RKN
06/19/14
Item No. 7

AN ORDINANCE 2014-06-19-0445

AUTHORIZING A CONTRACT WITH WELLS FARGO BANK, N.A. FOR CORPORATE PURCHASING CARD SERVICES FOR AN INITIAL FIVE YEAR TERM BEGINNING JULY 1, 2014 AND ENDING JUNE 30, 2019, WITH TWO (2) TWO (2) YEAR RENEWAL TERMS AT THE CITY'S OPTION UPON CITY COUNCIL APPROVAL.

* * * * *

WHEREAS, a Request For Proposals ("RFP") seeking proposals to provide purchasing card services to the City was issued by City Staff on November 20, 2013; and

WHEREAS, on December 20, 2013, six responsive proposals were received in response to the RFP; and

WHEREAS, an evaluation team comprised of various members of City Staff has evaluated the Proposal received and has recommended that the Proposal of Wells Fargo Bank, N.A. ("Respondent") be accepted, and that the City enter into a Contract For Purchasing Card Services with the Respondent for an initial five year term, with two (2) two (2) year renewal terms at the City's option, upon subsequent approval by the City Council; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff's recommendation; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Contract For Purchasing Card Services ("Contract") with the Respondent for an initial five year term beginning July 1, 2014, and ending June 30, 2019, with two (2) two (2) year renewal terms at the City's option upon approval by the City Council, are hereby approved. A copy of the Contract, in substantially final form, is attached hereto and incorporated herein by reference, for all purposes as **Attachment I.**

The City Manager, or her designee, or the Director of Finance, or his designee, are each hereby authorized eight (8) business days from the effective date of this Ordinance within which to negotiate and execute the Contract, substantially according to the terms and conditions set forth in **Attachment I.** If the Contract is not negotiated and executed within said eight (8) business days, or if the parties cannot agree to terms of such contract within such time, then there shall be no authority to execute the Contract unless there is subsequent City Council approval.

SECTION 2. Funds generated by the Contract authorized by this Ordinance will be deposited into Fund 71001000, Internal Order 207000000806 and General Ledger 6301130.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the

Agenda Item:	**7 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 24, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38A, 38B, 39A, 39B, 40A, 40B, 40C)**
Date:	06/19/2014
Time:	10:29:56 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract with Wells Fargo Bank for corporate purchasing card services with an estimated $36,000.00 in annual revenue for the Procurement Fund and a one-time fee of $450.00 for the card design layout will be paid out of the Procurement Fund. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

A T T A C H M E N T I

WELLS FARGO MASTERCARD® MULTICARD AGREEMENT

This Wells Fargo MasterCard® MultiCard Agreement (this **"Agreement"**) is made and entered into effective as of July 1, 2014 (the **"Effective Date"**), by and between Wells Fargo Bank, National Association (**"Wells Fargo"**) and City of San Antonio, Texas, a Texas home-rule municipal corporation, acting herein through its duly authorized Director of Finance pursuant to Ordinance No. 2014-06-19____ (**"Customer"**). Wells Fargo and Customer are sometimes hereafter collectively referred to as the Parties.

Introduction

This Agreement governs the MasterCard® MultiCard Commercial Card (**"Card"**) issued by Wells Fargo for use by Customer and its designated employees, subsidiaries, affiliates, agents and representatives (**"Cardholders"**). In this Agreement, "Card" shall mean individually and collectively, all MasterCard® MultiCard Commercial Cards and account numbers issued to Customer, Cardholders and the associated accounts including all card-not-present transactions and account numbers. The transactions made using the Card constitute extensions of credit by Wells Fargo to Customer and not to individual employees, or agents of Customer. In order to participate in the MasterCard® MultiCard Commercial Card program, Customer shall at all times maintain ten (10) or more Cards. Attachment A-1 (Program Information), Attachment A-2 (Multiple Division Billing Program Information), if applicable, Attachment B (Program Administrator), Attachment C-1 (Fee Schedule), and Attachment C-2 (Revenue Share Calculation) are incorporated into this Agreement. For good and valuable consideration, and intending to be legally bound hereby, Customer and Wells Fargo agree to each and every term and condition of this Agreement as set forth below:

1. Permitted Uses of Card; Promise to Pay; Credit Limit. The Card may be used for Cardholders' Customer-related purchasing, travel and entertainment, general payables and fleet purchases; to the extent such functionality is offered to Customer by Wells Fargo. Customer agrees that the Card shall be used for business purposes only. In no event shall the Card be used for any transaction that is unlawful or illegal under any applicable law, including but not limited to, **"restricted transactions"** as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG issued thereunder. Except as otherwise provided in the "Liability for Unauthorized Use" Section below, Customer agrees to pay Wells Fargo, when due, the total of all purchases made with the Card. Customer also promises to pay the total of all other fees and charges due on the Card, as stated in this Agreement or as otherwise agreed to by Customer, and all costs and expenses, including all reasonable attorney's fees, and other reasonable legal costs incurred by Wells Fargo in enforcing this Agreement. Customer agrees that the total of all transactions charged to all Cards and account numbers issued hereunder outstanding at any time shall not exceed the Credit Limit specified in Attachment A-1, or as may be changed from time to time. Customer agrees that it is responsible for repaying outstanding balances under the Card, including but not limited to those that exceed its Credit Limit. Wells Fargo may change the Credit Limit at any time and will promptly notify; provided, however, that Wells Fargo will provide Customer with not less than thirty (30) days prior notice of any reduction of the Credit Limit, except that no such prior notice for a reduction in the Credit Limit shall be required if (i) Wells Fargo has determined that there exists an Event of Default, (ii) such reduction is required under applicable law or regulation, or (iii) such reduction is in response to unusual or suspicious transactions or activity related to the Card as determined by Wells Fargo in good faith in its sole discretion (it being understood that the duration of such a reduction will be for such period as is reasonably required to investigate, analyze and, if necessary, take steps to prevent such unusual or suspicious transactions or activity). Termination or expiration of this Agreement does not terminate Customer's obligation for all amounts owed pursuant to this Agreement.

