other requirements as described in the Materials, as amended from time to time; provided, however, the Bank shall have no responsibility for any defects that result from the Licensee's own conduct. In the event of any breach of such warranty, Licensee's sole and exclusive remedy shall be for the Bank to bring ESP into compliance with the Materials within a reasonable period of time. If the Bank is not able to bring ESP into compliance within a reasonable period of time, the Licensee has the right to terminate this Addendum and provided herein.
 - (B) To the maximum extent permitted by law, the Bank disclaims all representations and warranties of any kind, whether express or implied, with respect to ESP, any equipment or software that the Licensee uses in connection with ESP services and any Materials, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.
 - (C) The Bank makes no guarantees and has no responsibility with respect to (i) the operation of ESP, being uninterrupted, error free or free from program limitations, (ii) ESP or the servers that make it available being free of viruses, disabling devices or other harmful components, (iii) any information or reports that are transmitted over the Internet remaining confidential or being accurate, or (iv) any person gaining unauthorized access to the ESP unless the Bank failed to meet its standard of care under this Addendum in giving that person an authorization code.
 - (D) The Bank is not liable for any claim made or losses or damages suffered by the Licensee arising directly or indirectly from the Licensee's use of ESP, except for losses or damages which the Licensee suffers as a direct result of the Bank's gross negligence or willful misconduct related to providing ESP, and only if the Licensee has exercised good faith and ordinary care in performing its obligations under this Addendum and the Card Agreement. In the event the Bank has any liability to the Licensee, then the Licensee agrees to the maximum extent permitted by law that the Bank's liability to the Company will be limited to any of the Company's direct monetary losses or damages, up to the amount of the charges on a Card Account to be paid to which the error, omission or other discrepancy relates. Neither party shall be liable for any indirect, consequential, special, punitive, exemplary or other indirect losses or damages, (including but not limited to, damages for lost profits, business interruption or delay, loss of data or cost or procurement of substitute goods or services), regardless of form of the claim or action or whether the such claim is in contract, tort or otherwise, and even if the other party knew such losses or damages were possible or likely, provided, however, any amounts that the Bank is required to pay its vendor or other third parties as a result of the Licensee's misuse of ESP (including, but not limited to, use not in accordance with the terms of the license grant in this Addendum) will be considered direct damages, regardless of the nature or characterization of the claim giving rise to such payments. The Licensee agrees that the Bank will not have any liability with respect to any error, delay or failure to perform that is caused by (i) fire, natural disaster, strike, civil unrest, terrorism, failure of computer or communications facilities, (ii) the acts or omissions of any third party or (iii) any circumstance beyond the Bank's reasonable control or for which the Bank does not have responsibility under the Card Agreement. If the Bank reimburses the Licensee for any losses or damages, the Licensee agrees to transfer all of its respective rights relating to the transactions in question to the Bank and to assist the Bank in any efforts or legal actions that the Bank may take to recover those amounts from any third party.
 - (E) The Licensee shall indemnify, protect and hold the Bank harmless from and against any and all losses, damages, liabilities, claims, demands, and judgments (collectively "Claim"), together with all costs, charges, and expenses, imposed in any manner upon or accruing against the Bank relating to the performance of the Bank in connection with and/or the use by the Licensee (and, if the Licensee is the Company, the use by the Company and all Affiliates,) of the ESP under this Addendum, including, but not limited to, disputes between (i) the Licensee and the Cardholders and/or (ii) the Licensee and the Company or any Affiliate, unless such Claim is solely the result of the Bank's gross negligence or willful misconduct. The Licensee will, at its own expense, defend any action or proceeding brought against the Bank in connection with any such Claim.
5. **System Changes.** The Bank reserves the right, in its sole discretion, to modify ESP from time to time by enhancing, adding to, and/or removing functionality.
6. **Proprietary Rights.** The Bank and/or its vendor retains all ownership and other rights in ESP (and any enhancements, modifications or derivative works, thereto), the Materials and in any related Trade Secrets, copyrights and other intellectual property rights. In addition, the Licensee acknowledges that ESP and the Materials are confidential information that belongs to the Bank and/or to its vendor. The Licensee will not disclose or otherwise make ESP or the Materials available to any person other than its employees and/or agents that need to use ESP on behalf of Licensee and the Licensee will instruct those employees and agents to keep ESP and the Materials confidential by using the same care and discretion that the Licensee uses with respect to its

own confidential property and trade secrets. This Addendum does not provide any proprietary or intellectual property rights to the Licensee.

- 7. **Termination.** This Addendum shall begin on the date stated below and shall continue until either party gives at least thirty (30) days prior written notice termination; provided, however, this Addendum shall automatically terminate upon termination of the Card Agreement. The Bank may suspend or terminate the provision of ESP at any time without notice in the event the Bank reasonably believes that the Licensee has materially breached this Addendum or the Card Agreement.
- 8. **Facsimile and Email Delivery.** A duplicate or copy of this signed Addendum delivered by through facsimile or email attachment shall be as effective and enforceable as an original manually signed Addendum. A digital, electronic or photo static image of this signed Addendum maintained in the Bank's record retention system shall be as effective and enforceable as an original manually signed Addendum.

Signature. This Addendum has been signed and delivered on the Licensee's behalf by the person individual whose name is printed below. This individual represents and warrants to the Bank that he or she is an authorized representative and that the Licensee has taken all required action to authorize him or her to sign and deliver this Addendum and any other documents the Bank may require with respect use of the ESP on the Licensee's behalf.

CITY OF MEDMERE GARDENS
Licensee Name

[Signature]
Authorized Signature

DR. DANNY O. CREW
Name (Printed or Typed)

CITY MANAGER
Title

(305) 622-8003
Telephone Number

6/10/08
Date

Attor. [Signature]
City Clerk

Approved as to form and legal sufficiency
[Signature]
Sonja K. Dickens, City Attorney

IF LICENSEE IS AN AFFILIATE, STATE THE COMPANY NAME (required): _____