C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 14, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Lease Agreement between the City of Norfolk and Suntrust Bank for the location of an ATM machine

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Suntrust Bank
919 E. Main Street, 14th Floor
Richmond, VA 23219

III. **Description:**
This agenda item is an ordinance to renew a lease agreement between the City of Norfolk (the "city") and Suntrust Bank ("Suntrust") to permit Suntrust to continue to use sixteen (16) square feet of space on the first floor of the City Hall building for an automated teller machine ("ATM").

IV. **Analysis**
This lease agreement will permit Suntrust to install, operate, maintain, replace and remove an ATM machine in the City Treasurer's office in the City Hall building located at 810 Union Street. The ATM in this location provides convenience to citizens visiting City Hall. Suntrust will maintain the ATM and keep it in good working order. The term of the lease agreement is three (3) years, commencing on May 1, 2016 and terminating on April 30, 2019.

V. **Financial Impact**

Rent (Suntrust ATM in City Hall)	Annual Rent: $10.00 (Payable on April 1st of each year)
Liability insurance for Suntrust Bank	The City has been named as an additional insured, with a minimum combined single limit of liability of $2,000,000 per occurrence; therefore, there should be no financial risk to the City

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate, the City Treasurer's office, and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Proposed Lease Agreement

3/1/2016-bjl

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF A LEASE OF SPACE IN CITY HALL TO SUNTRUST BANK FOR THE LOCATION OF AN ATM MACHINE.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of a Lease Agreement between the City of Norfolk as Landlord and Suntrust Bank as Tenant for the lease of space in City Hall to Suntrust Bank for the location of an ATM machine for the period from May 1, 2016 through April 30, 2019, a copy of which is attached hereto, are hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement on behalf of the City and to do all things necessary and proper to carry out the Lease.

Section 3:- That the City Manager is further authorized to correct, revise or amend the Lease Agreement, with the advice and counsel of the City Attorney, as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

LEASE AGREEMENT
BETWEEN
THE CITY OF NORFOLK
AND
SUNTRUST BANK

THIS LEASE AGREEMENT entered into this _____ day of _____, 2016, between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia (the "Landlord") and SUNTRUST BANK, whose address is 919 East Main Street, 14th Floor, Richmond, Virginia 23219 (the "Tenant") provides:

THAT for and in consideration of the mutual promises and conditions set forth herein and other good and valuable consideration, the Tenant and the landlord hereby agree as follows:

1. **LEASE OF PREMISES**. The parties agree that the Landlord hereby leases to the Tenant sixteen (16) square feet of space, as more particularly shown and described on Exhibit A attached hereto (the "Premises"), for the installation, operation, maintenance, replacement and removal of an automated teller machine, or any similar machine or terminal (collectively, the "ATM"), in the City Treasurer's office in the building known as City Hall and located at 810 Union Street, Norfolk, Virginia 23510 (the "Building").

2. **PREMISES**. The Landlord hereby leases the premises to the Tenant, together with the non-exclusive right of access to and from the Premises and the right to use all parking areas, sidewalks and other common areas inside and outside of the building, upon the terms and conditions set forth herein.

3. **TERM**.

a. The parties agree that this Lease Agreement shall be in effect from May 1, 2016 through April 30, 2019, unless earlier terminated or extended as provided herein. The Landlord shall, immediately after the execution of this Lease, deliver possession of the Premises to the Tenant for installation of the ATM for purposes hereof.

b. The Tenant shall have the option to renew this Lease Agreement for up to two (2) additional three (3) year terms. The Tenant may exercise such renewal option by sending written notice of renewal to the landlord at least sixty (60) days prior to the end of the then current term. In the event the Tenant elects to renew the Term, the Renewal Terms shall be upon the same terms and conditions as set forth in this Lease Agreement.

c. Notwithstanding any other provision of this Lease to the contrary, either party shall have the right at any time during the Term to terminate this Lease, with or without cause, by providing at least ninety (90) days written notice to the other party, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein) after the termination of this Lease.

4. **PAYMENTS**. The Tenant shall pay the Rent to the Landlord, at the Landlord's address in the amount of Ten Dollars ($10.00) per year payable on April 1 of each year during this Lease Agreement.