2. Payments. Customer shall pay or cause to be paid the total of all amounts charged on the Card as a result of purchases, other transactions, fees, charges, costs and expenses by wire transfer of immediately available funds to the following account:

Beneficiary Account Name: Wells Fargo Bank, N.A.
Beneficiary Account Number: 00029871650795
SWIFT Code:
Routing Transit Number: 121000248
Bank Name: Wells Fargo Bank, N.A.
Bank Address: 420 Montgomery
San Francisco, CA 94104
United States

or such other account as Wells Fargo may subsequently instruct by written notice to Customer. Such payment by wire transfer of immediately available funds is due, and must be received by Wells Fargo in the aforementioned account, on or prior to the twenty-eighth (28th) calendar day (or next Business Day if the calendar day is not a Business Day) following the date of each Wells Fargo MasterCard® Commercial Card billing statement provided to Customer. A **"Business Day"** shall mean any day (except Saturday or Sunday) that Wells Fargo is open for business. In the event such payment by wire transfer of immediate funds is not received by Wells Fargo as described above in full on or prior to the applicable due date, Customer shall be obligated to pay to Wells Fargo a late charge of $35 (per occurrence) and, in addition, interest on the unpaid balance at the Prime Rate plus

3.0%. The **"Prime Rate"** means the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate."

3. **Authorizations.** All transactions on Customer's Card are subject to prior approval by Wells Fargo (**"Authorizations"**). Wells Fargo reserves the right to limit the number of Authorizations given during any period of time (day, weekend, week, etc.) in connection with its fraud prevention processes and activities,and Wells Fargo may deny an Authorization if Wells Fargo has reason to suspect (in its discretion) that the Card is being used without Customer's permission. In the event the Authorization system is temporarily unavailable, an Authorization may be unable to be given even though the transaction would not exceed the Credit Limit and the Card is in good standing. For security reasons, Wells Fargo cannot explain the details of how the authorization system works. Wells Fargo shall not be liable for failing to give any such Authorization. Wells Fargo may, but is not required to, authorize transactions that will cause the balance on the Card to exceed the Credit Limit, and Customer agrees it is liable for any such transactions. In addition, Wells Fargo reserves the right to deny transactions or authorizations from merchants apparently engaging in the Internet gambling business or identifying themselves through the Card transaction record or otherwise as engaged in such business.

Notwithstanding the foregoing, Customer acknowledges and agrees that: (i) some or all of the Cards issued hereunder may be Cards that contain an embedded security microchip that works in tandem with personal identification number (PIN) authentication functionality (**"PIN & Chip Cards"**), rather than traditional magnetic stripe Cards; (ii) certain PIN & Chip Card transactions are authorized via Offline Authorization rather than Online Authorization; (iii) as a result, such PIN & Chip Card transactions authorized via Offline Authorization are not verified against restrictions applicable to the Customer's Card program generally or to a specific Card and/or Cardholder (such as credit limits, transaction type restrictions, etc.) prior to authorization; and (iv) Customer's liability and responsibility for PIN & Chip Card transactions shall not be in any way diminished or otherwise affected by whether such transactions have been authorized via Online Authorization or Offline Authorization. For purposes of the foregoing: (a) **"Online Authorization"** means authorization of a Card transaction via the electronic communications authorization system utilized for traditional magnetic stripe Card transactions, in which transaction information with respect to each Card transaction is electronically communicated to the Card issuer (i.e. Wells Fargo) for authorization; and (b) **"Offline Authorization"** means authorization of a PIN & Chip Card transaction by communication between the PIN & Chip Card and payment terminal using defined limiting parameters stored on the PIN & Chip Card, such as a cumulative offline transaction amount limit or a consecutive offline transaction limit, but without electronic communication with and authorization by the Card issuer (i.e. Wells Fargo) as would occur with an Online Authorization.

4. **Program Administrator.** Wells Fargo will require, and is authorized to rely on, written instructions it receives from the Customer's Program Administrator(s) named on Attachment B with regard to the following matters, without limitation: issuance of individual Cards to Cardholders; establishment of and changes to credit limits on individual Cards; notification of disputed transactions; and termination of individual Cards. Customer may substitute, remove or designate additional Program Administrators by written notice to Wells Fargo signed by an authorized officer of Customer. Notwithstanding any other provision of this Agreement to the contrary, if Customer enrolls to administer its Commercial Card program using the Internet to access Card information, Customer agrees that the primary Program Administrator named on Attachment B has full authority to substitute, remove or designate additional Program Administrators, each of whom may have the full authority of a Program Administrator including authority to designate other Program Administrators, and that written notice signed by an authorized officer of Customer is required only to substitute the primary Program Administrator. The primary Program Administrator may designate in writing one or more contacts for fraud or potential fraud related matters concerning Customer's Card program (**"Fraud Contact(s)"**), and in the absence of such designation the primary Program Administrator shall be deemed to be Customer's sole Fraud Contact. Customer may, but is not required to, execute additional Attachment Bs appointing separate program administrators for divisional or affiliate Card programs established under this Agreement.

