

UMB
B A N K
PURCHASING CARD AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of September, 2002, by and between the City of Overland Park, Kansas (the “City”), and UMB Bank, n.a., Kansas City, Missouri (the “Bank”).

WHEREAS, the City requested proposals from firms qualified and interested in designing, developing and implementing business procurement card programs for the City and performing related services in connection therewith (said programs and services collectively hereinafter referred to as a “Purchasing Card Program”) that will support the business processes currently utilized by the City; and

WHEREAS, in response to the City’s invitation, the Bank provided information (the “Proposal”) and requested consideration to provide the desired and requested Purchasing Card Program for the City; and

WHEREAS, following review and evaluation of the information received by the City from the Bank, the City desires to engage the services of the Bank; and

WHEREAS, the Bank represents that it is duly qualified, licensed and experienced to provide the City with such services and is willing to provide the same in accordance with and subject to the terms and conditions of this Agreement; and

WHEREAS, the City and the Bank hereby agree to accept the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

Engagement of the Bank for Services

1.1 The City hereby engages the services of the Bank for the purpose of designing, developing, and implementing a Purchasing Card Program for the City that will support the procurement processes being utilized by the personnel of the City as of the effective date of this Agreement, and the Bank hereby agrees to provide the City with such services in accordance with and subject to the terms and conditions of this Agreement.

ARTICLE II

Description and Delivery of Services to be Provided

2.1 The City will designate a Purchasing Card Program Administrator as defined in Section 12.2 of this Agreement. The Purchasing Card Program Administrator will determine how each Card is issued and used, consistent with the terms of this Agreement, and the Bank may rely on any instructions received from the Purchasing Card Program Administrator. The Purchasing Card Program Administrator may establish and request changes to purchase controls and information in an individual's Cardholder account. Such controls and information may include, but are not limited to: expenditure limits (cycle limits) for each purchasing Card issued ("Card"), transaction limits, purchase restrictions, the names in which Cards may be issued (each individual in whose name a Card is issued is a "Cardholder"), Cardholder billing address or telephone, and termination or non-renewal of a Cardholder's account. The Cardholder and/or the Purchasing Card Administrator will immediately report lost or stolen Cards to the Bank.

2.2 The Bank will make available the types of controls and features for the City's Purchasing Card Program which are normally accepted as the Banking "industry standards" for Purchasing Cards and which will meet the business needs of the City. Such controls and features include, but are not limited to, the following:

- (a) Single dollar transaction limitations for each Card.
- (b) Transaction authorizations per day limit for each Card.
- (c) Transaction authorizations per cycle limit for each Card.
- (d) Total transaction dollars per cycle limit for each Card.
- (e) Vendor category (SIC/MCC) blocking/de-blocking for each Card.
- (f) Cash advance prohibition.
- (g) Individual and Consolidated Billing Statements.
- (h) Standard paper management reports.
- (i) Optional personal computer-based management reporting.

ARTICLE III

Cardholder Accounts and Payments

3.1 The City acknowledges that all Cards issued for this Program are the property of the Bank and must be surrendered to the Bank upon request.

3.2 The City will make every effort to inform Cardholders of the proper usage of the Cards, and will use reasonable efforts to ensure its Cardholders abide by restrictions, limitations, and policies that are applicable to their accounts, and will promptly notify the Bank of lost or stolen Cards.

3.3 The City agrees to pay the Bank for all transactions entered into by its employees pursuant to the terms of this Agreement and billed on a periodic monthly statement(s) by the next billing date, or within 30 days of the billing date of the monthly periodic statement(s), whichever is earlier, irrespective of when or whether the goods or services purchased were received or accepted. Payment of the entire monthly statement balance in full, less any billing error disputes, will be due each month. Payments made later than 60 (sixty) days past the due date may, at the Bank's option, result in temporary suspension of account purchasing capability and/or cancellation of accounts. Unless expressly otherwise agreed to in writing by the Bank, the maximum period of time covered by a billing period shall be one month.

