

EXHIBIT A

MERCHANT BANKCARD SERVICES CONTRACT

CONTRACT NO.

This Contract, made and entered into this _____ day of _____, 2013, by and between U.S. Bank Government Banking, hereinafter called "Bank", and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called "City". This Contract may refer to the City and Bank individually as a "Party" or jointly as the "Parties."

WITNESSETH:

The Parties hereto mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK: Bank shall provide Merchant Bankcard Services for the City of Portland for electronic payment card processing, online account access and reporting, and other merchant bankcard services to include but not be limited to those services as identified in Attachment 1. All services shall be performed in accordance with Attachment 1 to this Contract. The Bank shall assure that the City receives the standard of care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances

In the event there is a perceived or actual conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this contract the order of precedence shall be:

- a. The Amendment to City of Portland Contract for Merchant Bankcard Services,
- b. This City of Portland Contract for Merchant Bankcard Services *[including: Attachment 1]*
- c. Exhibit 1, City RFP #114739 (including any addenda issued)
- d. Exhibit 2, Bank Proposal incorporated by reference *[including: Exhibit 2, Bank documents, including: Exhibit 1, Elavon Payment Device Processing Agreement (PDPA) which shall include the Schedule A, Schedule of Fees, Schedule B, Affiliated Entities and Schedule C, Merchant Application (large Relationship) and Schedule I, Processing Services for Government Entities and Institutions (the schedules and documents referenced in the aforementioned listing, each as may be amended from time to time)]*

2. EFFECTIVE DATE AND DURATION: The initial term of this Contract shall begin on April 1, 2013 and shall expire on March 31, 2017 unless terminated sooner as provided herein. The Parties may agree, by mutual consent, to extend this Contract for an additional one year period. Fees and terms for the additional one (1) year period will be subject to renegotiation at the end of the initial contract period. At least one hundred-twenty (120) days prior to the expiration of the initial term, or extension, the Parties shall commence discussions if they desire to extend the Contract. The Bank shall provide a written extension proposal within fifteen (15) calendar days following the City's request for such a proposal. However, nothing binds or requires either Party to extend this Contract. The total term of this Contract shall not exceed five (5) years.

3. CONSIDERATION: Except as otherwise agreed in writing between the Parties, the City agrees to pay Bank all incurred Interchange, Assessment, Processing and related miscellaneous merchant fees as identified in Exhibit 1, Schedule A, Schedule of Fees. All proposed fees shall be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period will be subject to renegotiation at the end of the first four years; pricing for services not contemplated by the Attachment 2 shall be subject to negotiation. Bank agrees to pass through card network interchange and assessments directly for each merchant account and, in the event of increases or decreases to card network interchange and/or assessments at any transaction qualification level, the new rate(s) will be passed through directly.

This Contract shall not exceed two million, five hundred twenty-four thousand dollars/year (\$2,524,000) for provision of and completion of the services for a total contractual cost not to exceed ten million, one hundred thousand dollars (\$10,100,000) for the four year period. Interim payments shall be made to the Bank in accordance with the costing schedule identified in Exhibit 1, Schedule A.

4. INVOICING: The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Bank may deduct from each merchant account all bankcard fees for services from revenue collected in that merchant account on behalf of the City, such deductions to occur monthly. City will require the Bank to provide merchant account analysis statements, including fees for services, on a monthly basis. The City may elect to pay such invoiced amounts directly to the Bank. The Bank shall timely submit merchant account analysis statements and billings electronically. Any paper invoices shall be sent to:

City of Portland
Public Finance and Treasury Division
1120 SW Fifth Avenue, Room 1250
Attn: City Treasurer
Portland, OR 97204

Bank is at all times solely responsible for billing accuracy and timeliness; Bank shall provide monthly invoices for the services to the City and the City may elect to pay such invoiced amounts. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Bank has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice. All unpaid fees shall be due and payable within 30 days of the expiration or termination of the Contract.

5. INVOICE PAYMENT: Billing details may be agreed upon between the Parties. Invoicing for services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of the billed services.

Revised invoices or billing adjustments shall apply only to services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Bank billing errors, services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the Parties, without prior written City approval.

6. INSURANCE – PROOF OF COVERAGE: Contractor shall obtain and maintain in full force at Contractor expense, throughout the duration of the Contract, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract. The insurance requirements are as follows.

Commercial General Liability Insurance – Public Liability and Property Damage. The Bank shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the Bank and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Bank's work under this Contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, the Bank shall provide a new policy with the same terms. The Bank agrees to maintain continuous, uninterrupted coverage for the duration of the Contract.

Automobile Liability. Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Bank. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Bank.

Workers' Compensation. Prior to the performance of any work under a Contract awarded by the City, the Bank shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Bank shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the Contract.

Technology Errors and Omissions. Liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A- or better and shall include the following coverage parts:

Technology Products & Services E&O -Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of Products, Services and Licensed Programs under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$ 1,000,000.00 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Contract. Evidence of coverage must be sent to the City for three years following termination of this Contract.

Certificate(s) of Insurance: Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Contractor shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

7. INDEPENDENT STATUS: The Bank is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Bank, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

8. NO THIRD PARTY BENEFICIARIES: Bank and City are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

9. SUCCESSORS IN INTEREST: The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

10. SURVIVAL: The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

11. COMPLIANCE WITH APPLICABLE LAW: In connection with its activities under this Contract, Bank shall comply with all applicable federal, state and local laws and regulations that are applicable. Additionally, the Bank shall be in compliance with all regulatory requirements and all its regulatory oversight agencies. To the extent applicable, all statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant Contract: Appendix A as attached hereto.

To the extent applicable the Bank must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

Certification as an EEO Affirmative Action Employer: The Bank is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland through September 4, 2014. The certification will be maintained throughout the duration of the Contract.

Non-Discrimination in Employee Benefits (Equal Benefits): The Bank has complied by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: Option C.

Business License: The Bank license # 337756 is in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Contract.

12. GOVERNING LAW / VENUE: The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question

arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. To the extent applicable, by executing this Contract the Bank agrees to in personam jurisdiction of the Oregon courts.

13. NONDISCRIMINATION: Bank agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Bank also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

14. INDEMNITY: Bank shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Bank or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Contract. Bank is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

15. ASSIGNMENT OF ANTI-TRUST RIGHTS: By entering into a contract, the Bank, for consideration paid to the Bank under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Bank now has or which may accrue to the Bank in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any services provided to the Bank by any person, which services are used, in whole or in part, for the purpose of carrying out the Bank's obligation under this Contract.

In the event the Bank hires subcontractors to perform any of the Bank's duties under the Contract, the Bank shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Bank in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of the Bank that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Bank to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- b. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- c. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Bank, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

16. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

17. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Bank agrees to abide by any such decision including revision or termination of services.

18. ASSIGNMENT AND SUBCONTRACTING: This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Bank remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, the Bank shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Bank hereunder. The Bank agrees that if subcontractors are employed in the performance of this Contract, the Bank and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

19. LIENS: Bank shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

20. SUSTAINABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the Bank is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

21. FORCE MAJEURE: Neither City nor Bank shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the Party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

22. AMENDMENTS: All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute amendments to this Contract without the City's further approval, provided such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Bank understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

23. NON-WAIVER: No waiver, consent, modification, or change of terms of this Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

24. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES: The Bank shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the services. This includes planning for and integration of the services provided under this Contract with those provided by others. Further, Bank shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the services. Bank's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

25. ACCESS TO RECORDS: The Bank shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Bank which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

26. AUDITS: The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

The Bank will submit quarterly and annual audited financial statements for the Bank and annual audited financial statements for any holding companies (if applicable), as soon as publicly available. Electronic access to all these documents via web URL is sufficient.

If an audit discloses that payments to the Bank were in excess of the amount to which the Bank was entitled, then the Bank shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Bank agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by the Bank for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

27. EMPLOYEES NOT TO BENEFIT: No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

28. CITY FURNISHED PROPERTY: No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

29. ADDITIONAL SERVICES The City reserves the right to procure additional services beyond those stated in the RFP documents at the same prices submitted by the Bank. Prices for any additional services will be negotiated. Such additional services are not guaranteed and will be made at the City's sole discretion based upon the requirements of City bureaus.

30. RIGHT TO CHANGE: The City reserves the right to order changes to the services outlined herein. The City and the Bank shall determine a fair and equitable cost and, if required, additional time to implement such changes. All such changes shall be ordered in writing and agreed to by the Parties.

31. NOTICE: Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

BANK:

U.S. Bank Government Banking
111 SW Fifth Avenue, Suite 550
Portland, OR 97204

Attn: Wendy Sifford, CTP

CITY:

City of Portland
Public Finance and Treasury Division
1120 SW Fifth Avenue, Room 1250
Portland, OR 97204

Attn: Ms. Jennifer Cooperman, City Treasurer

With copy to:
The City of Portland
Chief Procurement Officer
1120 SW 5th Avenue, Room 750
Portland, OR 97204

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section. Unless otherwise designated by Bank in writing, the above noted Bank designee shall be its lead point-of-contact to the City. Bank shall notify the City of other designated employees who will service this Contract.

32. EARLY TERMINATION OF CONTRACT: The City and the Bank, by mutual written agreement, may terminate the Contract at any time. The City, on sixty (60) days written notice to the Bank, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the Bank may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured the breach within thirty (30) days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

33. SUSPENSION OF THE WORK: The City may at any time give notice in writing, by electronic mail, or by facsimile to the Bank to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Bank be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

34. PAYMENT ON EARLY TERMINATION: In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the Bank for services in accordance with the Contract prior to the termination date and delivered to City provided that such services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the Bank, then the City shall pay the Bank for services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Bank's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for services that the City cancels during the term of this Contract.

35. REMEDIES: In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the Bank, then the City may procure services outstanding from another contractor and the Bank shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are

available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available or may become available.

36. PERMITS AND LICENSES: The Bank shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

37. INTELLECTUAL PROPERTY: The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:

a. Copyright: All work products of the Bank which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Bank or its sub-vendor, purchases ownership with grant support.

b. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Bank or any of its sub-vendors shall immediately notify the City. The City will provide the Bank with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

38. SPECIFICATIONS: This Contract authorizes the Bank to provide and the City to procure those services, and establishes the terms and conditions for the City to obtain said services from the Bank. Services to be provided under this Contract are described in the Attachments hereto. The Bank shall provide to the City those services described in the attachments in accordance with the prices shown herein. Payment shall be made only in accordance with the payment schedule identified herein.

39. WARRANTY: The Bank represents and warrants that (i) Bank shall perform all Services set forth herein in a good and workmanlike manner, in conformance with the Specifications and requirements of the Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) Bank warrants that each of Bank's employees assigned to perform Services has the proper skill, training, and background to be able to perform Services in a competent, timely, and professional manner and that all Services shall be so performed; and (iii) Bank shall, at all times during the term of the Contract, maintain and keep current all licenses and certifications required to perform the work set forth in the Contract.

40. PROPRIETARY AND CONFIDENTIAL INFORMATION: The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract. All information submitted by Bank shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions for which Bank requests exemption from disclosure consistent with federal or Oregon law. Any portion that the Bank claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, 192.502, 646.461 or other state or federal law. Documents with Copyright must be clearly marked.

Bank agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Contract and shall not disclose any such information to third parties.

41. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The Bank shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

Bank shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

42. ENTIRE CONTRACT: This Contract and its Attachments represent the entire Contract between the Parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the Parties with respect thereto, whether written or oral.

This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the Parties hereto that:

- Any reference in this Contract to the scope of work or specifications is intended as a convenience to the Parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary

herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.

- All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.
- The Bank certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the proposal or resulting Agreement, that the proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.
- The City and Bank may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Bank and City have caused this Contract to be executed by their duly authorized representative(s), all on the day and year first above written.

U.S. BANK GOVERNMENTAL BANKING

by _____

Approved as to form:

City Attorney

Name, Title and Date

Address: 111 SW Fifth Avenue, Suite 550
Portland, OR 97204

Telephone No: 503 275 3498

Fax No: wendy.sifford@usbank.com

CITY OF PORTLAND

by _____

Chief Procurement Officer

Date

INITIALS: bg

DATE: 03/04/2013

ATTACHMENT 1

TECHNICAL REQUIREMENTS

1. **MINIMUM REQUIREMENTS:** Firms submitting proposals must as of the date of their proposal and for the term of any contract(s) agree with and satisfy the Minimum Requirements as identified herein, and must execute Exhibit B, CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OFRFP.
 - A. **ALL SERVICES:** To be considered for selection for ANY or ALL services described in this RFP, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):
 - 1) Agree that proposed fees for services stated in the Proposal be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period (if mutually agreed to extend) will be subject to renegotiation at the end of the first four years. Fee changes are to be submitted for consideration 120 days before the end of each contract term.
 - 2) Agree that Proposals shall constitute irrevocable offers to sell to City the services described in the attached specifications for a period of 120 days or until a contract has been approved by Portland City Council, whichever is earliest.
 - 3) Be in legal compliance with all applicable laws, rules, regulations and ordinances of the City, State of Oregon, and the United States.
 - 4) Have all required licenses, bonding, facilities, equipment and trained personnel necessary to perform all services as required.
 - 5) Agree to submit quarterly and annual audited financial statements for the bank or firm, and annual audited financial statements for any holding companies (if applicable), as soon as publicly available.
 - 6) Identify at least one dedicated service representative and one back-up service representative in the local area or Pacific time zone as the City's principal contacts, able to respond to issues affecting the City's account within 24 hours. Individuals must have sufficient technical expertise, authority and command the resources necessary to resolve complex issues, including matters involving online portals and data availability.
 - B. **MERCHANT BANKCARD SERVICES:** To be considered for selection for Merchant Bankcard Services, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):
 - 1) Have at least ten (10) years' experience processing merchant bankcard payment records transmitted for processing and settlement from major credit/debit card processing networks.
 - 1) Be PCI-DSS compliant.
 - 2) Be able to accept payment from bankcards directly from City applications and/or third party vendors on behalf of City as detailed in Exhibit D.
 - 3) Provide no later than one-day settlement for all proceeds deposited into City bank accounts once payments are sent (batched) by City applications. Settlement dollars must at all times reside in City bank accounts.
 - 4) Provide daily gross settlement and monthly debiting of fees for each merchant account.
 - 5) Be capable of submitting a separate monthly invoice for bankcard fees for each merchant account for City to process and pay through Accounts Payable.
 - 6) Provide online monthly account statements reflecting all activity and fees.
 - 7) Provide online access for City to monitor detailed daily and monthly merchant bankcard sales and fees (at batch, merchant account, bureau and corporate levels) and research chargebacks.