5. **USE AND OCCUPANCY**. The Tenant shall have the right to use and occupy the Premises for the installation, operation, maintenance, replacement and removal of the ATM, or any similar machine or terminal that may be initially or subsequently installed by the Tenant. Landlord may allow other tenants to also provide ATM equipment and services inside and on the exterior of the Building. The Landlord further agrees that:

a. Provided the Tenant performs all of its obligations under this Lease, the Tenant shall have and enjoy peaceful and quiet possession of the Premises during the Term; and

b. The Landlord shall not limit or obstruct access to and from the ATM or obscure the visibility of the ATM to the Landlord's visitors, employees and invitees in the Building during normal business hours.

6. **SIGNS**. The Tenant may place signs identifying itself and its operations and the names and logos of network providers on the ATM. The Tenant may conduct is operations at the Premises under its current trade name or any other trade name that the Tenant may lawfully use in the jurisdiction in which the Building is located.

7. **FIXTURES AND EQUIPMENT**. The Tenant, at its expense, may provide all fixtures and equipment that it deems necessary or desirable for the operation of the ATM and all such fixtures and equipment shall at all times during the Term remain the property of the Tenant. The Tenant agrees that if any mechanics' or similar liens shall be filed against the Building by any contractor, subcontractor, materialman or laborer for work performed or materials furnished at the request of the Tenant in connection with the installation of the ATM, the Tenant shall, within thirty (30) days after it is provided with written notice of such lien, cause such lien to be released or bonded off and removed of record. The Landlord expressly waives and releases any right the Landlord may have to a lien under the common or statutory laws of the jurisdiction in which the Building is located upon the ATM or any other fixtures, machinery or equipment installed by the Tenant on the Premises.

8. **MAINTENANCE AND REPAIR**.

a. The Tenant, at its expense, shall keep and maintain the ATM in good order and repair. The Landlord agrees to provide the Tenant and its employees and contractors with access to the Premises at reasonable times for the purposes of maintaining and servicing the ATM.

b. The Landlord, at its expense, shall (i) keep and maintain the Building and the Premises in good order and repair, and (ii) furnish all necessary utilities including, without limitation, lighting, air conditioning, heating, electricity and other utilities (but excluding telephone), for the Premises. The Landlord agrees that the supply of electrical service to

the ATM shall be continuous and shall not be interrupted for any reason, except in the event of an emergency or as a result of reasons beyond the Landlord's control.

9. **INSURANCE**.

a. The Tenant, at its expense, shall (i) insure the ATM against damage by casualty, and (ii) maintain commercial general liability insurance, including public liability and property damage, with respect to its operation of the ATM, with a minimum combined single limit of liability of $2,000,000 for personal injury or death of persons occurring on the Premises.

b. The Landlord, at its expense, shall keep the Building and the Premises insured with broad form property damage insurance, with extended coverage, in the amount of the replacement value of the Building. The Landlord, at its expense, shall also maintain commercial general liability insurance, including public liability and property damage, with a minimum combined single limit of liability of $2,000,000 for personal injury or death of persons occurring in or around the Building or the Premises.

10. **DEFENSE AND INDEMNIFICATION**. The Tenant agrees to defend, indemnify and hold the Landlord and its officers, directors, employees and agents, harmless from any and all claims for injury, death, damages or expenses (including reasonable attorneys' fees) caused by the Tenant's use and occupancy of the Premises, except for any such injury, death, damages or expenses caused by the negligence or willful misconduct of the landlord or any employee, agent or contractor of the Landlord.

11. **TAXES**. The Landlord shall pay all taxes assessed against the Building and the Premises and the Tenant shall pay all personal property taxes imposed specifically against the ATM.

12. **TERMINATION BY LANDLORD**. If the Tenant breaches any covenant of this Lease Agreement and fails to cure same within thirty (30) days after written notice of such breach from the Landlord to the Tenant or, if such breach cannot be cured within such thirty (3) day period and the Tenant fails to pursue diligently the curing day period and the Tenant fails to pursue diligently the curing of such breach within a reasonable period of time thereafter, then the landlord may, at its option, terminate this Lease by providing ten (10) days prior written notice of such termination to the Tenant, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein).