3.4 The City will not have liability for unauthorized use which occurs after proper notification to the Bank that a Card was lost or stolen; provided, however, that the City shall be liable for unauthorized usage unless (1) the City or the Cardholder made a good faith attempt to protect the Card from loss or theft, and (2) notification was made to the Bank as soon as the City was aware of the loss or theft. The City, through its Purchasing Card Administrator, will designate certain controls that will determine how each Card may be used, and the Bank will make reasonable efforts to ensure compliance with the controls. The City shall be liable for all Purchasing Card Program transactions made by its authorized employees; provided, however, the Bank may waive the City's liability for transactions made by authorized employees outside the City's program limitations and policies if (and only to the extent that) such transactions (and the liability relating thereto) constitute "Waivable Charges" under the Visa Corporate Liability Waiver Program, a copy of which is included in this Agreement as Attachment A.

ARTICLE IV

Term

4.1 The term of this Agreement shall commence on February 8, 2004 and shall continue through December 31, 2006.

ARTICLE V

Nature and Scope of Services

5.1 The Bank shall perform all duties and responsibilities necessary to provide the City with a high level of quality of services and under the requirements of this Agreement.

5.2 The “Basic Services” shall include those services that are consistent with and correspond to the representations the Bank made to the City in its Proposals, incorporated into this Agreement as Attachment B. Additional services may be provided by the Bank to the City upon the terms set forth in a written request and by mutual agreement.

ARTICLE VI

Compensation and Expenses

6.1 No annual fees, transaction fees or other related costs, including, but not limited to, labor, expenses, subsistence or transportation, shall be assessed against or charged to the City by the Bank for Basic Services rendered by the Bank under and during the term of this Agreement. Fees or charges, interchange fees, or other sums received by the Bank from parties other than the City as a result of transactions associated with the Purchasing Card Program, shall remain the sole right and property of the Bank.

6.2 Should the Bank be requested to provide additional services for the City relative to and in connection with the purpose and requirements of this Agreement, the Bank shall be compensated for such services rendered and expenses reasonably incurred in the amount and rates mutually agreed to by the City and the Bank.

6.3 The rebate the City receives from the Bank shall be calculated in accordance with the method and rates outlined in the Bank’s proposal.

ARTICLE VII

Assignment

7.1 The Bank may not assign, transfer, convey, nor otherwise dispose of this Agreement or any of its rights and obligations hereunder without the prior written consent of the City.

7.2 The Bank, or its successor, shall provide the City written notice within ten days after any takeover, merger or acquisition. Upon receipt of the written notice from the Bank, or its successor, the City, within 60 days, may terminate, at its sole discretion, this Agreement by providing written notice of termination to the Bank, or its successor. In the event the City elects not to terminate this Agreement, the Agreement shall continue in full force and effect.

7.3 If the Bank provides certain services of the Purchasing Card Program through one or more subcontractors, such subcontractors shall at all times

remain under the direction and control of the Bank and not the City, and the Bank shall remain fully liable to the City for the proper discharge of all the services required hereunder, regardless of by whom they are performed.

ARTICLE VIII

Agreement Status

8.1 This Agreement is and shall be deemed an independent contract for services, and the Bank and all persons providing services on behalf of the Bank under this Agreement shall be deemed independent contractors, and shall not be deemed under any circumstances employees of the City.

8.2 The Bank accepts full responsibility for payment of unemployment insurance, workers compensation insurance, and social security taxes, as well as all income tax deductions and other taxes or payroll deductions required by law for its employees engaged in the performance of work under this Agreement.

ARTICLE IX

Amendment

9.1 This Agreement may be amended by supplemental writing mutually agreed to and executed by duly authorized representatives of the parties hereto.