- 8) Provide an online reporting tool with a security hierarchy limiting reporting to individual merchant accounts or groups of merchant accounts.

2. WORK PERFORMED BY THE CITY: Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the Bank and provide such information as required. The Office of Management and Finance, Treasury has assigned a project manager who will oversee the work and provide support as needed.

The City Treasurer will provide the Bank with the necessary documentation detailing the authority of City agents who are authorized to act on behalf of the City under this Contract, including the authority of the City Treasurer and designees for bankcard services documents, including any updates of bankcard services documents, and the mutually agreed upon clarifications, supplementation and modifications to the Elavon Payment Device Processing Agreement (PDPA) which shall include the Schedule A, Schedule of Fees, Schedule B, Affiliated Entities and Schedule C, Merchant Application (Large Relationship) and Schedule I, Processing Services for Government Entities and Institutions, which may be updated from time to time.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

3. TIME IS OF THE ESSENCE: Bank shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Bank shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Bank does not meet the established delivery dates or other deadlines and Bank has failed to cure such breach within fifteen (15) days of written notice by the City, the City may obtain the undelivered non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the Bank. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

4. ESCALATION/DE-ESCALATION: Initial Contract prices shall be as established herein and will remain firm for the first four years of the Contract. The City may consider pricing revisions proposed by Bank after the fourth year of the contract period; however, the Bank shall propose such revised pricing at least one hundred-twenty (120) days prior to the desired effective date for consideration by the City. Any proposed price increases must be fully documented and justified by Bank. Acceptance of Bank's proposed price revisions shall be at the City's sole discretion.

Bank shall submit any proposed pricing revisions in writing to the City Treasurer for consideration at least one hundred-twenty (120) days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Bank's original proposal, the Bank shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Price adjustments will only become effective by fully executed amendments.

EXHIBIT 1

Date: October 18, 2012



City of Portland, Oregon

RFP No. 114739

**REQUEST FOR PROPOSALS
for
GENERAL BANKING SERVICES
AND
MERCHANT BANKCARD SERVICES**

PROPOSALS DUE: November 29, 2012 by 2:00 p.m.

Submit one (1) complete original, one (1) unbound Redacted for Public Disclosure Copy, and six (6) complete copies of the Proposal to:

B. J. Gibson, CPPPO
Procurement Services
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
barbara.gibson@portlandoregon.gov

Refer questions to:

B. J. Gibson, CPPPO
Procurement Manager
Procurement Services
Phone: (503) 823-7665
Fax: (503) 279-3990
Email: barbara.gibson@portlandoregon.gov

PROPOSAL NO. 114739

PROPOSAL TERMS AND CONDITIONS

CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER - All respondents must be certified as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Procurement Services, City of Portland, prior to contract execution.

SUSTAINABLE PROCUREMENT: The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Local Action Plan on Global Warming, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website: <http://www.portlandonline.com/auditor/index.cfm?c=26818>).

As applicable to City procurement, these policies guide the City to buy products and services that reduce the City's negative environmental and social impacts. While specific goals vary, the City's sustainability objectives tend to focus on: reducing energy use; reducing air, water, and land pollution; building and maintaining high-performance green buildings; reducing the use of materials toxic to the environment and human health; utilizing resources efficiently, including the use of renewable, reusable and recycled materials; utilizing minority-owned, small, and/or local businesses; preserving or enhancing biodiversity; and maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

BUSINESS LICENSE AND REGISTRATION - Successful Proposers shall obtain a current City of Portland Business License, and shall be in compliance with regulations regarding conducting business in the State of Oregon prior to execution of this contract and commencement of the work.

ADDENDUMS - If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the bidders, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for filing bids, Saturday, Sunday, and legal holidays not included, shall be binding upon the bidder. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

COST OF RESPONDING This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

LATE PROPOSALS Proposal responses received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

CANCELLATION The City of Portland reserves the right to modify, revise, or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews does not obligate the City to award a contract.

REJECTION OF PROPOSALS The City reserves the right to reject any or all responses to the Request for Proposal if found in the City's best interest to do so.

GOVERNING LAW - The provisions of any contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of law provisions. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon. All statutory, charter and ordinance provisions that are applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this contract. In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and

regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. These requirements may be found on the City of Portland's Procurement Services website: <http://www.portlandonline.com/omfi/index.cfm?c=27353&>.

Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

AMERICANS WITH DISABILITIES ACT COMPLIANCE - Respondents agree that if awarded a contract, the successful Contractor will comply with all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. If any respondent requires special assistance or auxiliary aids during the proposal, evaluation or award process, please notify the Procurement Services, (503) 823-6855, or TDD (503) 823-6868, at least two (2) business days prior to the required assistance.

SPECIAL CONDITIONS - Where special conditions are written in the Request for Proposal, these special conditions shall take precedence over any conditions listed under these Proposal Terms and Conditions.

PUBLIC RECORDS: Any information provided to the City pursuant to this RFP shall be public record and subject to public disclosure pursuant to Oregon public records laws ORS 192.410 to 192.505 and 5.33.470.

The general requirement for public disclosure is subject to a number of exemptions. When preparing a proposal submission, a proposer must plainly mark each page containing information deemed by the proposer to remain exempt from public disclosure after proposals have been evaluated (e.g., pages containing trade secret, economic development information, etc.). A summary of the redactions shall be placed with the redacted version of the proposal response.

The fact that a proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. Any portion of a proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2) and ORS 192.502(4). The City will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Information that has not been properly marked and redacted may be disclosed in response to a public records request. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed.

Unless expressly provided otherwise in this RFP or in a separate communication, the City does not agree to withhold from public disclosure any information submitted in confidence by a proposer unless the information is otherwise exempt under Oregon law.

If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend, and indemnify the city for all costs, expenses, and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposer's records.

ORAL INSTRUCTIONS - Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective bidders shall not bind the City. Any changes or revisions to the specifications shall be binding only if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

TAXES - Taxes, whether State or Federal, shall not be included in the offered prices. A tax exemption certificate will be provided by the City upon request.

PART I PROPOSAL REQUIREMENTS

SECTION A GENERAL INFORMATION

1. **BACKGROUND:** The City of Portland, Oregon (City) with an estimated population of 585,845 as of July 1, 2011, is the county seat of Multnomah County and is the largest city in Oregon and the second largest city in the Pacific Northwest. The City is one of the largest public employers in the Portland metropolitan area, with an estimated employment of 8,950 as of May 2012 and net assets of \$2,492,825,873 as of June 30, 2011. The City's Public Finance & Treasury Division (Treasury), the central office through which all banking, cash management, investment and debt management services are provided to City bureaus, seeks to procure its general banking and merchant bankcard services.

2. **SCOPE OF WORK:** The City is seeking proposals for General Banking Services and for Merchant Bankcard Services from qualified banks and merchant bankcard processors, with demonstrated experience in providing general banking services and/or merchant bankcard services to the public sector. City intends to select one or more firms to provide these services and will negotiate a separate contract for each of these services.

The City is accepting separate proposals for each of the following services:

General Banking Services – depository accounts and services, disbursement services, branch services, online account access and reporting, and other banking services.

Merchant Bankcard Services – electronic payment card processing, online account access and reporting, and other merchant bankcard services.

Each Contract term shall be from April 1, 2013 through March 31, 2017. The term of each Contract may be extended for an additional one (1) year period upon mutual agreement between the City and the Contractor. Contractor hereby agrees to provide sixty (60) days written notice to the Chief Procurement Officer prior to expiration date of this Contract that Contractor desires that the Contract period be extended. Total Contract period, including extensions, shall not exceed five (5) years.

Firms submitting proposals for either or both of these services must meet all applicable technical and legal qualifications and requirements contained herein.

The successful contractor(s) will be expected to enter into a Banking Services Contract and/or Merchant Bankcard Services Contract with the City (reference Exhibit A).

3. **PROPOSAL INVITATION:** This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is for the City of Portland, Office of Management and Finance, Public Finance & Treasury Division as directed by Procurement Services as identified herein, in accordance with the requirements and provisions herein.

SECTION B WORK REQUIREMENTS

By submitting a proposal, the respondent agrees to provide all services specified within this Section B pursuant to all requirements and specifications as contained therein.

1. **MINIMUM REQUIREMENTS:** Firms submitting proposals must as of the date of their proposal and for the term of any contract(s) agree with and satisfy the Minimum Requirements as identified herein, and must execute Exhibit B, CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP.

A. **ALL SERVICES:** To be considered for selection for ANY or ALL services described in this RFP, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):

- 1) Agree that proposed fees for services stated in the Proposal be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period (if mutually agreed to extend) will be subject to renegotiation at the end of the first four years. Fee changes are to be submitted for consideration 120 days before the end of each contract term.

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- 2) Agree that Proposals shall constitute irrevocable offers to sell to City the services described in the attached specifications for a period of 120 days or until a contract has been approved by Portland City Council, whichever is earliest.
- 3) Be in legal compliance with all applicable laws, rules, regulations and ordinances of the City, State of Oregon, and the United States.
- 4) Have all required licenses, bonding, facilities, equipment and trained personnel necessary to perform all services as required.
- 5) Agree to submit quarterly and annual audited financial statements for the bank or firm, and annual audited financial statements for any holding companies (if applicable), as soon as publicly available.
- 6) Identify at least one dedicated service representative and one back-up service representative in the local area or Pacific time zone as the City's principal contacts, able to respond to issues affecting the City's account within 24 hours. Individuals must have sufficient technical expertise, authority and command the resources necessary to resolve complex issues, including matters involving online portals and data availability.

B. BANKING SERVICES: To be considered for selection for General Banking Services, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):

- 1) Be capable of providing all general banking services outlined in this RFP.
- 2) Be a member of the Federal Reserve System and have access to all its services, including the Fed Wire System.
- 3) Be insured by the FDIC.
- 4) Be a federally or State of Oregon chartered financial institution and member of the Oregon Automated Clearing House Association.
- 5) Be a qualified depository for public funds as prescribed by ORS 295 and as identified by the Oregon State Treasurer.
- 6) Provide for the collateralization of all funds deposited to all bank accounts within the scope of this RFP and be capable of meeting all collateralization requirements, including pledging collateral increases, prescribed by ORS 295 (as in effect on or after April 1, 2013).
- 7) Notify City in writing upon any requirement by the Oregon State Treasurer to increase its required level of collateral to 110%.
- 8) Be able to transfer funds to and from the Local Government Investment Pool managed by the Oregon State Treasurer.
- 9) Have a full service branch office located in close proximity to the Portland Building (1120 SW Fifth Avenue, Portland, OR 97204), branch offices throughout City for routine deposits by City Bureaus and a central pick-up point or cash vault within City that can accommodate the security, deposit volume and change order demands associated with City's accounts.
- 10) Be in compliance with all regulatory requirements, including capital ratios, as required by all its regulatory oversight agencies.
- 11) Be in compliance and in good standing with the Community Reinvestment Act.
- 12) Have at least ten (10) years' experience providing general banking services to major public sector clients similar in size to City.
- 13) Agree to be compensated with compensating balances and quarterly invoicing, or a combination thereof, as determined by City. For purposes of compensating balance, overdraft and negative collected balance calculations, bank must agree to treat City's accounts with the bank on a daily consolidated basis and, so long as City's accounts on a daily consolidated basis maintain a positive ledger balance, no charges may

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be assessed for individual accounts being in a negative ledger position.

- 14) Not open or maintain any bank accounts for any entity representing itself as an agency or entity of City or using City's tax ID numbers without the express written permission of the City Treasurer.
- 15) Enforce maximum dollar limits placed by the City Treasurer on checks drawn on any account created by this RFP and must have the technology to enforce such limits.
- 16) Cash for any City employee, without a fee, checks drawn on any positive pay account created by this RFP at any branch. Reasonable identification, including a City of Portland employee identification card (with photo), may be required of the presenter.
- 17) Provide an online system of placing stop payments with confirmation.
- 18) Be able to transmit direct deposits through the ACH system from files provided by City (through bank's portal and files created through SAP) with next day settlement, notify City of failed deposits or pre-notes, and return funds immediately upon notice of failure.
- 19) Be able to receive and process CCD, CCD+, PPD+ and CTX ACH debits and credits originated outside the City, ACH batches created through City-designed websites used by customers to pay bills (including recurring ACH), and ACH batches created through the bank's online portal.
- 20) Have a system to filter unauthorized ACH debits to all City accounts.
- 21) Be able to consolidate online bill payments and create and make available through secure means a file from payments made through consumer service providers (e.g., CheckFree, Metavante) and routed to the MasterCard RPPS or Visa ePay systems. Bank must provide a file format that meets Water Bureau requirements.
- 22) Automatically return as stale dated any check that has a past issue date of six months or greater on any account created by this RFP.
- 23) Provide for a returned check processing system that re-deposits returned checks once, sends actual physical returned items to City, charges the account that was deposited, and sends an advice of charge with an itemized listing for each account to City.
- 24) Be able to accept electronic desktop deposits.
- 25) Be able to accept and process a deposit file containing electronic check images (configured to the bank's specifications) created by City's own equipment and securely transferred where eligible checks are converted to ACH debits.
- 26) Have online capability for City to initiate both repetitive and non-repetitive wire transfers with confirmed status within 15 minutes of secondary authorization.
- 27) Have a positive-pay checking account system with payee validation and online exception reporting, and be able to accept positive-pay check data online and from files created (to bank specifications) through SAP.
- 28) Provide online capability to view paid checks from positive-pay checking accounts.
- 29) Provide a daily EDI report (with addenda) of ACH transactions in CCD, CCD+, PPD+ and CTX.
- 30) Have controlled disbursement check clearing capabilities with online reporting of the checks-paid amount in the early morning (Pacific Time) of the day the account is debited.
- 31) Provide online daily account statements of prior day activity in both printable format and BAI format (for manual downloading and posting to SAP) that provide detailed transactions and a summary of each account's daily ledger balance, available balance, and the total ledger balance for all accounts.
- 32) Have a procedure for ordering supplies, e.g., pre-printed encoded deposit slips, checks, coin rolls,

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currency traps, deposit bags, etc.