13. **TERMINATION BY TENANT**. If the Landlord breaches any covenant of this lease and fails to cure same within thirty (30) days after written notice of such breach from the Tenant to the Landlord or, if such breach cannot be cured within such thirty (30) day period and the landlord fails to pursue diligently the curing of such breach within a reasonable period of time thereafter, then the Tenant may, at its option, terminate this Lease by providing ten 910) days prior written notice of such termination to the landlord, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein).

14. **SURRENDER**. The Landlord acknowledges and agrees that the ATM and any other fixtures, machinery or equipment installed by the Tenant on the Premises shall remain the property of the Tenant. Within thirty (30) days after any termination or expiration of the Term the Tenant, at its expense, shall remove the ATM and repair any damages to the Premises caused by the Tenant's installation or removal of the ATM, and surrender possession of the Premises to the Landlord in good condition, reasonable wear and tear excepted.

15. **CASUALTY**. If the Premises or the Building is destroyed by fire or other casualty or the Building is destroyed or damaged to such an extent that the Tenant is unable to operate the ATM in a manner satisfactory to the Tenant, then the Tenant shall have the right to terminate this Lease as of the date such casualty occurred by providing written notice thereof to the Landlord, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein).

16. **ASSIGNMENT AND SUBLEASE**. Except as otherwise provided in this Section, the Tenant may assign its interests in this Lease or sublease the Premises only with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Tenant may assign this Lease or sublease all or part of the Premises, without the Landlord's consent, (i) to any entity that is a parent, subsidiary or affiliate of the Tenant, and (ii) to any successor in interest to the Tenant by merger, consolidation, acquisition or reorganization.

17. **ENTIRE AGREEMENT**. This Lease Agreement an any exhibits attached hereto set forth the entire agreement between the parties hereto with respect to the Tenant's right to install, operate, replace, maintain and remove the ATM. There are no promises, agreements or understandings, whether oral or written, between the parties regarding such matters other than as set forth in this Lease. Any amendment or modification to this Lease Agreement shall not be binding upon either party unless such amendment or modification is reduced to writing and signed by both parties. This Lease Agreement does not create a partnership, agency or joint venture relationship between the Landlord and the Tenant for the operation of the ATM or for any other purpose.

18. **CAPTIONS**. The captions of the sections of this Lease Agreement are not part of the context of this Lease Agreement and shall be ignored in construing this Lease Agreement. They are intended only as aids in locating various provisions of this Lease Agreement.

19. **SEVERABILITY**. Each provision contained in this Lease Agreement shall be independent and severable from all other provisions hereof and the invalidity of any such provision shall in no way affect the enforceability of the other provisions hereof.

20. **GOVERNING LAW**. This Lease Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Building is located without regard to conflict of laws principles.

21. **BINDING EFFECT**. This Lease Agreement shall be binding upon and shall inure to the benefit of the Landlord and the Tenant and their respective heirs, legal representatives, successors and permitted assigns.

22. **NOTICES**. All notices and communications under this Lease Agreement shall be in writing and signed by a duly authorized representative of the party sending the same. All notices shall be deemed effective when delivered personally or on the next business day after being sent by a guaranteed overnight delivery service (such as UPS) or on the third (3rd) day after being sent by certified mail, return receipt requested, postage prepaid, to the addresses listed as follows:

Landlord:	City Manager City Hall Building 810 Union Street, 11th Floor Norfolk, VA 23510
Tenant:	Suntrust Bank 919 East Main Street 14th Floor Richmond, Virginia 23219

Either party may change its address by giving written notice of such change to the other party in the manner provided herein. Until any such written notice is actually received, the most recent address of record shall be deemed to continue in effect for all purposes.

23. **AUTHORIZATION**. Each party to this Lease hereby represents that this Lease has been duly authorized, executed and delivered by all necessary action on behalf of such party, constitutes the valid and binding agreement of such party and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Tenant and the Landlord have caused this Lease Agreement to be executed on their behalf by their duly authorized representatives as of the date set forth above.