ARTICLE X

Waiver of Breach

10.1 The waiver by any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any prior or subsequent breach. Any waiver shall be in writing, and any forbearance or indulgence in any other form or manner by either party shall not constitute a waiver. Until complete performance or satisfaction of all provisions of this Agreement, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

ARTICLE XI

Contract Administration

11.1 All notices, demands, requests, approvals, reports, instructions, consents, or other communications (collectively referred to as “Notices”) which may be required or desired to be given by either party to the other, shall be in writing and shall be made by personal delivery or sent by United States mail, postage prepaid, or be sent by overnight delivery, prepaid, addressed as follows (unless otherwise notified):

The City:

Kristy Cannon Stallings
Director, Finance, Budget & Administration
City of Overland Park
8500 Santa Fe
Overland Park, Kansas 66212

The Bank: Ron Sager, Senior Vice President

UMB Bank, n.a.
921 Walnut Street
Kansas City, Missouri 64106

11.2 Karen E. Kindle or her designate shall act as the Purchasing Card Program Administrator for the City. The Bank shall be notified in writing any time if the identity of the Purchasing Card Program Administrator is changed. The Purchasing Card Program Administrator shall be responsible for all matters relating to this Agreement unless otherwise specified herein. The Purchasing Card Program Administrator shall notify the Bank of any additions or deletions of departments which shall participate under this Program, and any limitations or restrictions placed on the authority of each department’s designated Program, contact, and of the names of each individual to whom a Card is to be issued/sent.

ARTICLE XII

Termination

12.1 Termination for Cause. Without in any manner limiting the right of the City to terminate the Agreement or declare the Bank in default thereof for any reason set forth herein or in the Request for Proposal documents; if the work to be done under this contract shall be abandoned by the Bank; or if this Agreement shall be assigned by the Bank otherwise than as herein provided; or if the Bank should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a

receiver should be appointed for the Bank or any of its property; or if at any time the City determines that the performance of the work under this contract is being unnecessarily delayed, that the Bank is violating any of the conditions or covenants of this Agreement, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; then, in addition to other rights the City may choose to exercise, the City may, at its option, serve written notice upon the Bank of the City's intention to terminate this Agreement, and, unless within ten (10) days after the serving of such notice upon the Bank a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate unless the City otherwise agrees to continue the Agreement. In the event of such termination, the City shall immediately serve notice thereof upon the Bank, and the City may take over the work and prosecute same to completion by contract with another banking institution or otherwise, and in such event, the City may take possession of and utilize in completing the work any and all documents and other materials as may be necessary therefore. When the Bank's services have been so terminated, such termination shall not affect any rights or remedies of the City against the Bank then existing or which may later accrue. Similarly, any retention or payment of monies due the Bank shall not release the Bank from liability.

12.2 Termination for Convenience. The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the Bank, to terminate this Agreement by providing sixty (60) days prior written notice of such termination to the Bank. Upon receipt of such notice from the City, the Bank shall: (1) immediately cease all work, or (2) meet with the City and, subject to the City's approval, determine what work shall be required of the Bank in order to bring the Project to a reasonable termination in accordance with the request of the City. If the City shall terminate for its convenience as herein provided, the City shall compensate the Bank for all work completed to date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. Any termination of the Agreement for alleged default by the Bank that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

Article XIII

Indemnity

13.1 For purposes of indemnification requirements, the following terms shall have the meanings set forth below: (1) "the Bank" means and includes the Bank, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees, and their respective servants, agents, and employees; and (2) "Loss" means any and all loss

damage, liability or expense of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense).

13.2 For purposes of this Agreement, the Bank hereby agrees to indemnify, defend and hold harmless the City, its employees and agents, from any and all "Loss" where "Loss" is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Bank. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Bank's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on the Bank to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.