5. **Liability for Unauthorized Use.** Customer shall be liable for all unauthorized use of the Card in any amount at any time, unless and until Customer has notified Wells Fargo that the Card or Card number has been lost, stolen or misappropriated or that the person or vehicle (in the event of a fleet program) in whose name the Card has been issued is no longer authorized to use the Card (for example, upon termination of employment). Notification concerning unauthorized use shall be made by Customer calling the customer service number most recently provided by Wells Fargo; provided however, that Customer shall cooperate with Wells Fargo to complete any required written correspondence reasonably requested by Wells Fargo. Customer shall be responsible for full payment of all purchases, fees and charges incurred prior to such notification, regardless of when actually posted to Customer's account.

6. **MasterCoverage® Liability Protection Program.** Subject to applicable MasterCard® terms and conditions, Customer may be eligible for coverage under MasterCard®'s MasterCoverage® Liability Protection Program which provides coverage against employee misuse of the Card. Customer should consult the MasterCoverage® Liability Protection Program brochure available upon request from Wells Fargo for terms and conditions of coverage. Customer acknowledges that Wells Fargo is not

responsible for providing any form of liability protection program on Customer's behalf and that Wells Fargo makes no representations or warranties regarding any such program that may be offered by third parties.

7. **Department Cards.** In the event Customer requests Wells Fargo to issue Cards to Customer in a department, group name or other such designation not bearing a name or signature of an authorized employee or individual, all such Cards shall be deemed as "Department Cards". Customer hereby represents, acknowledges and agrees that: (i) such Department Cards will be used by more than one authorized employee or individual; (ii) physical Cards may or may not be issued in conjunction with such Department Cards; and (iii) issuance of Department Cards may increase the risk of fraudulent or unauthorized use. As such, Customer is responsible for all security and protection of the Department Cards and any and all Customer procedures concerning the use of such Department Cards by its Cardholders.

8. **Billing Disputes, Chargeback Requests.** Customer may dispute amounts reflected on a billing statement that Customer reasonably believes to be incorrect because (i) the amount shown on the billing statement does not reflect the actual face value of the transaction, (ii) the transaction shown on the billing statement did not result from the use of the Cards, (iii) the statement reflects fees not properly accrued under this Agreement, or (iv) the transaction is disputable with the honoring merchant under applicable MasterCard® rules, however, such dispute is subject to the procedures and liability provisions set forth in this section or other sections of the Agreement. In the event of a dispute, Customer must notify Wells Fargo of its dispute within seventy (70) days from the transaction date of purchase. Each request to Wells Fargo must be in writing and contain the following information: (i) Cardholder name; (ii) Card account number; (iii) the dollar amount of any billing dispute or suspected error; (iv) reason for the dispute; and (v) a summary of the steps already taken with the merchant to resolve the matter. Wells Fargo shall investigate the disputed amount and determine whether the amount is properly payable by Customer. Until Wells Fargo completes its investigation and determines whether the disputed amount is properly payable by Customer, Customer shall not be liable for the amount of the disputed transaction. Customer agrees that its failure to dispute a charge or other item within seventy (70) days from the transaction date of purchase shall constitute a waiver of any right the Customer may have to dispute the charge. In the event that transactions are posted to the accounts as a result of any circumstance under which the honoring merchant may be held liable under applicable MasterCard® rules, Wells Fargo shall attempt to charge the transaction back to the merchant in accordance with MasterCard® procedures. However, such attempted chargeback by Wells Fargo shall not relieve Customer of liability for the amount of the transaction even though the transaction may have been provisionally credited to the Customer's accounts.

9. **Default.** The occurrence of any of the following conditions or events shall constitute an **"Event of Default"** by Customer under this Agreement in which case, any unpaid balances on the Card shall become immediately due and payable: (1) a payment is not made when due or a payment to Wells Fargo is returned or reversed for any reason, and such payment failure is not cured within two (2) Business Days following the payment due date; (2) a non-monetary term of this Agreement is breached in any way and is not cured within ten (10) Business Days following Customer's receipt of written notice of such breach from Wells Fargo, provided that if Customer is diligently pursuing a cure at the conclusion of such ten (10) Business Day period then it shall have an additional ten (10) Business Days to complete such cure; (3) Customer defaults under the terms of (a) any other agreement with Wells Fargo or any of its subsidiaries or affiliates or (b) any loan, credit or similar agreement with any third party; (4) a bankruptcy petition is filed by or against Customer and, if such petition is filed against and promptly contested by Customer, is not dismissed within thirty (30) Business Days after such filing; (5) Customer becomes insolvent or is dissolved; (6) there shall exist or occur any event or condition which Wells Fargo reasonably and in good faith believes impairs, or is substantially likely to impair, the prospect of payment or performance of Customer's obligations under this Agreement; (7) Customer intentionally fails to submit required information Wells Fargo reasonably deems necessary; (8) Customer's account balance exceeds the Credit Limit for ten (10) consecutive Business Days; or (9) any financial statement or certificate furnished to Wells Fargo in connection with, or any representation or warranty made by Customer or any other party under this Agreement, shall prove to have been incorrect, false or misleading in any material respect when furnished or made.