CITY OF NORFOLK

_____

City Manager

Attest:

_____

City Clerk

SUNTRUST BANK

_____

Name: _____

Title: _____

Contents Approved:

_____

Department of General Services

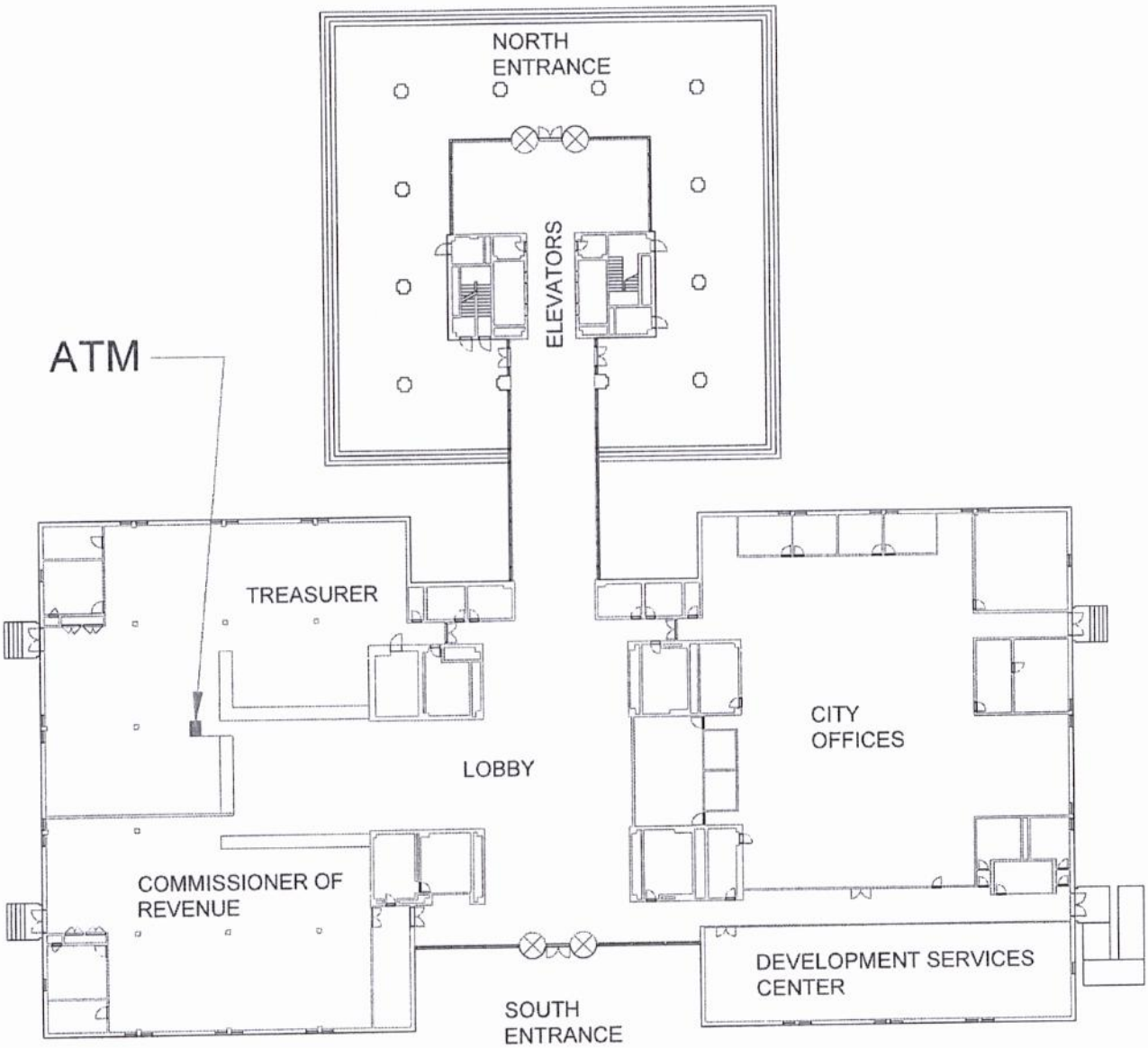
Form and Correctness Approved:

_____

Mary L. G. Nexsen
Deputy City Attorney

EXHIBIT

A



N

FIRST FLOOR PLAN - ATM LOCATION

NOT TO SCALE

CITY HALL

810 UNION ST., NORFOLK, VA 23510

FEBRUARY 29, 2016