Article XIV

Insurance

14.1 During the performance of this contract, the Bank agrees to maintain for the duration of the contract insurance coverage of the types and minimum liability as set forth below. Before entering into this Agreement, the Bank shall furnish to the City a Certificate of Insurance verifying such coverage and identifying the City as a Loss payee on the valuable paper coverage. The certificate holder on the Certificate of Insurance shall be as follows:

City of Overland Park
c/o City Clerk
8500 Santa Fe Drive
Overland Park, Kansas 66212

Prior to any material change or cancellation, the City will be given thirty (30) days advance written notice by registered mail to the stated address of the certificate holder.

A. **Banker's Professional Liability**

\$2,000,000 per occurrence and as an annual aggregate.

B. Banker's Blanket Bond

Coverage must be provided on Banker's Blanket Bond Standard Form 24 with a minimum limit of \$3,000,000 per loss under Insuring Agreements A-Fidelity, B-On Premises and C-In Transit. A minimum limit of \$2,000,000 shall be provided under Insuring Agreement E-Securities. Computer Crime coverage, in an amount not less than \$2,000,000, is to be provided either by endorsement to the Banker's Blanket Bond or by separate bond. If courier/messenger service is to be utilized for pickup and delivery of receipts, this service must also be covered under the Banker's Blanket Bond.

C. Valuable Paper Coverage

It shall be the responsibility of the awarded Bank to carry open-peril coverage to replace or reproduce physical securities, which are held as collateral.

D. Worker's Compensation and Employer's Liability

1. Workers' Compensation statutory (includes all states endorsement).
2. Employer's Liability - \$100,000 each occurrence.

Article XV

Affirmative Action/Other Laws

15.1 During the term of this Agreement, the Bank agrees as follows:

- A. The Bank shall observe the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex or national origin, ancestry or age.
- B. In all solicitations or advertisements for employees, the Bank shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Commission on Civil Rights.
- C. If the Bank fails to comply with the manner in which the Bank reports to the Kansas Commission on Civil Rights in accordance with the provisions of K.S.A. 44-103 as amended, the Bank shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the City.

- D. If the Bank is found to have violated the Kansas Act Against Discrimination under a decision or order of the Kansas Commission on Civil Rights, which has become final, the Bank shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the City.
- E. The Bank shall include all of Clauses (A.) through (D.) in every sub-contract or purchase order, so that such provisions will be binding upon each sub-contractor or vendor.

15.2 Bank further agrees that the Bank shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

ARTICLE XVI

Governing Law

16.1 This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of Kansas.

16.2 The Bank shall remain informed of, and shall comply with, all applicable laws, ordinances, rules, regulations, and orders of the City, County, State, Federal, or any other public bodies, which apply to work performed under this agreement. The Bank shall provide all necessary safeguards and protections as set forth by the United States Department of Labor, Occupational Safety, and Health Administration.

ARTICLE XVII

Severability

17.1 All Agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable Agreements, clauses and covenants were not contained herein.

ARTICLE XVIII

Entire Agreement

18.1 This Agreement, together with all documents incorporated herein by reference, represents the entire Agreement between the City and the Bank with respect to the provision of services required of the Bank for the City under this Agreement, and supersedes all prior understandings or promises, whether oral or written between the parties pertaining to or in connection with this Agreement.

18.2 In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any document incorporated herein, the terms and conditions of this Agreement shall control.

ARTICLE XIX

Force Majeure

19.1 The City or the Bank shall be excused from performance under this Agreement for any period that the City or the Bank is prevented from performing any services, in whole or in part, as a result of an Act of God, fire, loss of electrical power or computer service, failure of a third-party service provider, or any other act or event not within the reasonable control of the party prevented from performing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives and made effective the day and year first above written.

City of Overland Park, Kansas

UMB Bank, n.a.

BY: _____
Ed Eilert, Mayor

BY: _____
Ronald E. Sager, Senior
Vice President

BY: _____
Kristy Cannon Stallings
Director, Finance, Budget &
Administration

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Jane Neff-Brain
Senior Assistant City Attorney