C. MERCHANT BANKCARD SERVICES: To be considered for selection for Merchant Bankcard Services, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):

- 1) Have at least ten (10) years' experience processing merchant bankcard payment records transmitted for processing and settlement from major credit/debit card processing networks.
- 2) Be PCI-DSS compliant.
- 3) Be able to accept payment from bankcards directly from City applications and/or third party vendors on behalf of City as detailed in Exhibit D.
- 4) Provide no later than one-day settlement for all proceeds deposited into City bank accounts once payments are sent (batched) by City applications. Settlement dollars must at all times reside in City bank accounts.
- 5) Provide daily gross settlement and monthly debiting of fees for each merchant account.
- 6) Be capable of submitting a separate monthly invoice for bankcard fees for each merchant account for City to process and pay through Accounts Payable.
- 7) Provide online monthly account statements reflecting all activity and fees.
- 8) Provide online access for City to monitor detailed daily and monthly merchant bankcard sales and fees (at batch, merchant account, bureau and corporate levels) and research chargebacks.
- 9) Provide an online reporting tool with a security hierarchy limiting reporting to individual merchant accounts or groups of merchant accounts.

2. WORK PERFORMED BY THE CITY: City shall make available sufficient hours of staff personnel as is required to meet with the contractor and provide such information as required. City has assigned a project manager who will oversee the work and provide support as needed.

3. DELIVERABLES AND SCHEDULE: Deliverables shall be considered those tangible resulting work products which are to be delivered to City such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Deliverables and schedule for this project shall include:

Deliverables and schedule for this project shall include:

Deliverable	Schedule
Initial meeting with City personnel	January 2, 2013 or once contract(s) have been approved by Portland City Council, whichever is earliest
Transition plan, training plan and implementation schedule	January 22, 2013
Weekly project updates with City personnel	January 2 – April 15, 2013
Implementation go-live	April 1, 2013
Summary report of implementation	April 15, 2013

All deliverables and resulting work products from this contract will become the property of the City of Portland.

4. PLACE OF PERFORMANCE: For the most part, contract performance will take place at the contractor's facility. On occasion, there might be meetings which will be held in City offices unless both parties agree that meeting in a third party location is more acceptable.

5. PERIOD OF PERFORMANCE: Each contract term shall be from April 1, 2013 through March 31, 2017. The term of each Contract may be extended for an additional one (1) year period upon mutual agreement between the City and the Contractor. Contractor hereby agrees to provide sixty (60) days written notice to the Chief Procurement officer prior to expiration date of this Contract that Contractor desires that the Contract period be extended. Total Contract period, including extensions, shall not exceed five (5) years.

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6. **INSURANCE – PROOF OF COVERAGE:** Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor. All insurance requirements shall be as indicated within the attached sample Contract.

7. **PUBLIC SAFETY:** Public safety may require limiting access to public work sites, public facilities, and public offices, sometimes without little advance notice. The contractor shall anticipate delays in such places and include the cost of delay in the costs in its proposal. The contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have discretion to require the contractor's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

SECTION C ATTACHMENTS

1. **Exhibit A - SAMPLE SERVICES CONTRACT (with Attachments 1, 2 and Appendix A):** The sample services contract, shown as Exhibit A, is the City's standard contract for these services and will be used as a result of this selection process. Any deviations from this contract shall be clearly identified in the proposal.

2. **Exhibit B – CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP**

3. **Exhibit C – DESCRIPTION OF CITY'S CURRENT BANKING SERVICES**

4. **Exhibit D – DESCRIPTION OF CITY'S CURRENT MERCHANT BANKCARD SERVICES**

5. **Exhibit E – REFERENCE INFORMATION**

PART II PROPOSAL DEVELOPMENT

SECTION A PROPOSAL PREPARATION

1. **PRE-PROPOSAL MEETING:** There will be no pre-proposal meeting or site visit scheduled for this project, therefore, proposal submission will not be contingent upon attendance at a pre-proposal meeting.
2. **INVESTIGATION:** Respondent shall make all investigations necessary to inform itself regarding the work or services to be furnished.
3. **QUESTIONS OR CLARIFICATIONS:** It shall be the respondent's responsibility to ask questions, request changes or clarifications, or otherwise advise the City of Portland, Procurement Services if any language, specifications or requirements of this RFP appear to be ambiguous, contradictory, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

Every attempt shall be made to ensure that the proposer receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Questions and requests for clarification regarding this RFP must be directed in writing, via email or fax, to the person listed below at least ten (10) calendar days prior to the proposal due date. Therefore, respondents are advised that any questions received less than ten (10) calendar days prior to the RFP opening date may not be answered.

B.J. Gibson, CPPO Procurement Manager
Procurement Services
1120 SW Fifth Avenue, Room 750
Portland, Oregon 97204
barbara.gibson@portlandoregon.gov

Phone: (503) 823-7665
Fax: (503) 279-3990

If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the respondents, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for submitting the proposal, Saturday, Sunday, and legal holidays not included, shall be binding upon the respondent. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

4. **CONTRACT REVIEW:** The Services Contract as attached hereto contains the terms and conditions that will govern this Contract between the City of Portland and the successful proposer. The City of Portland is not inclined to negotiate any portion of this contract, however, if a proposer believes any of the terms and conditions contained in the City's contract are unnecessarily restrictive, limit competition, or would like to request that specific terms and conditions contained in the contract document be considered for negotiation, they shall submit a written request for negotiation to the City at least seven (7) working days prior to the proposal due date as indicated above.

The request shall identify the specific provision the proposer would like to negotiate, an explanation of why the proposer believes the provision should be a negotiable provision, and the suggested revised language. Requests that are not submitted in this format may not be considered. **Requests that state the entire contract be negotiated will not be considered.** If the City decides that a contract term can be changed, or is willing to consider negotiation of a term, an addendum will be issued. If no addendum is issued, the City will not consider negotiation of its standard contract terms.

THIS WILL BE THE OFFEROR'S ONLY OPPORTUNITY TO TAKE EXCEPTION TO ANY OF THE TERMS AND CONDITIONS CONTAINED WITHIN THE CONTRACT AND TO REQUEST THE NEGOTIATION OF PROVISIONS CONTAINED IN THE CONTRACT. **ANY PROPOSAL WHICH TAKES EXCEPTION TO TERMS AND CONDITIONS OF THE SAMPLE CONTRACT THAT HAVE NOT BEEN IDENTIFIED BY ADDENDUM AS SUBJECT TO NEGOTIATION OR WHICH MAKES THE PROPOSAL CONTINGENT UPON ACCEPTANCE OR NEGOTIATION OF OTHER TERMS AND CONDITIONS SHALL BE DEEMED NON-RESPONSIVE AND THE PROPOSAL SHALL BE REJECTED.**

5. **ORAL INSTRUCTIONS:** Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective respondents shall not bind the City. Any changes or revisions to the specifications shall only be binding if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

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6. **COST OF RESPONDING:** This RFP does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.
7. **PERMITS AND LICENSES:** The successful respondent shall include in their proposal the cost to obtain or maintain all permits, certifications and licenses that may be required to perform the contract.
8. **CHANGES TO THIS RFP:** The City reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

SECTION B	PROPOSAL SUBMISSION
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1. **PROPOSALS DUE:** By submitting a proposal, the respondent agrees to provide all services specified within the RFP, at the times and prices indicated, pursuant to all requirements and specifications as contained therein.

Sealed proposals must be received in this office no later than the date shown on the cover of this solicitation. The outside of the envelope shall plainly identify the subject of the proposal, the RFP number and the name and address of the proposer. Responses received after time or date listed herein shall not be considered. Proposals received after the scheduled closing time for filing will be returned to the proposer unopened.

2. **PROPOSAL:** Proposers who intend to submit proposals for both General Banking Services and Merchant Bankcard Services must submit two separate proposals in separate envelopes for each service type, one for General Banking and the other for Merchant Bankcard Services. Each submittal must be in its own sealed envelope, contain the original proposal and complete number of copies referenced on the cover of this RFP. The outside of the envelope and the Cover Letter must be identified with either "General Banking Services" or "Merchant Bankcard Services."

All proposals for General Banking Services must not exceed 50 pages. Appendices, First Tier Subconsultant Disclosure Form, section dividers, title page, and table of contents do not count in the overall page count of the proposal. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

All proposals for Merchant Bankcard Services must not exceed 40 pages. Appendices, First Tier Subconsultant Disclosure Form, section dividers, title page, and table of contents do not count in the overall page count of the proposal. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City requests the use of submittal materials (i.e. paper, envelopes) that contain post-consumer recycled content and are readily recyclable. Submittals shall not include 3-ring binders or any plastic binding, folder, or indexing material. Reusable binding posts, clips, or rings and recycled content paper envelopes or folders are examples of acceptable bindings. Submittals shall be printed on both sides of a single sheet of paper wherever applicable; if sheets are printed on both sides, it is considered to be two pages. Color is acceptable, but content should not be lost by black-and-white printing or copying.

All submittals will be evaluated on the completeness and quality of the content. Only those firms providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

3. **PROPOSAL SUBMISSION:** Security and confidentiality of the transmitted data: For purposes of this proposal submission, the proposer shall submit: one (1) complete original, six (6) hard copies and one (1) complete Redacted for Public Disclosure Copy. If Proposer has no redactions, provide a written statement to that effect. The entire proposal shall be received at the place, and on or before the time and date, specified on the first page of the proposal document.

4. **REDACTION FOR PUBLIC RECORDS:** Any portion of a proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2) and ORS 192.502(4). When preparing its proposal submission, the proposer shall provide one (1) Redacted for Public Disclosure Copy of their proposal with their submission. The Redacted for Public Disclosure Copy shall be a complete copy of the submitted proposal, in which all information that the Proposer deems to be exempt from public disclosure has been redacted. For the purpose of the Redacted for Public Disclosure Copy, "redaction" means "the careful editing of a document to remove confidential references; a revised or educated document thereby obscuring the exempt information but otherwise leaving the formatted document fully intact." Proposers shall include a summary page(s) at the beginning of their Redacted for Public Disclosure Copy detailing the location of all redacted information. When exempt information is mixed with nonexempt information on the same page, the exempt information must be redacted in such a way as to allow the disclosure of the non-exempt information. Should the

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proposer determine that no redaction is required, that statement may be included within the text of the cover letter. If a proposer fails to submit a Redacted for Public Disclosure Copy of their proposal as required, the City may release the proposer's original proposal without redaction.

Please refer to the PROPOSAL TERMS AND CONDITIONS for more information about confidential information within public records.

5. CONFLICT OF INTEREST: A respondent submitting a proposal thereby certifies that no officer, agent or employee of the City has a pecuniary interest in this RFP or has participated in the contract negotiations on the part of the City. Further the respondent certifies that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other respondent on this particular request for proposal, and that the respondent is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

6. PROPOSAL ORGANIZATION: The respondents must provide all information as requested in this RFP. Responses must follow the format outlined in this RFP. Additional materials in other formats or pages beyond the stated page limit(s) may not be considered. The City may reject as non-responsive at its sole discretion any proposal or any part thereof, which is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

A. COVER LETTER [all proposers]: By submitting a response, the proposer is accepting the General Instructions and Conditions of this RFP AND is certifying compliance with all Minimum Requirements as stated in Section I.B of this RFP. A signed copy of Exhibit B, CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP, must be attached to the cover letter.

The Subject Line of the cover letter must identify the services for which you are submitting your proposal, either "General Banking Services", or "Merchant Bankcard Services". The Cover Letter must state the name of the person(s) authorized to represent the proposer in any negotiations, the name(s) of the person(s) authorized to sign any contract that may result, the contact person's name, mailing or street addresses, phone and fax numbers and email addresses. A legal representative of the successful firm, authorized to bind the firm in contractual matters, must sign the Cover Letter and the Proposal response.

B. PROJECT TEAM [all proposers]: Proposer must demonstrate it has the resources and experience to staff appropriately for City's account. Please address the following:

- 1) How long has your organization been providing services to public sector municipal clients?
- 2) As of June 30, 2012:
 - a) How many clients (total) does your firm service in the public sector marketplace?
 - b) How many total employees does your firm have to service the public sector marketplace exclusively?
 - c) How many individuals does your firm employ within the State of Oregon?
 - d) How many public sector clients do you have with total revenues:
 - Over \$1 billion?
 - \$750 million – \$1 billion?
 - \$500 – 750 million?
- 3) In the last five years, how many public sector clients have you won (i.e., clients transferring primary account relationships from a previous firm to your firm), and lost (i.e., clients you elected to rebid but did not successfully retain) with total revenues:
 - Over \$1 billion?
 - \$750 million – \$1 billion?
 - \$500 – 750 million?
 - Oregon public sector/municipal clients?
- 4) Provide in Exhibit E, REFERENCE INFORMATION, contact information for:
 - a) Three (3) current public sector customers, and
 - b) One (1) prior public sector customer you elected to rebid but did not successfully retain, and
 - c) Two (2) public sector customers that converted from another financial institution to yours within the last three (3) years.

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- 5) How do you propose to staff the City's account? Will City be able to participate in selecting staff for the City's account? NOTE: Proposer shall indicate one primary point of contact for the resulting contract.
- 6) Names and resumes of key members who will work on City's account, and:
 - o Their roles and responsibilities on City's account;
 - o Their current assignments and location;
 - o Their relevant experience on similar or related public sector accounts;
 - o Their unique qualifications;
 - o The percentage of their time that will be devoted to the City's account;
 - o Whether they will be employees of your firm.
- 7) If staff for the City's account is not located in Portland or the Pacific Time zone, please address whether your firm has any staff in Portland or in the Pacific Time zone.
- 8) If your RFP response requires the City to transition to your firm, please provide separate answers to the above questions specifically for your dedicated transition team.

C. PROJECT APPROACH [respond only to those sections pertinent to the services your firm is proposing to provide]: Proposer must demonstrate it has a well-developed approach to providing the services being requested. Proposer should provide a clear and concise response to each of the following questions and should clarify in its response any major issues based upon existing information.