10. **Term; Right to Terminate.** The initial term of this Agreement shall be for five (5) years commencing on July 1, 2014 and ending on June 30, 2019. Upon written agreement of the parties, the term of this Agreement may be renewed and extended for up to two (2) renewal terms of two (2) years each. Any such renewal and extension by Customer shall require approval of Customer's City Council by the adoption of an Ordinance. Wells Fargo or Customer may, upon at least sixty (60) days prior written notice to the other party, and with or without cause, (i) terminate this Agreement, (ii) terminate one or more services provided for in this Agreement, or (iii) terminate one or more Cards; provided, however, that the foregoing shall not affect Customer's ability to terminate the authority of a Cardholder as set forth below in this Section Ten (10). In addition, Wells Fargo may take any one or more of the actions referred to in the immediately preceding sentence immediately, without prior notice to Customer, upon the occurrence of an Event of Default. If Customer has enrolled in CCER, any such notice required under this Agreement may be delivered to Customer electronically in the same manner that statements are delivered. If Wells Fargo or Customer terminates the Agreement, or upon the expiration of this Agreement, (i) all Cards shall automatically expire, (ii) Customer shall immediately, upon notice from Wells Fargo, destroy all Cards, (iii) Customer will continue to be responsible for full payment of the current balance on the Card and all purchases, fees and charges incurred before termination that post after termination, including, without limitation, recurring transactions that post after termination, and (iv) any unpaid balances on the

Cards shall become immediately due and payable. If Wells Fargo terminates one or more Cards but not the Agreement, Customer shall immediately, upon notice from Wells Fargo, destroy all such Cards. Customer may, at any time, terminate the authority of any Cardholder to use the Card. Such termination by Customer shall become effective upon written electronic notice via the internet to Wells Fargo, along with written confirmation that the Cardholder's Card has been destroyed.

11. Limitation of Liability. Each party's liability hereunder shall be limited to the other party's actual money damages caused directly by such party's breach of this Agreement (except to the extent such liability is further limited by the terms of this Agreement), and Wells Fargo shall not be liable for any other matters whatsoever, including, without limitation: (i) Customer's use of the Card, or (ii) transmission errors or data security problems, or other acts or omissions, on the part of third parties (including, without limitation, third-party service providers in connection with transaction files sent to Customer or its designee). Notwithstanding the foregoing, in no event shall either party be liable for any indirect, incidental, special, consequential or punitive damages, even if such party has been advised of the possibility of any such damages.

Wells Fargo and Customer acknowledge and agree that the inclusion of the provisions of this Section 11 in this Agreement shall not be applied or construed as a precedent or custom or practice between the Parties with regard to subsequent contract negotiations between the Parties on contracts unrelated to this Agreement. Each subsequent contract negotiation (if any) shall stand on its own with regard to the matters addressed in this Section 11.

12. Changes to Agreement or to Credit Limit; Other Changes. In addition to, and not in lieu of, Wells Fargo's termination rights in Section Ten (10) above, Wells Fargo may unilaterally, in its sole discretion, (i) subject to Section One (1) above, change the Credit Limit for any reason, including but not limited to changes as may be required by law, upon prompt notice to Customer, and/or (ii) make a Specified Change to any of the terms of this Agreement or any Attachments hereto upon thirty (30) days prior written notice to Customer. A **"Specified Change"** is any change to the terms of this Agreement or any Attachments hereto (i) made to comply with or reflect the impact of (A) a change in any law, rule or regulation (including, without limitation, those related to credit card interchange) applicable to Wells Fargo or (B) a change made or imposed by MasterCard® or its successor (including, without limitation, any change in MasterCard® rules or in compensation paid by MasterCard® to Wells Fargo) or (ii) made in response to a significant change in the profitability of the Card program established hereunder. Notwithstanding the first sentence of Section Ten (10) above, upon receipt of a notice described in clause (ii) of the first sentence of this Section Twelve (12) (a **"Change in Terms Notice"**) Customer may, at any time prior to the effective date of the change set forth in the Change in Terms Notice, terminate the Agreement upon written notice to Wells Fargo. Customer may change the designated Program Administrator(s) upon an authorized officer's notice in writing or via the Internet to Wells Fargo.

13. Foreign Currency Transactions. If a Card is used to engage in a transaction in a currency other than U.S. dollars (**"Foreign Currency Transaction"**), that amount will be converted into U.S. dollars before posting to Customer's account.

13.1 Foreign Currency Transaction Procedures: If a Foreign Currency Transaction occurs, and the transaction is not converted to U.S. dollars by the merchant itself, MasterCard® will convert the transaction into a U.S. dollar amount by using its currency conversion procedure in effect at the time the transaction is processed. Currently, MasterCard® regulations and procedures provide that the currency conversion rate they use is either (1) a wholesale market rate, which rate may vary from the rate MasterCard® itself receives or (2) a government-mandated rate for the applicable currency as determined under MasterCard® regulations and procedures, as applicable. This rate may differ from the rate in effect when the transaction occurred or when it was posted to the Cardholder's account.

