

**AGREEMENT FOR DISTRIBUTION OF AN
ECONOMIC DEVELOPMENT INCENTIVE FUND GRANT**

THIS AGREEMENT is effective this ____ day of _____, 2011 and is hereby made and entered into by and between the City of Overland Park, a municipal corporation of the State of Kansas, hereinafter referred to as "CITY," and J.P. Morgan Retirement Plan Services, LLC, a Delaware Limited Liability Company, hereinafter referred to as "J.P. MORGAN."

WHEREAS, the Governing Body of the CITY has created an Economic Development Incentive Reserve Fund (hereinafter "EDIRF") within the treasury of the CITY for the purpose of providing incentives to attract and keep desirable businesses in the CITY; and

WHEREAS, J.P. MORGAN is a Delaware Limited Liability Company that is in good standing and qualified to do business under the laws of Kansas; and

WHEREAS, J.P. MORGAN is contemplating investing approximately \$14,000,000.00 to relocate certain aspects of its operation to the CITY and in so doing to retrofit an existing facility located at Floors 1 through 5 of 11500 Outlook Street in the CITY (the "New Facility"); and

WHEREAS, J.P. MORGAN has made a request to the CITY for a grant from the EDIRF in the total amount of \$100,000.00 for the purpose of purchasing machinery and equipment and offsetting employee training expenses in the process of relocation to the New Facility; and

WHEREAS, CITY desires to assist J.P. MORGAN in relocating its operations into the CITY; and

WHEREAS, CITY has the entire amount of \$100,000.00 that is the subject of this Agreement actually on hand and available in the EDIRF in the CITY treasury; and

WHEREAS, the Governing Body of the CITY on December 21, 2009, conceptually agreed to provide J.P. MORGAN a grant of \$100,000.00 from the EDIRF subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of such mutual benefits and of the mutual covenants and agreements expressed herein, the parties covenant and agree as follows:

1. **Definitions.** The following terms are defined as follows for purposes of this Agreement:

- a. "Affiliate" means any direct or indirect subsidiary of J. P. Morgan Chase & Co.
- b. "Minimum Employment Requirement" means J.P. MORGAN's employing at the New Facility employees filling at least 390 full-time equivalent positions.
- c. "Minimum Salary Requirement" means J.P. MORGAN's paying the full-time equivalent employees at the New Facility an average annual salary of at least \$61,538.00.

d. "Overland Park Hotel, Convention Facility and Meeting Facility Utilization Requirement" means J.P. MORGAN agreeing for the term of this Agreement to (i) enter into room night agreements with at least one (1) hotel in the City of Overland Park, Kansas regarding the term of use and booking of rooms at such hotel for events periodically held by J.P. MORGAN (a "Room Night Agreement") and, upon request by the City to provide the City an opportunity and right to review such Room Night Agreement (with redactions to preserve confidentiality) and (ii) to make at least one-third (1/3) of its hotel reservations for or on behalf of out-of-town guests, employees, contractors and other visitors with hotels located in the City of Overland Park and to generally promote the use of hotels and convention/meeting facilities located in the City of Overland Park, Kansas, by J.P. MORGAN's out-of-town guests, employees, contractors and other visitors. Also, J.P. MORGAN shall provide the City, at or about the time it provides the City with the Employee Requirement and Salary Requirement certification contemplated in Paragraph No. 3, below, a summary of hotel usage during the prior calendar year during the Term.

2. **Incentive Grant.** The CITY hereby agrees to grant to J.P. MORGAN from the EDIRF the total amount of not to exceed \$100,000.00, subject to the terms and conditions of this Agreement. Payments to J.P. MORGAN from the not to exceed amount shall be made in the form of reimbursements for expenditures J.P. MORGAN or an Affiliate has made for the purchase of furniture, fixtures, machinery and equipment used at the New Facility, or for training expenses of persons employed at the New Facility. J.P. MORGAN shall first become eligible for reimbursements up to the not to exceed amount upon its certification that it initially has (1) met the Minimum Employment Requirement; and (2) met the Minimum Salary Requirement. Subsequent to attaining eligibility for reimbursements, J.P. MORGAN shall be entitled to reimbursement for expenditures made prior to achieving eligibility for reimbursements so long as the expenditures for which it seeks reimbursement are eligible expenditures that were made subsequent to January 1, 2010. J.P. MORGAN must submit its requests for reimbursement for the full \$100,000.00 by no later than December 31, 2011, and must do so on the form attached hereto and marked as Exhibit A.