1) BANKING SERVICES

On-Line Account Access and Reporting

- a) What are the minimum requirements for City employees to access the bank's Internet portal(s) (browser version, processor speed, memory, etc.)?
- b) What Internet security protocols do you have in place? Is there a second or higher level of authentication when funds are affected? (Yes/No)
- c) How are Internet-passwords assigned and changed?
- d) Can the City self-administer its use of the Internet portal(s)? (Yes/No) If yes, what are the control options (e.g., dual, forced dual)? Can the City set varying security level access to different accounts?
- e) Does your bank have the ability to recognize and accept digital certificates? (Yes/No) If yes, please describe.
- f) Have there been instances where your Internet portal(s) were not functioning? (Yes/No) If yes, please describe frequencies and duration.
- g) What is your bank's contingency plan for providing services in the event that the Internet portal(s) are not functioning properly (from intermittent outage to major disaster)? Please address prior day reporting, controlled disbursement reporting, positive pay exception reporting and decisions, sending fed wires out and reporting fed wires in, initiating ACH transactions, and creating ARP registers.
- h) How many system outages or down times has your system experienced in the past year? How quickly were services restored? Which customers may we contact to verify their experiences?
- i) What is the latest time that the previous day's summary and detail information is available in the morning online? Is it available in both BAI and a printable format? For how many days is it maintained online?
- j) In regard to the bank's Internet services for initiating wires:
 - Can the City send template, freeform and book transfers over the Internet? (Yes/No)
 - Are two individuals required, one for initiation and one for approval? (Yes/No)
 - How far in advance can wires be set up?
 - How quickly are you able to confirm both incoming and outgoing wires?
 - What are the deadlines for correcting errors and how are they handled?
- k) What are the timing requirements for initiation of ACH transactions (both file transmissions and

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Internet based)? When do transfers occur during the day? What are the procedures and deadlines for corrections or cancellations?

- l) What is the latest time the bank's EDI report of current day ACH credit/debit postings to the City's accounts is available? In what formats is the report available (e.g., fax, Internet)?
- m) In regard to your bank's positive pay service:
 - Which check fields are matched?
 - What is the latest time that current day exceptions are reported?
 - Can images of exception items be viewed over the Internet? (Yes/No) If yes, at what time are images available?
 - What time is the decision deadline?
 - Are a certain number of exception items free to the City to compensate for bank encoding errors? (Yes/No) If yes, how many?
- n) When placing a stop payment on-line:
 - What fields are entered?
 - Is the check immediately confirmed as outstanding?
 - Is the stop payment immediately assigned a confirmation number?
 - How long are stop payments in effect?
- o) In regard to your bank's controlled disbursement service:
 - If you have multiple control points, what site are you recommending for the City and why?
 - What detail is reported (holdovers, presentments, adjustments, etc.)?
 - Does your controlled disbursement report distinguish between ACH payments and checks cleared?
 - What is the latest notification time?
 - How many times have you missed the notification time within the past 90 days and what is the average length of time by which you missed the notification?
- p) The bank must provide bank account and client analysis statements monthly:
 - Are statements available over the Internet? (Yes/No) If yes, is that an extra cost option? Can they be downloaded into Excel? (Yes/No) If yes, is that an extra cost option?
 - How soon are statements available after month-end?
- q) In regard to images of paid checks:
 - How soon can they be viewed after being paid?
 - How long is the online image available (including checks that are imaged on CD or returned with the monthly statement)? Is that an extra cost option?
 - Can the image be downloaded and saved?
- r) Do you plan on any upgrades to your online banking system(s) or software in the next 12 months? (Yes/No) If yes, please describe.
- s) Please provide a sample of the following as part of your response to the Project Approach for Banking Services:
 - A detailed monthly bank account statement
 - Internet prior day account summary and detail transaction posting showing ledger balance, collected balance, float balance, etc.
 - Account analysis statement and user guide

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Depository Services

- a) What is the latest time of day deposits may be made for same-day credit?
- b) Can cash vault deposits be dropped off at a satellite location (e.g., a bank branch) and transferred to the cash vault internally by the bank? (Yes/No) If yes, describe the options.
- c) Describe the bank's procedure for requesting change/currency orders (both cash vault and tellers).
- d) In regards to the processing of returned items (both physical and electronic), what is the time elapsed between:
 - First and second presentment
 - Second presentment and sending advice of charge with return items
- e) Describe the process and timing for deposit corrections or other credits or charges to our accounts. When these entries are made, is notification provided to the City? How soon should it be received?
- f) Describe the bank's problem resolution process for missing deposits, deposit amount differences, and account adjustments.
- g) Describe the procedure for ordering supplies (e.g. pre-printed encoded deposit slips, coin rolls, currency straps, deposit bags, etc.). Indicate the turnaround time between ordering and receiving these supplies.
- h) Can the bank provide on-line access to images of deposited items? (Yes/No) If yes, how soon are the images available and how long will they be maintained and available to the City?
- i) Do you offer any benefit programs for City employees (free checking with direct deposit, etc)?

Disbursement Services

What is the turn-around time for providing CDs or online images of paid checks? What is the procedure in the event you cannot provide a readable CD or photocopy in a timely manner?

Earnings Credits

The City intends to pay all fees associated with banking services through compensating balances and quarterly invoicing, or a combination thereof. For purposes of compensating balance, overdraft and negative collected balance calculations, bank must agree to treat City's accounts with the bank on a daily consolidated basis and, so long as City's accounts on a daily consolidated basis maintain a positive ledger balance, no charges may be assessed for individual accounts being in a negative ledger position.

- a) Describe how the bank calculates collected balances. Describe the methodology that would be used to give credit to the City for bank balances.
- b) In addition to the Federal Funds target rate, please provide the City with at least one additional earnings credit rate allowance option from which to choose. (e.g., 91-day Treasury Bills, 3-month LIBOR).
- c) What is the bank's policy regarding overdrafts and negative balances? What is the interest rate charged on negative balances?
- d) Over what period of time (e.g., monthly, annually) will account profitability be reviewed? Is this negotiable? If profitability is reviewed annually and additional profitability exists, are you willing to carry excess earnings forward to the next year? (Yes/No)

Training

- a) Will you provide City employees with on-site product training sessions? Will this be one-time or on an on-going basis? (Yes/No) If yes, please list the titles of training topics that may be provided; no description is necessary.
- b) Do you offer online product education and training programs to City employees? (Yes/No) If yes, please list the classes/courses currently available; no description is necessary.

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Conversion Plan

All proposers must acknowledge and accept that the City reserves the right to establish and adjust the banking services conversion plans or schedules as deemed appropriate by and in the best interest of the City.

- a) Provide an outline of your transition plan for the City assuming conversion begins April 1, 2013. Please address:
 - Necessary actions
 - Responsible parties
 - Target completion dates
 - Number of meetings with Treasury staff
 - Number of meetings with affected bureau staff
- b) Provide a template or brief explanation as to how to effectively manage the opening of new accounts and closing of existing accounts.
- c) Describe setup fees, training fees or other conversion/implementation fees the City will be charged by converting to your bank.
- d) Are you willing to commit to reimbursing the City's costs associated with transitioning the City's account? (Yes/No) If yes, please indicate the monthly reimbursement credit you would be willing to provide the City during the initial four-year contract period.

Other

- a) Describe services, enhancements and/or technologies City should consider to improve operational efficiencies and/or cost profile of its banking services.
- b) Describe your firm's approach to keeping your product line competitive.

2) MERCHANT BANKCARD SERVICES**On-Line Account Access and Reporting**

- a) What are the minimum requirements for City employees to access the bank's Internet portal(s) (browser version, processor speed, memory, etc.)?
- b) What Internet security protocols do you have in place?
- c) How are Internet-passwords assigned and changed?
- d) Can the City self-administer its use of the Internet portal(s)? (Yes/No) If yes, what are the control options (e.g., dual, forced dual)?
- e) Have there been instances where your Internet portal(s) were not functioning? (Yes/No) If yes, please describe frequencies and duration.
- f) The Proposer must provide merchant account statements monthly:
 - Are statements available over the Internet? (Yes/No) If yes, is that an extra cost option? Can they be downloaded into Excel? (Yes/No)
 - How soon are statements available after month end?
 - Are monthly statements available with a summary of sales by card type and detailed fees for each merchant account?
- g) Will the portal support drill-down to individual transactions to enable research into chargebacks?
- h) Do you plan on any upgrades to your on-line system(s) or software in the next 12 months? (Yes/No) If yes, please describe.
- i) Please provide a sample of a detailed monthly merchant bankcard account statement as part of your response to the Project Approach, Merchant Services.

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Merchant Bankcard Services

- a) As a processor, what credit/debit processing networks will your organization utilize in providing processing and settlement? Are different networks used for different types of bankcard processing applications? If so, please explain.
- b) If a bureau transmits data and there is a transmission failure, who is responsible for notification of the failure, how will it be discovered and when will it be communicated?
- c) What backup procedures are available in event of a network failure? How will we be notified of network failure? How many down times has your system experienced in the past year? How quickly were services restored? Which customers may we contact to verify their experiences?
- d) Discuss your operational procedures for settling payment and credit/debit records, identifying what time(s) batches sent to your organization for processing and settlement will be forwarded through the settlement network(s) for final settlement; the actual time after batch submission when money will be transferred or deposited into the City's accounts and; any cutoff times that must be met to insure settlement by the times listed.
- e) Provide a copy of any terms and conditions for credit/debit card processing, chargebacks and security procedures that bureaus will be required to follow as part of your response to Project Approach, Merchant Bankcard Services.
- f) Does your organization have a help desk or 1-800 line support available for use by bureau personnel? Please describe the level of help available through the facility, the hours of operation/availability, and any costs associated with this service.
- g) Does your organization have a department or person dedicated to the issue of PCI compliance? Will your organization work with the City and offer guidance to the bureaus in establishing and maintaining PCI compliance and determining whether 3rd party service providers are validated and registered with PCI-DSS? In the event that data is compromised or exposed, will your organization help guide the City through the forensic investigation and remedial actions required?
- h) Does your organization have the ability to process credit cards using smart phones (either able to read NFC chips in credit cards, attach to a credit card swipe, or key the credit card information into the phone through an app)? Can you process directly or does this require a 3rd party to integrate?
- i) Do you offer any benefit programs for City employees?

Training

- a) Will you provide City employees with on-site product training sessions on an on-going basis? (Yes/No) If yes, please list the titles of training topics that may be provided. No description is necessary.
- b) Do you offer video or web-based product education and training programs available to City employees? (Yes/No) If yes, please list the classes/courses currently available. No description is necessary.

Conversion Plan

All proposers must acknowledge and accept that the City reserves the right to establish and adjust the merchant services conversion plans or schedules as deemed appropriate by and in the best interest of the City.

- a) Provide an outline of your transition plan for the City assuming conversion begins April 1, 2013. Please address the following:

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- Necessary actions
 - Responsible parties
 - Target completion dates
 - Number of meetings with Treasury staff
 - Number of meetings with affected bureau staff
- b) Provide a template or brief explanation as to how to effectively manage the opening of new merchant accounts and closing of existing accounts.
- c) Describe setup fees, training fees or other conversion/implementation fees the City will be charged by converting to your firm.
- d) Are you willing to commit to reimbursing the City costs associated with transitioning the City's account? (Yes/No) If yes, please indicate the monthly reimbursement credit you would be willing to provide the City during the initial four-year contract period.

Other

Describe services, enhancements and/or technologies City should consider to improve operational efficiencies and/or cost profile of its merchant bankcard services.

D. ORGANIZATION [all proposers]: Provide a detailed description of your firm's overall organizational and management structure including integration of all activities required by the scope of work, including but not limited to the following:

- 1) Legal name of the responding firm, street and mailing addresses, telephone number, fax number, and company Internet address.
- 2) Location of all branches and cash vault(s) within City boundaries and any plans for branch closures. Identify the address and hours of the nearest full service branch to the Portland Building (1120 SW 5th Avenue; **banking services only**)
- 3) Ownership structure of firm, including parent company and all subsidiaries and affiliated businesses.
- 4) As part of your response to this section, provide in paper form, one copy of your firm's most recently available quarterly and annual audited financial statements for your firm and annual audited financial statements for any holding companies (if applicable). Also provide an Internet link where your financial information can regularly be accessed.
- 5) Identify your firm's and parent company's financial regulators, net capital position and regulatory capital ratios as of June 30, 2011.
- 6) Provide your firm's and parent company's most current short- and long-term credit ratings.
- 7) Provide your firm's most current Community Reinvestment Act (CRA) rating.
- 8) Provide information pertaining to your firm's current financial condition in the context of current economic conditions, including discussion of any financial challenges that may impact firm's ability to provide the services detailed in this RFP. If challenges exist, what is firm's strategy to address them?
- 9) Describe organizational challenges that may impact your firm's ability to provide the services detailed in this RFP. If firm has completed or proposed a merger with or acquisition of another firm within the past 12 months, include a discussion of the combined entity's surviving systems and impact of any system transitions on delivering the services detailed in this RFP.
- 10) Will any of the services requested in this RFP be provided by subcontractors? (Yes/No) If yes, identify the services, the subcontractor(s), and address how you will ensure the City receives the standard of care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances. Identify how the security of City information shared with subcontractors will be ensured.

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- 11) Has your organization ever been petitioned into bankruptcy or insolvency? (Yes/No) If yes, please explain.
- 12) Describe any litigation or regulatory actions against your firm, in the past five years or pending, resulting from current or past involvement providing banking and/or merchant bankcard services to municipal clients.
- 13) Has your firm or any local service representatives or subcontractors been cited or reprimanded by any regulatory agency within the past five years? (Yes/No) If yes, please describe.

E. COSTING [respond only to those sections pertinent to the services your firm is proposing to provide]: The proposal shall include the contractor's true cost to perform the work irrespective of the City's anticipated cost. Proposed fees for services stated in the Proposal must be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period (if mutually agreed to extend) will be subject to renegotiation at the end of the first four years. Fee changes are to be submitted for consideration 120 days before the end of each contract term. **Utilize form as found in Attachment 2, COSTING TABLE.**

- 1) **BANKING SERVICES:** Please refer to Exhibit C for a description of the City's general banking services.
 - a) **Monthly Deposit Insurance Assessment.** The City maintains 25 demand accounts with a total monthly average balance of \$6,667,140. In addition, one bank account (the General Account) maintains a negative monthly average balance of (\$852,800). Based on this information, what is your total monthly deposit insurance assessment fee? Provide details of your fee structure.
 - b) **Costing Table.** State your fee for each of the services detailed in Attachment 2, COSTING TABLE. Note that the monthly volumes indicated are historical estimates and not guarantees of minimum or maximum future activity. . Ensure all fees associated with general banking services described in this RFP are included. Any fee not fully documented in your proposal will not be allowed during the course of the contract.
- 2) **MERCHANT BANKCARD SERVICES:** Please refer to Exhibit D for a description of the City's merchant bankcard services.