13.2 Point of Sale Currency Conversion: Some merchants outside of the United States offer Cardholders the option of having card transactions converted to U.S. dollars by the merchant itself during the transaction (**"Point of Sale Currency Conversion"**). If that option is chosen the transaction is actually originated in U.S. dollars and the currency conversion rate is determined solely by the merchant.

13.3 Cross Border Transactional Fee. For each Foreign Currency Transaction that has been converted into a U.S. dollar amount by MasterCard®, and for each Point of Sale Currency Conversion transaction where a non-U.S. merchant originates a transaction in U.S. dollars, Wells Fargo will charge Customer a 1% fee ("**Cross Border Transactional Fee**").

14. Reserved.

15. Financial Information. Promptly upon Wells Fargo's request, Customer shall provide Customer's then current Consolidated Annual Financial Report ("CAFR") and adopted Annual Consolidated Operating and Capital Budget.

16. Confidential and Proprietary Information.

(a). Customer and Wells Fargo acknowledge and agree that, in connection with this Agreement, it may be necessary and/or desirable to exchange Confidential Information (as defined below). For purposes hereof, "**Confidential Information**" means all

non-public, confidential or proprietary information of a party that is disclosed by such party (including any of its Representatives (as defined below)) (the "**Disclosing Party**") to the other party (the "**Receiving Party**") under or in connection with this Agreement, and includes, without limitation, financial, technical, or business information relating to the Disclosing Party, including trade secrets, marketing or business plans, strategies, forecasts, budgets, projections and pricing, customer and supplier information. Notwithstanding the above, Confidential Information does not include information that: (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure by the Receiving Party or its Representatives (as defined below) in violation of this Section Sixteen (16); (ii) is already known by the Receiving Party at the time of its disclosure by the Disclosing Party; (iii) is or becomes available to the Receiving Party from a source not known to the Receiving Party to be under an obligation of confidentiality to the Disclosing Party; or (iv) is independently developed by the Receiving Party without the use of Confidential Information.

(b). For a period of two (2) years following its disclosure to the Receiving Party, the Receiving Party will: (i) keep Confidential Information confidential and not disclose it to any other person or entity, except disclosures (A) to federal and state bank examiners, and other regulatory officials having jurisdiction over the Receiving Party, as applicable, (B) to the Receiving Party's Representatives (as defined below), (C) in the case of Wells Fargo, to i) MasterCard®, and ii) third party payment industry service providers with whom Wells Fargo has a business relationship and has entered into a non-disclosure agreement covering such Confidential Information, (D) required by applicable law or legal process in the opinion of the Receiving Party's counsel or any of its Representative's counsel, as applicable, or (E) otherwise authorized in writing by the Disclosing Party; and (ii) use Confidential Information only in connection with this Agreement (including the evaluation, negotiation, implementation, administration and enforcement hereof). For purposes hereof, "**Representatives**" means a party's or any of its affiliates' officers, employees, agents, legal counsel, auditors or other professional advisors who need to know Confidential Information in connection with this Agreement (including the evaluation, negotiation, implementation, administration and enforcement hereof). The Receiving Party will be responsible for any failure of its Representatives to treat the Confidential Information as confidential in accordance with the terms and conditions of this Agreement. In the event that the Receiving Party or any of its Representatives is, in the opinion of its counsel, required by applicable law or legal process to disclose any Confidential Information under clause (i)(D) of the first sentence of this paragraph, then the Receiving Party, unless prohibited by law, will provide notice of such disclosure to the Disclosing Party so that the Disclosing Party, at its sole option (but without an obligation to do so) and at its sole expense, may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section Sixteen (16).

(c). Following any termination of this Agreement, upon the Disclosing Party's request, the Receiving Party will use commercially reasonable efforts to destroy all copies of Confidential Information then in the possession of the Receiving Party; provided, however, that the Receiving Party may retain such copies as are required by applicable law or in accordance with its customary practices and procedures (any Confidential Information so retained will be held by the Receiving Party subject to this Agreement).

(d). If there is a breach of this Section Sixteen (16) by either party, the other party will have the right to seek any and all remedies at law or in equity, including without limitation appropriate injunctive relief or specific performance. The protections afforded to Confidential Information hereunder are in addition to, and not in lieu of, the protections afforded under any applicable trade secrets or other laws.

17. No Waiver; Right of Set-Off. Neither party's failure to exercise any right or to pursue any remedies under this Agreement or otherwise shall constitute a waiver thereof. Wells Fargo shall have the right to, in its sole discretion, set-off or recoup any obligation of Customer to Wells Fargo under this Agreement or otherwise against any obligation Wells Fargo owes to Customer under this Agreement to the extent permitted by law.