3. **Certification.** By no later than January 31, 2013, and by no later than January 31 of each succeeding year through the year 2022, J.P. MORGAN shall report to the City on the form attached hereto and marked as Exhibit B, its compliance or lack of compliance with both the Minimum Employment Requirement and the Minimum Salary Requirement during each month of the immediately preceding calendar year.

4. **Repayment.** If Exhibit B, the Annual Employment Certification, indicates that during any month during any such immediately preceding calendar year J.P. MORGAN failed to meet either its Minimum Employment Requirement or its Minimum Salary Requirement, J.P. MORGAN shall thereby become ineligible to receive additional grant payments for so long as such ineligibility continues thereafter. Additionally, for any year J.P. MORGAN fails to meet either its Minimum Employment Requirement or its Minimum Salary Requirement J.P. MORGAN shall pay \$10,000.00 to the City by no later than March 1 of the year next following said failure to perform. J.P. MORGAN's repayment obligation under this section shall not extend beyond March 1, 2022, and shall not exceed the total amount of the grant received.

5. **Audit.** The CITY shall have the right to audit and examine the records of J.P. MORGAN related solely to and necessary to verify the information submitted to the CITY by J.P. MORGAN pursuant to this Agreement. Discovery by the CITY, through an audit or otherwise, that J.P. MORGAN has failed to comply with its Minimum Employment Requirement or Minimum Salary Requirement shall trigger the Repayment obligation contained in Paragraph No. 4, above.

6. **Anti-Discrimination.** J.P. MORGAN agrees that:

- a. J.P. MORGAN shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin, ancestry or age; and
- b. In all solicitations or advertisements for employees, J.P. MORGAN shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission"); and
- c. If J.P. MORGAN fails to comply with the manner in which J.P. MORGAN reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, J.P. MORGAN shall be deemed to have breached this Agreement it may be canceled, terminated or suspended, in whole or in part, by the CITY; and
- d. If J.P. MORGAN is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, J.P. MORGAN shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the CITY; and
- e. J.P. MORGAN shall include the provisions of paragraphs (a) through (d) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

J.P. MORGAN further agrees that it 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. 12101 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.

7. **Indemnity, Litigation and Claims.** J.P. MORGAN shall indemnify, protect, defend and save the CITY harmless from and against any and all claims, demands, liability and costs, including attorneys' fees, arising from J.P. MORGAN's negligence or willful misconduct in its performance under this Agreement. J.P. MORGAN shall give CITY immediate notice in writing of any action filed against J.P. MORGAN arising out of the performance under this Agreement.

8. Notices. Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, return receipt requested, to the following:

To J.P. Morgan Retirement Plan Services:

David L. Musto
Chief Executive Officer
11500 Outlook Street
Overland Park, Kansas 66211
Email: David.l.musto@jpmorgan.com
Phone: 913-664-1680

With a copy to:

JPMorgan Chase Law Department
1111 Polaris Parkway, Suite 4P
Mail Code: OH1-0152
Columbus, Ohio 43240
Attn: Real Estate Counsel
Phone: 614.248.6691

To City of Overland Park, Kansas:

Kristy Stallings
Deputy City Manager
8500 Santa Fe Drive
Overland Park, KS 66212
Email: kristy.stallings@opkansas.org
Phone: 913-895-6152

With a copy to:

Tammy Owens
Senior Assistant City Attorney
8500 Santa Fe Drive
Overland Park, KS 66212
Email: tammy.owens@opkansas.org
Phone: 913-895-6087

9. Miscellaneous. The following miscellaneous provisions shall apply to this Agreement:

- a. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same instrument.

- b. Binding Effect. This Agreement shall bind and benefit the CITY and J.P. MORGAN, its and their respective legal representatives, successors and assigns.
- c. Integrated Agreement. This Agreement represents the complete and entire understanding and agreement between the parties hereto with regard to the Grant, and supersedes any and all prior or contemporaneous agreements, whether written or oral with respect thereto. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or other than as set forth in this Agreement.
- d. Modification; Waiver. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto, or their respective successors in interest.
- e. Interpretation. The headings used in this Agreement are for convenience only and shall not affect its interpretation.
- f. No Third-Party Beneficiaries. The recitals set forth above are incorporated in and made a part of the Agreement. Nothing contained in this Agreement shall be deemed to be for the benefit of any third parties.
- g. Notification of Material Change. J.P. MORGAN shall provide prompt advance notice to CITY of any material change in J.P. MORGAN's ownership, control or management, including issues of insolvency or bankruptcy, or other material changes that could reasonably result in a default by J.P. MORGAN under any agreement to which it is a party related to the matters set forth herein.
- h. Severability. In the event any provision in this Agreement is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.
- i. Authority. By signing this Agreement, the parties affirm that they have the authority of their respective entities to enter into this Agreement and bind their respective entities.
- j. Assignment. The parties acknowledge and agree that J.P. MORGAN shall not assign, transfer, hypothecate or otherwise encumber this Agreement and its rights hereunder, without the prior written approval of CITY.
- k. Taxability. CITY makes no representation as to the taxability or tax effect of this Agreement and the incentive payments hereunder.
- l. Cash Basis. This Agreement and the obligations of the City hereunder, are subject to the Kansas Cash Basis Law (K.S.A. 10-1100, et. seq.) and Budget Law (K.S.A. 75-2529, et. seq.). The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement, in accordance with the foregoing and other applicable laws and regulations.