The City recognizes that pricing for credit card processing includes Visa/MasterCard interchange and assessments. Contractor agrees to pass through Visa/MasterCard interchange and assessments directly for each merchant account and, in the event of increases or decreases to Visa/MasterCard interchange and/or assessments at any transaction qualification level, the new rate(s) will be passed through directly.

 - a) **Processing Fee.** Based on the merchant bankcard activity described in Exhibit D, what is your processing fee expressed as a percentage rate, an item charge, or a combination of the two?
 - b) **Costing Table.** State your fee for each of the services detailed in Attachment 2, COSTING TABLE. Ensure all fees associated with merchant bankcard processing described in this RFP are included. Any fee not fully documented in your proposal will not be allowed during the course of the contract.
- 3) **If you are submitting Proposals for both General Banking and Merchant Bankcard, discuss whether your Proposals include discounts for providing all requested services.**

F. DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS [all proposers]: The City values diversity in its workforce and in the workforce of those who contract with the City and has a significant interest in extending contracting opportunities to Minority, Women, and Emerging Small Businesses (M/W/ESB) at both a prime and subcontracting level. The City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City contracts.

All proposers responding to this solicitation shall address the following factors in their proposal:

- 1) Indicate if your firm is currently certified through the State of Oregon as a Minority-owned, Women-owned or Emerging Small Business (M/W/ESB). If not, what percentage of the project will be subcontracted out to M/W/ESBs?
- 2) Identify your current diversity of workforce and describe your firm's commitments to providing equal employment opportunities:

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- Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm.
 - If your firm currently has under-representation of minorities or women within your current workforce, describe how, over time, you propose to remedy this underutilization.
 - Discuss any project-specific opportunities for technical training and/or employment of under-represented groups you would commit to.
- 3) Provide a narrative description of your firm's experience in promoting participation on the part of M/W/ESB enterprises as partners, consultants or suppliers on previous projects.
- 4) List those certified M/W/ESBs with which your firm has had a contractual relationship during the last twelve (12) months.
- 5) If your firm has a supplier diversity program, describe: How long it has been in existence? What were the driving factors for establishing the program? How do you evaluate the credentials of your M/W/ESB suppliers? What results has it had to increase your company's M/W/ESB participation?
- 6) Discuss any innovative or particularly successful measures your firm has undertaken to work with M/W/ESBs on other projects.
- 7) Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship with certified M/W/ESB firms:
- How do the M/W/ESBs that you partner with benefit from the relationship with your firm?
 - Describe what you consider your first-tier diversity solution in which you utilize a certified M/W/ESB firm as the prime contractor and your company works as an alliance partner.
 - Describe how your firm could increase the utilization of certified M/W/ESB firms in service of this City contract if you are the winning proposer?
- 8) Describe your outreach plan to M/W/ESBs for this project. If your firm is not utilizing existing relationships as described above or is able to undertake *additional* outreach to improve opportunities for M/W/ESBs, describe your outreach program or plan for obtaining maximum utilization of M/W/ESB firms on this project. Proposers not drawing on existing relationships with M/W/ESBs should describe what outreach efforts will be pursued in order to make contracting opportunities available to M/W/ESBs.
- 9) M/W/ESB compliance and reporting: If your company will be utilizing M/W/ESBs on this project, please list those firms and detail their role within the present solicitation. The City will enforce all EEO/Diversity and M/W/ESB commitments submitted by the successful proposer. Proposers shall identify the following:
- The name of ALL subcontractors on the project.
 - The names of all M/W/ESB firms. If firms have more than one certification (ESB and MBE) note that on the form.
 - The proposed scope or category of work for each subcontract.
 - If the proposer will not be using any subcontractors, the proposer will indicate "NONE" with the proposal.
- 10) Specific to the Portland metropolitan area:
- Describe your firm's workforce demographics and the measurable steps taken to ensure a diverse workforce.
 - Describe your firm's employee compensation structure, including policies regarding living wages, healthcare coverage, employee leaves, dependent care, etc.
 - Describe your firm's commitment to corporate citizenship and community service, including participation in charitable programs, scholarships, etc.
 - Describe your firm's incentives to employees for community service and the rate(s) of employee participation.
 - Describe the measurable steps your firm has taken to foster economic development, including small business lending programs, and their utilization rates.
 - Describe the measurable steps your firm has taken to support homeownership, including foreclosure prevention programs, and their utilization rates.
 - Describe your firm's programs targeted to the non-banked and under-banked populations, including financial literacy programs, and their utilization rates.

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7. **WITHDRAWAL, MODIFICATION OR ALTERATION OF PROPOSAL:** Prior to the RFP opening, changes may be made provided the change is initialed by the respondent or authorized agent. Also, a proposal may be withdrawn upon written request of the respondent prior to the scheduled closing time for accepting proposals. Negligence on the part of the respondent in preparing their proposal confers no right to withdraw their response after the scheduled closing time for filing proposals.

As a result of any of these actions, if the intent of the respondent is not clearly identifiable, the interpretation most advantageous to the City will prevail.

8. **LATE PROPOSALS:** Proposals received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

9. **CANCELLATION:** The City of Portland reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

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PART III PROPOSAL EVALUATION

SECTION A PROPOSAL REVIEW AND SELECTION

1. **EVALUATION CRITERIA:** Each proposal shall be evaluated on the following evaluation criteria, weighting, and maximum points, as follows:

Criteria	Maximum Score
A. Cover Letter	0
B. Project Team	15
C. Project Approach	20
D. Organization	10
E. Costing	35
F. Diversity in Employment and Contracting Requirements	20
TOTAL	100

2. **PROPOSAL REVIEW:** A selection review Committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals, each of the Committee members will evaluate each proposal based upon the criteria listed above. The Committee may seek the assistance of outside expertise, including, but not limited to, technical advisors. Separate proposals must be submitted for each service being requested. For contracts over \$500,000, the Committee's recommendation will be submitted to the Portland City Council for approval. The City has the right to reject any or all proposals for good cause, in the public interest.

The proposal evaluation process consists of a series of Evaluation Levels that will lead to the identification of a finalist. Each proposal response, whether for General Banking Services or for Merchant Bankcard Services, will be evaluated in accordance with the following evaluation plan:

Evaluation Level #1 – Preliminary Review: This step will assess whether Proposers meet the mandatory and responsiveness requirements outlined in this RFP including the Minimum Requirements as stated in Part I, Section B(1). The proposer's signed copy of Exhibit B, CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP, will also be evaluated as part of this review. Failure to meet the mandatory and responsiveness requirements within Level #1 shall disqualify a Proposer from moving to Level #2.

Evaluation Level #1 Evaluation Criteria		
Criteria	Maximum Evaluation Level #1 Score	Point Distribution by Subsection
Cover Letter	0	P/F
Exhibit B	0	P/F

Evaluation Level #2 – Written Scoring: Responses meeting the mandatory and responsiveness requirements in Evaluation Level #1 will be further evaluated as part of Evaluation Level #2. One hundred possible points are available at Level #2. The Committee will require a minimum of twenty (20) working days to evaluate and rank the proposals. This step consists of a detailed review of the responses as follows:

Evaluation Level #2 Evaluation Criteria		
Criteria	Maximum Evaluation Level #2 Score	Point Distribution by Subsection
B. PROJECT TEAM	15	
C. PROJECT APPROACH	20	

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D. ORGANIZATION	10	
E. COSTING	35	
F. DIVERSITY IN EMPLOYMENT & CONTRACTING REQUIREMENTS	20	
M/W/ESB		15
Portland-specific metrics		5
Total:	100	

For Evaluation Level #2, the sum of all points earned by a Proposer from all proposal evaluators will be the Total score for Level #2.

The Evaluation Committee may focus on only a limited number of proposals by developing a "short list" based on the scores from the written proposals or may proceed directly to contract negotiation and award. The number of proposals on the "short list" depends on whether the Committee believes such proposals have a reasonable chance of leading to the award of a contract. If the Evaluation Committee develops a "short list", the scores from Evaluation Level #2 will be held until completion of the Evaluation #3 scoring to become part of the Total Overall Score.

Evaluation Level #3 – Oral Scoring: If oral interviews are determined to be necessary, this next step will consist of oral presentations and further clarification of the Proposer's response. Proposers invited to participate in Evaluation Level #3 will be given additional information regarding the City's desired content a reasonable time before the scheduled Evaluation Level #3 presentations are held. The scoring of the oral interviews will be as follows:

Evaluation Level #3 Evaluation Criteria	
Criteria	Maximum Evaluation Level #3 Score
Content of Oral Presentation	100
Total:	100

Following completion of the Evaluation Level #3 scoring, each Proposer's Evaluation Level #3 score will be added to their Evaluation Level #2 score to determine their Total Overall Score. The highest scoring Proposal, based on their Total Overall Score, may be identified as the Finalist.

The selection of the Finalist shall be based on negotiated costs and conformance to the City's terms and conditions. Negotiations will follow with the Finalist, and if successful, the contractor and City will enter into a service contract for the work. If the contract with the Finalist cannot be reached within a time period deemed reasonable to the City, the City may elevate any of the respondents that passed Level #1.

The City's choice of how to proceed, its decision to begin or terminate negotiations, its determination of a reasonable time, its decision to open negotiations with a lower scoring Proposer, and any decision that a solicitation should be cancelled are all within the City's sole discretion.

Proposers who are eliminated at any stage of the evaluation process will be notified of their elimination. At that time, Proposers who wish to protest their elimination shall file a protest within seven (7) calendar days of the notice. Following final selection, if any, the City will issue a Notice of Intent to Award a contract to the Successful Proposer.

3. CLARIFYING PROPOSAL DURING EVALUATION PERIOD: During the evaluation process, the City has the right to require any clarification or change it needs in order to understand the respondent's view and approach to the project and scope of the work. Any changes to the proposal will be made before executing the contract and will become part of the final contractor contract.

4. PROPOSALS ARE PUBLIC RECORDS: All information submitted by proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which proposer requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the proposer claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4).

If a request to inspect the proposal is made, the City will notify the proposer of the request. If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah

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County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend and indemnify the City for all costs, expenses and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposer's records.

5. LOCAL CONTRACTING: The City: prefers services that have been manufactured or produced by a local business if price, fitness, availability and quality are otherwise equal; desires to employ local businesses in the purchase, lease, or sale of any personal property, public improvements or services; and wants the residents of the State of Oregon and SW Washington to benefit from optimizing local businesses and services, and the local employment opportunities they generate.

6. AWARD REVIEW AND PROTEST PROCEDURE REVIEW: ORS 279B.060(5)(a) provides: "Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation, but the contracting agency shall record and make available the identity of all Proposers as part of the contracting agency's public records from and after the opening of the proposals. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued."

REVIEW: Following the Notice of Intent to Award, the public may view proposal documents, but the City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act. Proposers shall designate information they consider exempt or conditionally exempt from disclosure by stamping the word "Confidential" on such documents or by otherwise indicating the documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required after appeal. The City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the Evaluation Committee, subject to the City's authority to withhold documents, as stated above.

PROTESTS: Proposers are permitted to challenge the City's decision to exclude the Proposer from the next step in the evaluation process and/or to award a contract. Depending on the nature of the protest, Proposers may wish to review Portland City Code (PCC) 5.33.720, 5.33.730, and 5.33.740 regarding protest procedures, all of which may be found online at the City Auditor's website.

Procurement Services shall post a Notice of Intent to Award to the successful Proposer. The Notice of Intent to Award shall be posted on the Bureau's Internet Web Page.

A Proposer who is adversely affected or aggrieved by the award of contract or evaluation decision shall have seven (7) days after the issuance of the "Notice" to file a protest. The contents to be included in the protest are found in PCC 5.33.740. A protest is not valid if the Proposer would not be eligible to be awarded a contract if its protest were upheld. The Chief Procurement Officer will review any protest and issue a written decision. Whether there are further appeal processes depends on the discretion of the Chief Procurement Officer.

Protests must be timely and must include all legal and factual information regarding the protest, and a statement of the form of relief requested. Protests received later than specified or from other than the Proposer who would receive the contract if the protest was successful will not be considered. The exercise of judgment used by the evaluators in scoring the written proposals and interviews, including ~~the use of outside expertise, is not grounds for protest.~~

SECTION B

CONTRACT AWARD

1. CONTRACTOR SELECTION: The City will award a contract(s) to the contractor(s) whose proposal is considered and evaluated as being the most advantageous to the City. The contractor selection process will be carried out under Portland City Code, Chapter 5.33.

2. CONTRACT DEVELOPMENT: The RFP and all responses provided by the contractor may become a part of the final contract. The form of contract shall be the City's Contract for Services.

3. NOTICE OF INTENT TO AWARD: A notice of intent to award posted on the Procurement Services website does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before

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providing any equipment, suppliers and/or services, the contractor must receive a properly authorized purchase order or contract.

4. ASSIGNMENT OF ANTI-TRUST RIGHTS: By entering into a contract, the Contractor, for consideration paid to the contractor under the contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any services provided to the Contractor by any person, which services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this Contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action, which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- b. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- c. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the city of Portland its proportionate share thereof, if any, assigned to the State hereunder.

5. FAILURE TO EXECUTE CONTRACT: Failure on the part of the respondent to whom a contract is awarded to execute the Contract and deliver the Contract and required documents with the required bonding and insurance certificates within twenty (20) calendar days shall be just cause for cancellation of the award and withdrawal of the Contract. Award may then be made to the next scored proposer, or the work may be re-advertised, or otherwise as the City may decide.