18. Miscellaneous; Entire Agreement; Governing Law; Counterparts; No Assignment; Independent Contractor; Severability. This Agreement contains the entire understanding between the parties on the subject matter hereof and supersedes all prior agreements, negotiations and representations. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any litigation initiated by Wells Fargo or Customer that involves this Agreement shall lie in State or Federal Court in Bexar County, Texas. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. Customer may not assign this Agreement or any of its rights, interest or obligations hereunder (by operation of law or otherwise). Nothing contained in this Agreement shall be construed as constituting or creating a partnership, joint venture, agency, or other association or relationship between Wells Fargo and Customer. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19. Verification of Identity. Customer acknowledges that Wells Fargo may be required by applicable law, including Executive Order 13224 (or successor orders/legislation), to screen the names of individual Cardholders against the Specially

Designated Nationals and Blocked Persons list published by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or otherwise verify such person's identity. Customer agrees to cooperate with Wells Fargo in this regard and to provide to Wells Fargo personally identifiable information about any Cardholder, upon Wells Fargo's request. In the event that Customer does not comply with the terms of this section, Wells Fargo will have the right, in its sole and absolute discretion, to terminate immediately any Card issued in the name of such individual(s), and Customer shall not permit such individual(s) to use any other Cards issued pursuant to this Agreement.

20. **Additional Terms and Conditions of this Agreement.** The terms and conditions set forth in the attached **ADDENDUM I** to this Agreement are made a part of this Agreement and shall apply to this Agreement to the same extent as if they had been recited in and contained in the body of this Agreement.

WELLS FARGO BANK, NATIONAL ASSOCIATION

Authorized Officer: _____

Signature: _____

Title: _____

Date: _____

City of San Antonio, Texas

Authorized Officer: _____

Signature: _____

Title: _____

Date: _____

WELLS FARGO MASTERCARD® MULTICARD AGREEMENT
ATTACHMENT A - 1
PROGRAM INFORMATION

CUSTOMER NAME	City of San Antonio, Texas
TAX ID	74-6002070
ADDRESS	111 Soledad, 5th Floor San Antonio, TX 78205
CREDIT LIMIT	$4,000,000
BILLING STATEMENT CYCLE	MONTHLY

Fee/Analysis Account:	**For fees under this Agreement (other than Cash Advance Fees and Cross-Border Transactional Fees, which will be included on the WellsOne® Commercial Card Billing Statement)***
BANK NAME DEPOSIT ACCOUNT NUMBER ROUTING NUMBER	

*Such fees, if applicable, will be billed separately via Account Analysis

WELLS FARGO MASTERCARD® MULTICARD AGREEMENT
ATTACHMENT B - PROGRAM ADMINISTRATOR

Please provide the following information about each Program Administrator:

City of San Antonio, Texas
Customer Name

Finance Department
Enter Division Name, if applicable

*The Attachment B to the Agreement may be updated at a later date, however it will replace the original Attachment B and all current Program Administrators of Customer must be included.

PROGRAM ADMINISTRATOR ***(Primary)***
Main point of contact for day to day business

James Moore
(Name / Title)

111 Soledad, 5th Floor
(Mailing Address)

San Antonio, TX 78205
(City / State / Zip Code)

(210) 207-5035 (Telephone)
(210) 207-4072 (Fax)

james.moore3@sanantonio.gov
(Email Address)

PROGRAM ADMINISTRATOR ***(Secondary)***

Amy Cowley
(Name / Title)

111 Soledad, 5th Floor
(Mailing Address)

San Antonio, TX 78205
(City / State / Zip Code)

(210) 207-5035 (Telephone)
(210) 207-4072 (Fax)

Amy.cowley@sanantonio.gov
(Email Address)

PROGRAM ADMINISTRATOR ***(Secondary)***

(Name / Title)

(Mailing Address)

(City / State / Zip Code)

(Telephone)
(Fax)

(Email Address)
(add additional pages as necessary)

PROGRAM ADMINISTRATOR ***(Secondary)***

(Name / Title)

(Mailing Address)

(City / State / Zip Code)

(Telephone)
(Fax)

(Email Address)

Select the Program Administrator above designated to receive all MasterCard® Commercial Cards*: James Moore
*Card delivery must be a physical address

Select the Program Administrator above designated to receive billing statements: James Moore

WELLS FARGO MASTERCARD® MULTICARD AGREEMENT
ATTACHMENT C-1
FEE SCHEDULE
City of San Antonio, Texas

The following fee pricing is based on an annual net purchase volume estimate of $3,000,000 and an average transaction size of $200. If either of these variables is not met, Wells Fargo reserves the right to amend such pricing.

STANDARD FEES:

ONE TIME FEES:

Set-up Fee	$ 3000 - Waived
On-site Implementation* Fee	$ Waived

* Not to exceed two (2) one(1)-day on-site visits per Program Year, as necessary

RECURRING FEES:

Program maintenance	$ Waived /Month
Card Issuance	$ Waived /Account
Transaction Fee	$ Waived /Transaction
CCER Reporting Solution	$ Waived /Month

MISCELLANEOUS FEES (Applicable Only If Customer Uses This Service):

Cash Advance Fee	2%/$2 minimum
Cross-Border Transactional Fee	1 % / Transaction
Card Artwork	$ 450.00
Manual Reports	$ 175.00/ Report
Rush Card	$ 10.00/Incident
Phone Re-Training	$ 175.00/Incident
Custom Data Solutions File	$ 75.00/ Hour
Other	$

- For those customers who opt to use ACH reimbursement for out-of-pocket expenses, separate ACH fees will apply.
- For those customers who opt to use CCER AP Control, Separate Payment Manager fees may apply.
- For those customers who opt to use the Commercial Card Expense Reporting solution, accessed through the Commercial Electronic Office (CEO), separate CEO access charges may apply.