10. **Time of Essence.** Time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations and warranties to be performed or satisfied by the parties hereto.

11. **Governing Law.** This Agreement shall be construed and the rights and obligations of the parties shall be determined under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

J.P. Morgan Retirement Plan Services, LLC

By: _____

Print Name: _____

Title: _____

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach, Mayor

ATTEST:

By: _____
Marian Cook, City Clerk

APPROVED AS TO FORM:

By: _____
Tammy M. Owens,
Senior Assistant City Attorney

STATE OF _____)
)
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of J.P. Morgan Retirement Plan Services, LLC, a Limited Liability Company duly formed under the provisions of the State of Delaware, who is personally known to me to be such _____ and who is personally known to me to be the same person who executed as such member the foregoing instrument on behalf of said company, and such person duly acknowledged the execution of same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

STATE OF _____)
)
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carl Gerlach, Mayor of the City of Overland Park, Kansas, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas, and Marian Cook, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officials, and said Carl Gerlach, as Mayor and Marian Cook, City Clerk, duly acknowledged the attestation of the same for and on behalf of said City, and affixed thereto the seal of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

EXHIBIT A

CERTIFICATION OF ELIGIBILITY FOR REIMBURSEMENTS AND REQUEST FOR REIMBURSEMENT OF ELIGIBLE EXPENDITURES

Request No: _____

Date: _____

To: City of Overland Park

Re: J.P. MORGAN Incentive Grant

1. J.P. MORGAN hereby certifies that it currently employs at the New Facility employees filling at least 650 full-time equivalent positions, and the average annual salary of the 650 full-time equivalent positions is at least \$61,538.00.
2. Further, J.P. MORGAN hereby requests reimbursement from grant funds for the eligible expenditures itemized on Attachment A, incorporated herein by this reference, and consisting of _____ pages.
3. No part of any eligible expenditures itemized on Attachment A has been the basis for any previous request for reimbursement from grant funds.
4. The total amount of grant funds requested hereby is \$ _____.
5. The authorized representative of J.P. MORGAN who has signed, below, on behalf of J.P. MORGAN also has signed Attachment A on behalf of J.P. MORGAN.

J.P. Morgan Retirement Plan Services, LLC

By: _____

Print Name: _____

Title: _____

APPROVED:

City of Overland Park, Kansas

By: _____

Print Name: _____

Title: _____

ATTACHMENT A

**TO EXHIBIT A, CERTIFICATION OF ELIGIBILITY FOR REIMBURSEMENTS AND
REQUEST FOR REIMBURSEMENT OF ELIGIBLE EXPENDITURES**

Request No: _____

Date: _____

1. 1. MACHINERY AND EQUIPMENT LOCATED AT THE NEW FACILITY
(Attach Supporting Documentation):

_____	_____	\$ _____
Description	Date of Purchase	Amount
_____	_____	\$ _____
Description	Date of Purchase	Amount
_____	_____	\$ _____
Description	Date of Purchase	Amount

2. TRAINING OF PERSONS EMPLOYED AT THE NEW FACILITY (Attach
Supporting Documentation):

INSERT STATE FORM

TOTAL OF ELIGIBLE EXPENDITURES \$ _____

J.P. Morgan Retirement Plan Services, LLC

By: _____

Print Name: _____

Title: _____

EXHIBIT B

ANNUAL EMPLOYMENT CERTIFICATION

FOR THE YEAR _____

Date: _____

J.P. MORGAN hereby certifies that, during the entirety of each month indicated below during _____, it employed at the New Facility employees filling the number of full-time equivalent positions shown, and paid them the average annual salary indicated:

INSERT STATE FORM

J.P. Morgan Retirement Plan Services, LLC

By: _____

Print Name: _____

Title: _____