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EXHIBIT A
GENERAL BANKING / MERCHANT
BANKCARD SERVICES CONTRACT

[NOTE: THE CITY WILL EXECUTE TWO SEPARATE CONTRACTS;
ONE FOR EACH OF THE SERVICES REQUIRED]

CONTRACT NO. _____

This Contract, made and entered into this _____ day of _____, 2013, by and between XXXXX a XXXXX (state) XXXXX Corporation, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties."

WITNESSETH:

The Parties hereto mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK: Contractor shall provide General Banking Services and/or Merchant Bankcard Services for the City of Portland as follows:

[Identify one]

- **General Banking Services** – depository accounts and services, disbursement services, branch services, online account access and reporting, and other banking services.
- **Merchant Bankcard Services** – electronic payment card processing, online account access and reporting, and other merchant bankcard services.

All services shall be performed in accordance with Attachment 1 to this Contract. The Contractor shall assure that the City receives the standard of care, skill and diligence that would ordinarily be used by similar professionals in this community in similar circumstances

2. EFFECTIVE DATE AND DURATION: The initial term of this Contract shall begin on April 1, 2013 and shall expire on March 31, 2017 unless terminated sooner as provided herein. The Parties may agree, by mutual consent, to extend this Contract for an additional one year period. At least thirty (30) days prior to the expiration of the initial term, or extension, the Parties shall commence discussions if they desire to extend the Contract. The Contractor shall provide a written extension proposal within fifteen (15) calendar days following the City's request for such a proposal. However, nothing binds or requires either Party to extend this Contract. The total term of this Contract shall not exceed five (5) years.

3. CONSIDERATION: The City agrees to pay Contractor for General Banking Services a sum not to exceed \$200,000.00/year for provision of and completion of the work. Interim payments shall be made to the Contractor according to the costing schedule identified in Attachment 2.

OR

3. CONSIDERATION: The City agrees to pay Contractor for Merchant Bankcard Services a sum not to exceed \$2,500,000.00/year for provision of and completion of the work. Interim payments shall be made to the Contractor according to the costing scheduled identified in Attachment 2.

4. INVOICING: The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Contractor shall submit billings in a timely fashion. Invoices shall be sent to:

City of Portland
Public Finance and Treasury Division
1120 SW Fifth Avenue, Room 1250
Attn: City Treasurer
Portland, OR 97204

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Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the services to the City in electronic or paper form. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

5. INVOICE PAYMENT: Billing details may be agreed upon between the Parties. Invoicing for services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of the billed services.

It is the City's policy to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at: <http://www.portlandonline.com/omf/index.cfm?c=26606&a=409834>. Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered or goods provided directly into vendor accounts with financial institutions. All payments shall be in United States currency.

6. INSURANCE – PROOF OF COVERAGE: The insurance requirements are as follows.

Commercial General Liability Insurance – Public Liability and Property Damage

The Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Contractor's work under this Contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation

Prior to the performance of any work under a Contract awarded by the City, the Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the Contract.

Technology Errors and Omissions

Liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A- or better and shall include the following coverage parts:

Technology Products & Services E&O -Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of Products, Services and Licensed Programs under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$ 1,000,000.00 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Contract. Evidence of coverage must be sent to the City for three years following termination of this Contract.

The coverage shall name the City as an additional insured and shall indemnify the City for loss for any errors or omissions on the part of the Contractor, its agents, officers, employees, subcontractors or any other authorized person, regardless of any negligence or lack thereof.

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The Insurance Policy shall also be endorsed as follows: The City of Portland, Oregon is named as an additional insured but only as respects the vicarious liability of such person or entity for the Wrongful Act of the Insured otherwise covered by this Insurance.

Certificate of Insurance

As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City with the return of the signed Contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts.

7. INDEPENDENT CONTRACTOR STATUS: The Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

8. NO THIRD PARTY BENEFICIARIES: Contractor and City are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

9. SUCCESSORS IN INTEREST: The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

10. SURVIVAL: The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

11. COMPLIANCE WITH APPLICABLE LAW: In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant Contract: Appendix A as attached hereto.

The Contractor must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

Certification as an EEO Affirmative Action Employer: The Contractor is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland through XXXXX. The certification will be maintained throughout the duration of the Contract.

Non-Discrimination in Employee Benefits (Equal Benefits): The Contractor has complied by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: XXXXX, Option XXXXX.

Business License: The Contractor license # XXXXX is in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Contract.

12. GOVERNING LAW / VENUE: The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Contract the Contractor agrees to in personam jurisdiction of the Oregon courts.

13. NONDISCRIMINATION: Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

14. INDEMNITY: Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Contract. Contractor is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

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15. ASSIGNMENT OF ANTI-TRUST RIGHTS: By entering into a contract, the Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any services provided to the Contractor by any person, which services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this Contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

16. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

17. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of services.

18. ASSIGNMENT AND SUBCONTRACTING: This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

19. LIENS: Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

20. SUSTAINABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the Contractor is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

21. FORCE MAJEURE: Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the Party's reasonable control including, but not limited to: acts of God; fire, flood,

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earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

22. AMENDMENTS: All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute amendments to this Contract without the City's further approval, provided such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

23. NON-WAIVER: No waiver, consent, modification, or change of terms of this Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

24. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES: The Contractor shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the services. This includes planning for and integration of the services provided under this Contract with those provided by others. Further, Contractor shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the services. Contractor's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

25. ACCESS TO RECORDS: The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

26. AUDITS: The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by the Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

27. EMPLOYEES NOT TO BENEFIT: No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

28. CITY FURNISHED PROPERTY: No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

29. ADDITIONAL SERVICES The City reserves the right to procure additional services for additional City bureaus beyond those stated in the RFP documents at the same prices submitted by the Contractor. Price increases will be allowed, but shall be in keeping with Attachment A of this Contract. Such additional services are not guaranteed and will be made at the City's sole discretion based upon the requirements of City bureaus.

30. RIGHT TO CHANGE: The City reserves the right to order changes to the services outlined herein. The City and the Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the Parties.

31. NOTICE: Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

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CONTRACTOR:XXXXX
XXXXX
XXXXX

Attn: XXXXX

CITY:City of Portland
Public Finance and Treasury Division
1120 SW Fifth Avenue, Room 1250
Portland, OR 97204

Attn: City Treasurer

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section.

32. EARLY TERMINATION OF CONTRACT: The City and the Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured the breach within thirty (30) days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

33. SUSPENSION OF THE WORK: The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

34. PAYMENT ON EARLY TERMINATION: In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the Contractor for services in accordance with the Contract prior to the termination date and delivered to City provided that such services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor for services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Contractor's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for services that the City cancels during the term of this Contract.

35. REMEDIES: In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the Contractor, then the City may procure services outstanding from another contractor and the Contractor shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available or may become available.

36. PERMITS AND LICENSES: The Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

37. INTELLECTUAL PROPERTY: The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:

a. Copyright: All work products of the Contractor which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.

b. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

38. SPECIFICATIONS: This Contract authorizes the Contractor to provide and the City to procure those services, and establishes the terms and conditions for the City to obtain said services from the Contractor. Services to be provided under this Contract are described in the Attachments hereto. The Contractor shall provide to the City those services described in the attachments in accordance with the prices shown herein. Payment shall be made only in accordance with the payment schedule identified herein.

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39. WARRANTY: The Contractor represents and warrants that (i) Contractor shall perform all Services set forth herein in a good and workmanlike manner, in conformance with the Specifications and requirements of the Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) Contractor warrants that each of Contractor's employees assigned to perform Services has the proper skill, training, and background to be able to perform Services in a competent, timely, and professional manner and that all Services shall be so performed; and (iii) Contractor shall, at all times during the term of the Contract, maintain and keep current all licenses and certifications required to perform the work set forth in the Contract.

Contractor represents and warrants that it is in compliance with, and for the duration of the Contract shall remain in compliance with, the standards and requirements of ORS 279.835 (4).

40. PROPRIETARY AND CONFIDENTIAL INFORMATION: The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract. All information submitted by Contractor shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions for which Contractor requests exemption from disclosure consistent with federal or Oregon law. Any portion that the Contractor claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, 192.502, 646.461 or other state or federal law. Documents with Copyright must be clearly marked.

Contractor agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Contract and shall not disclose any such information to third parties.

41. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

42. ENTIRE CONTRACT: This Contract and its Attachments represent the entire Contract between the Parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the Parties with respect thereto, whether written or oral.

ARTICLE IV. This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the Parties hereto that:

1. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the Parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.
2. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.
3. The Contractor certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the proposal or resulting Agreement, that the proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.
4. The City and Contractor may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be executed by their duly authorized representative(s), all on the day and year first above written.

XXXXXX

by _____

Name, Title and Date

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Approved as to form:

City Attorney

Address: XXXXX

XXXXX

Telephone No: XXXXX

Fax No: XXXXX

CITY OF PORTLAND

by

Chief Procurement Officer

Date

INITIALS: bg

DATE: 7/29/2012

ATTACHMENT 1 TO CONTRACT TECHNICAL REQUIREMENTS

1. **MINIMUM REQUIREMENTS:** Firms submitting proposals must as of the date of their proposal and for the term of any contract(s) agree with and satisfy the Minimum Requirements as identified herein, and must execute Exhibit B, CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP.

- A. **ALL SERVICES:** To be considered for selection for ANY or ALL services described in this RFP, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):
 - 1) Agree that proposed fees for services stated in the Proposal be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period (if mutually agreed to extend) will be subject to renegotiation at the end of the first four years. Fee changes are to be submitted for consideration 120 days before the end of each contract term.
 - 2) Agree that Proposals shall constitute irrevocable offers to sell to City the services described in the attached specifications for a period of 120 days or until a contract has been approved by Portland City Council, whichever is earliest.
 - 3) Be in legal compliance with all applicable laws, rules, regulations and ordinances of the City, State of Oregon, and the United States.
 - 4) Have all required licenses, bonding, facilities, equipment and trained personnel necessary to perform all services as required.
 - 5) Agree to submit quarterly and annual audited financial statements for the bank or firm, and annual audited financial statements for any holding companies (if applicable), as soon as publicly available.
 - 6) Identify at least one dedicated service representative and one back-up service representative in the local area or Pacific time zone as the City's principal contacts, able to respond to issues affecting the City's account within 24 hours. Individuals must have sufficient technical expertise, authority and command the resources necessary to resolve complex issues, including matters involving online portals and data availability.

- B. **BANKING SERVICES:** To be considered for selection for General Banking Services, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):
 - 1) Be capable of providing all general banking services outlined in this RFP.
 - 2) Be a member of the Federal Reserve System and have access to all its services, including the Fed Wire System.
 - 3) Be insured by the FDIC.
 - 4) Be a federally or State of Oregon chartered financial institution and member of the Oregon Automated Clearing House Association.
 - 5) Be a qualified depository for public funds as prescribed by ORS 295 and as identified by the Oregon State Treasurer.
 - 6) Provide for the collateralization of all funds deposited to all bank accounts within the scope of this RFP and be capable of meeting all collateralization requirements, including pledging collateral increases, prescribed by ORS 295 (as in effect on or after April 1, 2013).
 - 7) Notify City in writing upon any requirement by the Oregon State Treasurer to increase its required level of collateral to 110%.
 - 8) Be able to transfer funds to and from the Local Government Investment Pool managed by the Oregon State Treasurer.

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- 9) Have a full service branch office located in close proximity to the Portland Building (1120 SW Fifth Avenue, Portland, OR 97204), branch offices throughout City for routine deposits by City Bureaus and a central pick-up point or cash vault within City that can accommodate the security, deposit volume and change order demands associated with City's accounts.
- 10) Be in compliance with all regulatory requirements, including capital ratios, as required by all its regulatory oversight agencies.
- 11) Be in compliance and in good standing with the Community Reinvestment Act.
- 12) Have at least ten (10) years' experience providing general banking services to major public sector clients similar in size to City.
- 13) Agree to be compensated with compensating balances and quarterly invoicing, or a combination thereof, as determined by City. For purposes of compensating balance, overdraft and negative collected balance calculations, bank must agree to treat City's accounts with the bank on a daily consolidated basis and, so long as City's accounts on a daily consolidated basis maintain a positive ledger balance, no charges may be assessed for individual accounts being in a negative ledger position.
- 14) Not open or maintain any bank accounts for any entity representing itself as an agency or entity of City or using City's tax ID numbers without the express written permission of the City Treasurer.
- 15) Enforce maximum dollar limits placed by the City Treasurer on checks drawn on any account created by this RFP and must have the technology to enforce such limits.
- 16) Cash for any City employee, without a fee, checks drawn on any positive pay account created by this RFP at any branch. Reasonable identification, including a City of Portland employee identification card (with photo), may be required of the presenter.
- 17) Provide an online system of placing stop payments with confirmation.
- 18) Be able to transmit direct deposits through the ACH system from files provided by City (through bank's portal and files created through SAP) with next day settlement, notify City of failed deposits or pre-notes, and return funds immediately upon notice of failure.
- 19) Be able to receive and process CCD, CCD+, PPD+ and CTX ACH debits and credits originated outside the City, ACH batches created through City-designed websites used by customers to pay bills (including recurring ACH), and ACH batches created through the bank's online portal.
- 20) Have a system to filter unauthorized ACH debits to all City accounts.
- 21) Be able to consolidate online bill payments and create and make available through secure means a file from payments made through consumer service providers (e.g., CheckFree, Metavante) and routed to the MasterCard RPPS or Visa ePay systems. Bank must provide a file format that meets Water Bureau requirements.
- 22) Automatically return as stale dated any check that has a past issue date of six months or greater on any account created by this RFP.
- 23) Provide for a returned check processing system that re-deposits returned checks once, sends actual physical returned items to City, charges the account that was deposited, and sends an advice of charge with an itemized listing for each account to City.
- 24) Be able to accept electronic desktop deposits.
- 25) Be able to accept and process a deposit file containing electronic check images (configured to the bank's specifications) created by City's own equipment and securely transferred where eligible checks are converted to ACH debits.
- 26) Have online capability for City to initiate both repetitive and non-repetitive wire transfers with confirmed status within 15 minutes of secondary authorization.