WELLS FARGO MASTERCARD® MULTICARD AGREEMENT
ATTACHMENT C-2
REVENUE SHARE CALCULATION
City of San Antonio, Texas

Revenue Share Schedule:
Revenue Share will be paid within forty-five (45) days following the end of each Program Year on Net Purchase Volume for such Program Year. For purposes of this Attachment C-2, **"Program Year"** shall mean the twelve month period beginning July 1 and ending June 30 of the following year.

Net Purchase Volume *				Revenue Share	
Average Transaction Size: $200.00 to $299.99					
$ 0	to	$	1,999,999.99	0	Basis points (bps)
$ 2,000,000	to	$	4,999,999.99	95	bps
$ 5,000,000	to	$	9,999,999.99	107	bps
$ 10,000,000	to	$	19,999,999.99	120	bps
$ 20,000,000	to	$	39,999,999.99	130	bps
$ 40,000,000	to	$	59,999,999.99	135	bps
$ 60,000,000			and above	140	bps
Average Transaction Size: $300.00 to $399.99					
$ 0	to	$	1,999,999.99	0	bps
$ 2,000,000	to	$	4,999,999.99	100	bps
$ 5,000,000	to	$	9,999,999.99	117	bps
$ 10,000,000	to	$	19,999,999.99	130	bps
$ 20,000,000	to	$	39,999,999.99	140	bps
$ 40,000,000	to	$	59,999,999.99	145	bps
$ 60,000,000			and above	150	bps
Average Transaction Size: $400.00 and above					
$ 0	to	$	1,999,999.99	0	bps
$ 2,000,000	to	$	4,999,999.99	105	bps
$ 5,000,000	to	$	9,999,999.99	130	bps
$ 10,000,000	to	$	19,999,999.99	140	bps
$ 20,000,000	to	$	39,999,999.99	150	bps
$ 40,000,000	to	$	59,999,999.99	155	bps
$ 60,000,000			and above	160	bps

Commencing after the Program Year ending June 30, 2015 and annually thereafter ("**Anniversary Date**"), the Revenue Share amount to be paid to Customer (if any) shall be calculated and applied retroactively by multiplying the applicable Revenue Share bps times the Net Purchase Volume for the previous Program Year. No Revenue Share shall be owed for the previous Program Year if: (i) Customer terminates this Agreement prior to the Anniversary Date, or (ii) Wells Fargo terminates this Agreement for an Event of Default prior to the Anniversary Date. No Revenue Share shall be owed for the previous Program Year if the Customer's average transaction size for such Program Year is less than $200.

***Total volume minus credits and cash advances (if applicable).** Wells Fargo will segregate Large Ticket Transactions as defined below and as qualified by MasterCard®. The term **"Large Ticket Transaction"** as used herein shall mean certain transactions subject to select transaction requirements, qualified and determined by MasterCard®, in its sole and absolute discretion. Such MasterCard® transaction qualification requirements for large ticket interchange shall include, but not be limited to, custom payment service qualification with Level II and Level III data included with the transaction.

The following terms and conditions shall apply under this Attachment: i) Customer must obtain an annual minimum Net Purchase Volume of $2,000,000 per Program Year, which may include both qualified and non-qualified Large Ticket Transactions, to receive a Revenue Share payment under this Attachment, ii) Wells Fargo will segregate Large Ticket Transactions (as qualified by MasterCard®), and iii) If such Large Ticket Transactions are segregated, Customer's Net Purchase Volume will be segregated into either the Standard non-qualified Large Ticket Revenue Share Schedule set forth above or the qualified Large Ticket Revenue Share Schedule set forth below for purposes of Revenue Share calculation:

Qualified Large Ticket Revenue Share Schedule:

Net Purchase Volume of Qualified Large Ticket Transactions*	Revenue Share
$ 1.00 and above	60 - basis points (bps)

ADDENDUM I

A. **Insurance Provisions Applicable to this Agreement.**

1) Prior to the commencement of any work under this Agreement, Wells Fargo shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to Customer's Finance Department, which shall be clearly labeled "Corporate Purchasing Card Account Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. Customer will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to Customer. Customer shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Customer's Finance Department. No officer or employee, other than Customer's Risk Manager, shall have authority to waive this requirement.

3) Customer reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by Customer's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will Customer allow modification whereby Customer may incur increased risk.

4) Wells Fargo's financial integrity is of interest to Customer; therefore, subject to Wells Fargo's right to maintain reasonable deductibles, Wells Fargo shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension(s) thereof, at Wells Fargo's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation or alternative plan with approval from the City of San Antonio 2. Employers' Liability	Statutory Limit $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

5) Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

6) If CUSTOMER requests in writing a copy (ies) of any insurance policy(ies), WELLS FARGO may (a) provide a copy of the policy(ies) for review in a secured format and/or (b) prominently mark those portions of the policy(ies) it regards as confidential. In the event a third party makes an open records request under the Texas Public Information Act, or

other public information law, asking to view or copy the policy, the City shall submit the material to the Texas Attorney General ("AG") for an opinion regarding the release of said policy(ies). WELLS FARGO and CUSTOMER agree that CUSTOMER will be bound by the AG opinion. Similarly, CUSTOMER would respond to provide the material under a court order or a litigation discovery rule which may require or direct disclosure of the information.

7) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Include the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- In the event of inapplicability for any reason of Wells Fargo's omnibus "other insurance" endorsement, provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- General liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- General liability and automobile liability policies will provide a waiver of subrogation in favor of Customer.

8) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Wells Fargo shall provide a replacement Certificate of Insurance and applicable endorsements to Customer. Customer shall have the option to suspend Wells Fargo's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9) In addition to any other remedies Customer may have upon Wells Fargo's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Customer shall have the right to order Wells Fargo to stop work hereunder, and/or withhold any payment(s) which become due to Wells Fargo hereunder until Wells Fargo demonstrates compliance with the requirements hereof.

10) Nothing herein contained shall be construed as limiting in any way the extent to which Wells Fargo may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.

11) It is agreed that Wells Fargo's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by Customer for liability arising out of operations under this Agreement.

12) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of Customer shall be limited to insurance coverage provided.

13) Wells Fargo is responsible for all damage to its own equipment and/or property.

B. **Indemnification**. WELLS FARGO covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CUSTOMER and the elected officials, employees, officers, directors, volunteers and representatives of CUSTOMER, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CUSTOMER directly or indirectly arising out of, resulting from or related to Wells Fargo's (a) breach of this Agreement; and/or (b) negligence; and/or (c) violation of any law or third party's rights (including intellectual property rights) in connection with its activities under this Agreement, including any such acts or omissions of WELLS FARGO, any agent, officer, director, representative, employee, consultant or subcontractor of WELLS FARGO, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of

CUSTOMER, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT WELLS FARGO AND CUSTOMER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CUSTOMER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

WELLS FARGO further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CUSTOMER AND IN THE NAME OF CUSTOMER, any claim or litigation brought against CUSTOMER and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. WELLS FARGO shall advise the CUSTOMER in writing within 24 hours of any claim or demand against CUSTOMER or WELLS FARGO known to WELLS FARGO related to or arising out of WELLS FARGO 's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Wells Fargo's cost. CUSTOMER shall have the right, at its option and at its own expense, to participate in such defense without relieving WELLS FARGO of any of its obligations under this paragraph.

Defense Counsel - CUSTOMER shall have the right to select or to approve defense counsel to be retained by WELLS FARGO in fulfilling its obligation hereunder to defend and indemnify CUSTOMER, unless such right is expressly waived by CUSTOMER in writing. WELLS FARGO shall retain CUSTOMER approved defense counsel within seven (7) business days of CUSTOMER'S written notice that CUSTOMER is invoking its right to indemnification under this Contract. If WELLS FARGO fails to retain Counsel within such time period, Customer shall have the right to retain defense counsel on its own behalf, and WELLS FARGO shall be liable for all costs incurred by CUSTOMER. CUSTOMER shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of WELLS FARGO, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for WELLS FARGO or any subcontractor under worker's compensation or other employee benefit acts.

Any of WELLS FARGO's employees under this Agreement who suffer disability or death as a result of personal injury arising out of and in the performance of duties in connection herewith shall be treated as an employee of WELLS FARGO who sustained injury or death in the performance of duty.

C. **Customer's Request For Proposals ("RFP) and Wells Fargo's Proposal submitted in response to the RFP ("Proposal").** Customer issued the RFP on November 18, 2013. Wells Fargo submitted the Proposal on December 20, 2013. To the extent there is no conflict between the provisions of the Proposal and this Agreement, Wells Fargo shall provide all of the services included in the Proposal . To the extent that there is such a conflict, the provisions of this Agreement shall control.

D. **Records Retention**. Wells Fargo shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to Customer at all reasonable times and as often as Customer may deem necessary during the term of this Agreement, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by Customer and any of its authorized representatives.

Wells Fargo shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) years (hereafter referred to as "retention period") from the date of their creation. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Wells Fargo shall retain the records until the resolution of such litigation or other such questions. Wells Fargo acknowledges and agrees that Customer shall have access to any and all such documents at any and all times, as deemed necessary by Customer, during said retention period. Customer may, at its election, require Wells Fargo to return the documents to Customer at Wells Fargo's expense prior to or at the conclusion of the retention period. In such event, Wells Fargo may retain a copy of the documents. Wells Fargo shall notify Customer, immediately, in the

event Wells Fargo receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Wells Fargo understands and agrees that Customer will process and handle all such requests.

E. **Licenses and Certifications**. Wells Fargo warrants and certifies that Customer and any other person designated to provide services under this Agreement has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

F. **Compliance.** Wells Fargo shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

G. **Legal Authority**. The signer of this Agreement on behalf of Wells Fargo represents, warrants, assures and guarantees to Customer that [s]he has full legal authority to execute this Agreement on behalf of Wells Fargo and to bind Wells Fargo to all of the terms, conditions, provisions and obligations herein contained.

H. **Quarterly Status Meetings.** The Parties shall hold status meetings not less than quarterly to be attended by applicable staff of Wells Fargo and representatives of Customer for the purpose of discussing: (a) current operations and procedures under this Agreement; and (b) any and all other subjects pertinent to any aspect(s) of this Agreement.