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- 27) Have a positive-pay checking account system with payee validation and online exception reporting, and be able to accept positive-pay check data online and from files created (to bank specifications) through SAP.
- 28) Provide online capability to view paid checks from positive-pay checking accounts.
- 29) Provide a daily EDI report (with addenda) of ACH transactions in CCD, CCD+, PPD+ and CTX.
- 30) Have controlled disbursement check clearing capabilities with online reporting of the checks-paid amount in the early morning (Pacific Time) of the day the account is debited.
- 31) Provide online daily account statements of prior day activity in both printable format and BAI format (for manual downloading and posting to SAP) that provide detailed transactions and a summary of each account's daily ledger balance, available balance, and the total ledger balance for all accounts.
- 32) Have a procedure for ordering supplies, e.g., pre-printed encoded deposit slips, checks, coin rolls, currency traps, deposit bags, etc.

C. MERCHANT BANKCARD SERVICES: To be considered for selection for Merchant Bankcard Services, firms submitting proposals must as of the date of their proposal and for the term of any contract(s):

- 1) Have at least ten (10) years' experience processing merchant bankcard payment records transmitted for processing and settlement from major credit/debit card processing networks.
- 2) Be PCI-DSS compliant.
- 3) Be able to accept payment from bankcards directly from City applications and/or third party vendors on behalf of City as detailed in Exhibit D.
- 4) Provide no later than one-day settlement for all proceeds deposited into City bank accounts once payments are sent (batched) by City applications. Settlement dollars must at all times reside in City bank accounts.
- 5) Provide daily gross settlement and monthly debiting of fees for each merchant account.
- 6) Be capable of submitting a separate monthly invoice for bankcard fees for each merchant account for City to process and pay through Accounts Payable.
- 7) Provide online monthly account statements reflecting all activity and fees.
- 8) Provide online access for City to monitor detailed daily and monthly merchant bankcard sales and fees (at batch, merchant account, bureau and corporate levels) and research chargebacks.
- 9) Provide an online reporting tool with a security hierarchy limiting reporting to individual merchant accounts or groups of merchant accounts.

2. WORK PERFORMED BY THE CITY: Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. The Office of Management and Finance, Treasury has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

3. TIME IS OF THE ESSENCE: Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Contractor does not meet the established delivery dates or other deadlines and Contractor has failed to cure such breach within fifteen (15) days of written notice by the City, the City may obtain the undelivered non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the Contractor. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

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4. ESCALATION/DE-ESCALATION: Initial Contract prices shall be as established herein. The City may consider pricing revisions proposed by Contractor after the fourth year of the contract period; however, the Contractor shall propose such revised pricing at least 120 days prior to the desired effective date for consideration by the City. Any proposed price increases must be fully documented and justified by Contractor. Acceptance of Contractor's proposed price revisions shall be at the City's sole discretion.

Contractor shall submit any proposed pricing revisions in writing to the Project Manager for consideration at least 120 days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Contractor's original proposal, the Contractor shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Price adjustments will only become effective by fully executed amendments.

ATTACHMENT 2 TO CONTRACT COSTING TABLE

[Note: INSERT CONTRACTOR'S FINAL PRICING]

The following table is provided as part of the COSTING as required in Part II, Section B.6.E for the proposal response. The proposal shall include the contractor's true cost to perform the work irrespective of the City's anticipated cost. Proposed fees for services stated in the Proposal must be guaranteed for the initial four-year period. Fees and terms for the additional one (1) year period (if mutually agreed to extend) will be subject to renegotiation at the end of the first four years. Fee changes are to be submitted for consideration 120 days before the end of each contract term. **Proposers will respond only to those sections pertinent to the services your firm is proposing to provide.**

1. BANKING SERVICES: Please refer to Exhibit C for a description of the City's general banking services.

- a) Monthly Deposit Insurance Assessment. The City maintains 25 demand accounts with a total monthly average balance of \$6,667,140. In addition, one bank account (the General Account) maintains a negative monthly average balance of (\$852,800). Based on this information, what is your total monthly deposit insurance assessment fee? Provide details of your fee structure.
- b) Costing Table. State your fee for each of the services detailed below. Note that the monthly volumes indicated are historical estimates and not guarantees of minimum or maximum future activity. Ensure all fees associated general banking services described in this RFP are included. Any fee not fully documented in your proposal will not be allowed during the course of the contract.

	Monthly Volume	Per Item Fee	Total Fee
General Account Services			
Account Maintenance – checks returned with statement	19		
Account Maintenance – non return of checks	4		
Account Maintenance – zero balance	4		
Bank Internet Portal and Reporting			
Previous day – accounts reported	11		
Previous day BAI monthly base	1		
Previous day detail items	10196		
Debits posted (other than checks)	300		
Credits posted (non-electronic deposits and credits)	1690		
Credits posted – electronic	2248		
Monthly subscription per account for EDI report	3		
Detail items in EDI report	905		

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Addenda items in EDI report	393
Wire detail report monthly subscription	1
Wire detail report per items accessed	42
Domestic wire out	33
Wire – book transfer	26
Domestic wire in	24
Stop payments	8

Provide any further details regarding fee structure and features for the bank's Internet portal and reports available on the portal.

Branch Deposit and Check Processing Services

Unencoded checks – on us	2563
Unencoded checks – local clearing house	7349
Unencoded checks – transit	2576
Unencoded checks – region	4254
Cash deposited & verified by teller	\$217,060

Provide any further details regarding fee structure and features for the bank's branch deposit and check processing services.

Cash Vault Services

Unencoded checks – on us	133
Unencoded checks – local clearing house	374
Unencoded checks – transit	136
Unencoded checks – region	269
Cash deposited	\$522,983
Accounts w/duplicate receipt mailed to Treasury	3
Deposit adjustment	8

Provide any further details regarding fee structure and features for the bank's cash vault services.

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Desktop Deposit

Checks – on us	75
Checks – not on us	426
Desktop deposits	87

Provide any further details regarding fee structure and features for the bank's desktop deposit services.

Electronic File Deposits

Checks – on us	1325
Checks – not on us	6920
Deposit adjustments	2
Checks (on us) same day conversion to ACH	3798
Checks (not on us) one day conversion to ACH	18896

Provide any further details regarding fee structure and features for the bank's electronic file deposit services.

Return Checks

Check returned (not electronic)	46
Returned check redeposited (not electronic)	35
Electronic check corrected but returned to City unpaid	1
Electronic check repaired as ACH item	1
Electronic check repaired as substitute check	9
Electronic check re-presented	16
Electronic check returned to City (no correction)	11

Provide any further details regarding fee structure and features for the bank's check return services.

Coin & Currency

Coin/Currency furnished by branch	\$4,824
Coin/currency orders at branch	9
Per role charge for rolled coin by branch	246

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Provide any further details regarding fee structure and features for the bank's coin and currency services.

Controlled Disbursement (Accounts Payable)

Account maintenance monthly	1
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Reporting on bank portal monthly subscription	1
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Provide any further details regarding fee structure and features for the bank's controlled disbursement services **and** any differences in fees not captured below in Positive Pay.

Positive Pay

Checks paid – full reconciliation (incl. AP)	5973
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Payee validation per check issued (incl. AP)	5967
--	------

ARP monthly base with full reconciliation (incl. AP)	8
--	---

Full reconciliation per check issued (incl. AP)	5967
---	------

Sort checks in serial order	529
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ARP checks returned with statement	598
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Checks manually entered on bank portal	130
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Exceptions reported by bank	13
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Exception image on bank portal	5
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Outstanding checks on file over 60 days (incl. AP)	1562
--	------

ARP accounts with paper statement (incl. AP)	8
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Provide any further details regarding fee structure and features for the bank's positive pay services.

Check Imaging

Monthly maintenance for payroll CD	1
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Monthly maintenance for controlled disbursement CD (AP)	1
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CD with check images (payroll & AP)	2
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Payroll items imaged on CD	1578
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AP items imaged on CD	3690
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Provide any further details regarding fee structure and features for the bank's check imaging service.

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ACH Services

Monthly base fee for accounts	8
One day items – bank Internet portal	456
Two day items – bank Internet portal	1961
Same day items – direct file	22
One day items – direct file	2032
Two day items – direct file	23699
Batches processed – bank Internet portal	11
Batches processed – direct file	51
Recurring ACH auto pay items - direct file	3096
Received items (not originated by City)	410
Monthly maintenance returns/NOC (per account)	9
Items returned or NOC – bank portal	159
Returned items – bank transmitted advice	160
NOC items – bank transmitted advice	26
Returned items – bank faxed advice	3
Fax fee for ACH reports (per page)	85
Delete ACH item	1
Reverse ACH item	1
Fraud filter monthly base (per account)	25
Fraud filter monthly base reported on portal (per account)	8
Fraud filtered items for review on bank portal	11

Provide any further details regarding fee structure and features for the bank's ACH services.

Consolidated Internet Bill Payments

Monthly maintenance fee	1
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Per item charge 15639

Transmissions 21

Provide any further details regarding fee structure and features for the bank's consolidated Internet bill payment services including the cost of implementation.

2. MERCHANT BANKCARD SERVICES: Please refer to Exhibit D for a description of the City's merchant bankcard services.

The City recognizes that pricing for credit card processing includes Visa/MasterCard interchange and assessments. Contractor agrees to pass through Visa/MasterCard interchange and assessments directly for each merchant account and, in the event of increases or decreases to Visa/MasterCard interchange and/or assessments at any transaction qualification level, the new rate(s) will be passed through directly.

- a) Processing Fee. Based on the merchant bankcard activity described in Exhibit D, what is your processing fee expressed as a percentage rate, an item charge, or a combination of the two?
- b) Costing Table. State your fee for each of the services detailed below. Ensure all fees associated with merchant bankcard processing described in this RFP are included. Any fee not fully documented in your proposal will not be allowed during the course of the contract.

General Account Services

Account Maintenance – specify terms, i.e., per merchant account, etc.; monthly/annual, etc.

Set-up fees for new merchant accounts or services

Transaction Fees

Debit card transaction fees

Third party transaction fee (e.g. American Express)

Visa/MasterCard fees, other than Interchange, including but not limited to:
--

Assessment

Sales transaction

Network

Access

Network access authorization

Network access settlement

Acquirer processor credit

Acquirer processor DB/PP

AVS authorization

Chargeback

All other fees not mentioned above

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Reporting fees:

Monthly merchant ID statements

Processor's Internet portal

PCI Compliance support fees**PayPal PayFlow Pro monthly charge****All other fees not mentioned above**

3. If you are submitting Proposals for both General Banking and Merchant Bankcard, discuss whether your Proposals include discounts for providing all requested services.

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APPENDIX A TO CONTRACT CONTRACTUAL REQUIREMENTS

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable.

- Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week if four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The

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contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).
- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

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EXHIBIT B

CERTIFICATION OF COMPLIANCE WITH MINIMUM REQUIREMENTS OF RFP

I have read, understand and agree to comply with the **MINIMUM REQUIREMENTS** as specified in **Section I, B** of this RFP. Checking "YES" indicates acceptance of the entire list of requirements; checking "NO" denotes non-acceptance of any or all requirements and must be detailed below. All exceptions **MUST** be documented and explained in the form below. All contract clarifications or exceptions must be documented and explained in the form below. The City, at its sole discretion, must approve these exceptions and determine if the proposal will be included as part of Level #2 evaluation or rejected for non-responsiveness.

YES _____ NO _____ SIGNATURE _____

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

EXCEPTION SUMMARY FORM

MINIMUM REQUIREMENT NUMBER	EXPLANATION OF NON-ACCEPTANCE
EXAMPLE: 1.,A.,1)	[Detailed explanation here.]

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EXHIBIT C

DESCRIPTION OF CITY'S CURRENT BANKING SERVICES

A. Bank Accounts

The City currently maintains 25 demand accounts. Note that some accounts are counted in more than one category (e.g. ZBA accounts also have positive pay):

- **General Account** (1). Concentration account used for investments, deposits, disbursements, ACH and federal wire activities. Account is linked to four (4) zero balance accounts.
- **Positive Pay Accounts** (8). Positive pay files are transmitted by either a file generated by SAP or through bank's Internet portal. Check number, date, amount and payee fields are matched. Exceptions and their related check images are available via bank's Internet portal by 7:00 AM Pacific Time daily.
- **Controlled Disbursement** (1). Accounts Payable account has controlled disbursement and perfect presentment with reporting via bank's Internet portal by 7:00 AM Pacific Time daily.
- **Depository Accounts** (6). Accounts (including General Account) managed by Treasury which serve as depository accounts for City bureaus. Several have significant deposits (including night drops) of cash, checks and bankcard settlements. Bureau operations are spread throughout the Portland metropolitan area and require many branch offices.
- **Bureau Accounts** (15). Accounts managed by bureaus and used for various purposes including petty cash and refunds. Accounts have pre-established dollar check limits.
- **ZBA Accounts** (4). Zero balance accounts used for the four largest check-issuing accounts.
- **ACH Filters** (25). All demand accounts have ACH filters preventing ACH debits except where specifically authorized by the City (e.g., tax payments).

B. Depository Services

The City's current depository bank has a downtown branch in close proximity to the Portland Building and branch offices throughout the Portland metropolitan area to accommodate bureau deposits. In addition, deposit bags are brought to the bank by armored car (under separate contract with the City) from a variety of locations on schedules established by the bureaus creating the deposits. Deposits include checks, currency and coin. Change orders are delivered to these sites by armored car.

The City converts checks to electronic images in two locations using Panini My Vision X 30 desktop scanners. Desktop deposits are created using the bank's Internet portal and clear through Check 21 processing.

The City's Water Bureau converts checks to an electronic image file (designed to the bank's specifications) using Water Bureau equipment. The file is transferred to the bank using the bank's secured transmission, and the bank converts the eligible checks to ACH debits.

Four accounts receive CCD, CCD+, PPD+, and CTX ACH debits and credits. The City is both the originator and receiver of ACH debits and credits. In addition to receiving ACH deposits from other banks, the City originates ACH deposit batches through two City-designed websites that customers use to pay bills. One website (water bills) includes recurring ACH payments. The City also originates ACH deposit batches through the bank's Internet portal (retiree health premiums). The City receives Fed wires into two accounts.

On behalf of City's Water Bureau, the current bank consolidates Internet bill payments and creates and directly transmits (or makes available through a secure means) a file from payments made through consumer service providers (e.g., CheckFree, Metavante) and routes to the MasterCard RPPS or Visa ePay systems. The file is provided in a format configured by the bank to interface with Water's customer billing system. Funds are posted to a City bank account as ACH credits.

Returned checks not paid (both physical and electronic) are re-deposited immediately to the account. If rejected a second time, they are charged to the deposit account. An advice of charge with an itemized list of returned items and physical checks (or check images where appropriate) are sent to the City.

The current bank has a procedure for ordering supplies, e.g. pre-printed encoded deposit slips, checks, coin rolls, currency straps, deposit bags, etc.

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C. Disbursement Services

The City's four largest checking accounts (Accounts Payable, Payroll, Portland Development Commission, and Fire and Police Disability and Pension) are zero balance accounts funded by the General Account. In addition, the accounts payable account uses controlled disbursement (early morning notice of settlement amount) and perfect presentment. Besides the four ZBA accounts, there are four additional positive pay accounts. Five demand accounts do not permit check writing (money is transferred to the General Account by Internet generated book transfers). All accounts have pre-established disbursement limits that must be monitored by the bank.

The City provides the bank with daily positive pay check issued/cancelled files for the eight positive pay accounts as either files generated through SAP (AP and payroll), or through the bank's Internet portal (manually entered or uploaded files). The City subscribes to full account reconciliation service (ARP) of positive pay.

Stop payments are placed through the bank's Internet portal and are in effect for six months with an automatic one-year renewal for a total of 18 months. All checks stale-date after six months.

Physical checks are returned monthly to the City for all accounts except Payroll and Accounts Payable where they are received in an imaged format on CD. Check images can be ordered and received through the bank's Internet portal.

The City utilizes direct deposit services for a wide range of disbursements. The City's SAP system creates a biweekly payroll file for over 5,000 employees. Accounts Payable (the controlled disbursement account) today creates a small number of ACH vendor payments through SAP, but this number is anticipated to greatly expand and involve daily ACH transmissions. In addition, the Fire and Police Disability and Retirement Fund makes monthly pension and disability payments using the bank's Internet based ACH service.

Treasury originates Fed wires to a wide variety of domestic beneficiaries on a daily basis from the General Account. Wires are either freeform or by template. In addition, Treasury uses book transfers to move funds from six City accounts to the General Account. Wires are executed via the bank's Internet portal with immediate confirmation status.

D. Reporting Services (Banking Services)

Treasury manually downloads account information from the Internet at 7:00 AM Pacific Time daily. A prior day account activity report is received for 11 accounts that list all prior day credit and debit detail including checks paid. Each of the 11 accounts plus a consolidated summary includes the following information:

- Closing ledger balance
- Closing collected balance
- Opening available balance
- One day float
- Two + day float
- MTD average closing ledger balance
- MTD average closing collected balance
- Total credits
- Total debits
- Total number credits
- Total number debits

The prior day account activity report must be in both a printable format and BAI format to be downloaded from the bank's Internet portal and imported into SAP.

The morning download also includes a controlled disbursement summary report for the Accounts Payable zero-balance account showing the amount (check and ACH) to be charged that day.

The bank's Internet portal includes a function that allows Treasury to view items stopped due to the ACH fraud filters placed on all accounts (the default is to block), and to create exceptions for stopped items so they will be paid in the future.

An Internet ARP positive pay exception report is available and printed at 7:00 AM by Treasury. For each of the positive pay checking accounts, the report notes whether there are exceptions and the decision deadline (12:00 PM for all accounts except Accounts Payable which is at 5:30 PM). Exceptions awaiting decision can be paid, returned, or edited and paid (i.e., the serial number and/or amount can be edited). Check images of exception items can be viewed by 7:00 AM except Accounts Payable which is available at 1:00 PM.

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An EDI report of ACH credits and debits in all formats (with addenda) posting to three accounts on the current day is available at 7:00 AM through the bank Internet portal.

An intraday wire transfer report is available on the bank's Internet portal to confirm Fed wires (in and out) and display detail.

Monthly bank statements are received for all 25 demand accounts. Paper statements for the 15 bureau accounts are received by mail at bureau locations. Treasury receives paper statements for the remaining 10 accounts. All monthly bank statements (including positive pay full account reconciliation) are available on the bank's Internet portal in PDF format.

The monthly client analysis of detailed charges is available on the bank's Internet portal in HTML, PDF and Excel formats.

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EXHIBIT D

DESCRIPTION OF CITY'S CURRENT MERCHANT BANKCARD SERVICES

The City **accepts** bankcard payments for a number of different services. This RFP does not include the use of bankcards for purchases made by the City which is under a separate contract. There are currently 35 merchant bankcard accounts handling bankcard sales (Visa/MasterCard credit and debits). Twenty-three of these merchant bankcard accounts are linked to American Express merchant accounts and assess an authorization fee for routing third party transactions. However, American Express is a separate contract outside this RFP and American Express collects its own bankcard fees. The City does not accept Discover.

Bankcard payments are accepted throughout the City by several bureaus for multiple goods and services. Citywide, the merchant accounts have a monthly combined average of:

Citywide Totals	TICKETS	SALES
MasterCard	124,697	\$1,867,418
Visa	515,687	\$6,514,829
Online debit	63	\$15,414
American Express	26,099	\$80,198
Total	666,546	\$8,477,859
Average ticket		\$12.72

The average monthly volume of Internet transactions included in the above totals is:

Tickets: 19,927

Sales: \$4,574,601

Average ticket: \$229.57

Transaction reports are currently received by mail or Internet portal. Chargeback notifications are received by mail.

The City of Portland Bureau of Technology Services (BTS) operates a Payment Gateway that provides bankcard transaction processing for several City bureaus and third party managed parking meters. The Payment Gateway was developed and is maintained by in-house BTS staff who also provide custom front-end applications to meet the needs of City bureaus that utilize the Gateway as detailed below. The Payment Gateway uses Pay Pal PayFlow Pro and the Nashville platform. The City is currently a Level 2 merchant, but foresees growth into a Level 1 merchant within one to two years time. The following is a summary of the various bankcard merchant accounts:

1. **Parking Garages (6).** Six parking garages accept bankcards. Each garage has its own merchant account. Five of the garages employ Amano McGann equipment in various combinations of AMG 4500 Express Park, AMG 7800 Pay Station, and AMG 2070 Pay Station. These five merchant accounts use Tender Retail's Merchant Connect Multi and the Cardnet platform. The sixth garage uses one Hypercom T7Plus 1 (purchased) and the Nashville platform. The six parking garages have a combined monthly average of:

Parking Garages	TICKETS	SALES
MasterCard	10,871	\$69,478
Visa	43,183	\$273,210
American Express	487	\$2,636
Total	54,541	\$345,324
Average ticket		\$6.33

2. **Print Shop (1).** The print shop has one merchant account and uses a Hypercom T7 Plus 1 (leased) and the Nashville platform. The print shop has a monthly average of:

Print Shop	TICKETS	SALES
MasterCard	37	\$1,595
Visa	147	\$6,185
Total	184	\$7,780
Average ticket		\$42.28

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3. **Permit Center (4).** The Bureau of Development Services (BDS) accepts credit card payments for various permits and inspections in person and online via a custom application developed by BTS. One merchant account uses three Hypercom FD-100 swipe machines (purchased). The other three merchant accounts use the City's Payment Gateway, one for Web payments and the other two for in-house PC transactions. The permit center has a combined monthly average of:

Permit Center	TICKETS	SALES
MasterCard	497	\$258,368
Visa	1,970	\$1,066,142
Online debit	59	\$15,251
Total	2,526	\$1,339,761
Average ticket		\$530.39

4. **Police (2).** The Portland Police Bureau has two merchant accounts for alarm permits and records sales. One uses DataCap software and the other uses a Hypercom T7 Plus (leased); both use the Nashville platform. The Police Bureau has a combined monthly average of:

Police	TICKETS	SALES
MasterCard	34	\$3,416
Visa	134	\$12,966
Total	168	\$16,382
Average ticket		\$97.51

5. **Parking Meters (4).** The Bureau of Transportation has contracted with a third party, Cale America, Inc., to operate parking meters throughout the City. The meters communicate via a private cellular network to a central gateway which, in turn, uses the City's Payment Gateway for processing. The four merchant accounts have a combined monthly average of:

Parking Meters	TICKETS	SALES
MasterCard	105,082	\$262,291
Visa	436,461	\$1,069,301
American Express	25,237	\$58,862
Total	566,780	\$1,390,454
Average ticket		\$2.45

6. **Fire (2).** The Bureau of Fire and Rescue has one merchant account for permits and one merchant account for inspection. Each uses a Hypercom T7 Plus (one leased and one purchased) and the Nashville platform. The Fire Bureau has a combined monthly average of:

Fire	TICKETS	SALES
MasterCard	22	\$4,575
Visa	125	\$24,420
Total	147	\$28,995
Average ticket		\$197.24

7. **Water Permits (1).** The Water Bureau has one merchant account for sales of permits that uses a virtual terminal developed by BTS. After bankcard information is entered, it is forwarded to the City's Payment Gateway for processing. Water permits averages:

Water Permits	TICKETS	SALES
MasterCard	4	\$9,619
Visa	14	\$41,192
Total	18	\$50,811
Average ticket		\$2,822.83

8. **Water/Sewer Billing (1).** The Water Bureau uses one merchant account for customers to pay water/sewer

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bills online. Bills are paid online using the third party utilities program (Cayenta). Payments are then sent to the City's Payment Gateway for processing. Transactions qualify for Visa/MasterCard interchange utility pricing. Water billing averages:

Water/Sewer Billing	TICKETS	SALES
MasterCard	3,339	\$1,038,659
Visa	13,564	\$3,156,028
Total	16,903	\$4,194,687
Average ticket		\$248.16

9. **Leaf Fee (1).** The Bureau of Transportation has one merchant account for payment of fees related to seasonal leaf removal. Bills are paid online using the Water Bureau's website and Water's third party utilities program (Cayenta). Payments are then sent to the City's Payment Gateway for processing. This merchant account is new and there is no data on sales.
10. **Bureau of Planning and Sustainability (1).** The Bureau of Planning and Sustainability has one merchant account for sales relating to several seasonal events. Tickets are sold through a City webpage that links to a third-party vendor (ServiceU Corporation) that uses the TSYS platform. The merchant account averages:

Bureau of Planning and Sustainability	TICKETS	SALES
MasterCard	10	\$300
Visa	39	\$1,361
Total	49	\$1,661
Average ticket		\$33.90

11. **Parks Bureau (6).** The Bureau of Parks & Recreation has six merchant accounts. One merchant account is used for class registration and facilities reservations via telephone, fax, mail or in person. It uses the Class software server with Tender Retail and the TSYS platform. A second merchant account receives online payments through a City webpage using the Class server with Tender Retail and the TSYS platform. Within a year, these two merchant accounts will change to ActiveNet software, with the Pay Pal gateway. Two merchant accounts process parking using the City's Payment Gateway. A fifth merchant account has three Hypercom T4100 terminals (leased) using the Nashville platform, and a sixth merchant account has one Hypercom T7Plus (owned), also using the Nashville platform. The Parks Bureau has a combined average of:

Parks	TICKETS	SALES
MasterCard	4,741	\$210,006
Visa	19,834	\$829,292
American Express	367	\$18,088
Total	24,942	\$1,057,386
Average ticket		\$42.39

12. **Revenue Bureau (2).** The Revenue Bureau maintains a merchant account for citizens to pay business taxes and purchase or renew business licenses online. A second merchant account collects a convenience fee. This is currently the only situation where the City collects a convenience fee. After the bankcard information is entered online, it is forwarded to the City's Payment Gateway. The two merchant accounts have a combined monthly average of:

Revenue Bureau	TICKETS	SALES
MasterCard	44	\$8,267
Visa	142	\$29,926
Total	186	\$38,193
Average ticket		\$205.34

13. **Sidewalk Permits (1).** The Bureau of Transportation uses one merchant account for the payment of sidewalk permits. The merchant account uses a First Data wireless terminal FD 400 Ti (owned) and the Nashville platform. The monthly average is:

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Sidewalk Permits	TICKETS	SALES
MasterCard	6	\$386
Visa	22	\$2,601
Online debit	1	\$90
American Express	1	\$189
Total	30	\$3,266
Average ticket		\$108.87

14. **Sunderland Yard (1).** The Bureau of Transportation uses one merchant account for the payment of fees at the Sunderland Yard recycling center. The merchant account uses a First Data wireless terminal FD 400 Ti (owned) and the Nashville platform. The monthly average is:

Sunderland Yard	TICKETS	SALES
MasterCard	1	\$28
Visa	5	\$152
Online debit	3	\$73
Total	9	\$253
Average ticket		\$28.11

15. **Sunday Parkways (1).** The Bureau of Transportation uses one merchant account to collect donations in support of the Sunday Parkways project. Donations are accepted through a City webpage that uses the City's Payment Gateway. The monthly average is:

Sunday Parkways	TICKETS	SALES
MasterCard	9	\$430
Visa	47	\$2,053
American Express	7	\$423
Total	63	\$2,906
Average ticket		\$46.13

16. **Portland Streetcar (1).** The Bureau of Transportation has 72 Strada Pay Stations installed at stations throughout the Streetcar line for the sale of tickets. The Pay Stations communicate via a private cellular network to a central gateway which, in turn, uses the City's Payment Gateway for processing. This merchant account is new and there is no data on sales.

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EXHIBIT E

REFERENCE INFORMATION

Provide the following contact information for all of the categories below:

Name: _____

Title: _____

Institution: _____

Address: _____

Phone: _____

Email: _____

- a)** Three (3) current public sector customers;
- b)** One (1) prior public sector customer you elected to rebid but did not successfully retain; and,
- c)** Two (2) public sector customers that converted from another financial institution to yours within the last three (3) years.



CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE
Sam Adams, Mayor
Jack D. Graham, Chief Administrative Officer
Bryant Enge, Director, Bureau of Internal Business Services

186045
Christine Moody
Chief Procurement Officer
Procurement Services
1120 S.W. Fifth Avenue, Rm. 750
Portland, Oregon 97204-1912
(503) 823-5047
FAX (503) 823-6865
TTY (503) 823-6868

November 2, 2012

ADDENDUM NO. ONE (1)

RFP No. 114739

**GENERAL BANKING SERVICES
AND
MERCHANT BANKCARD SERVICES
Proposals Due: November 29, 2012
By: 2:00 pm**

This addendum provides changes to the specifications for the above-entitled project to be considered by each respondent. This addendum shall be included within the proposal. Any changes made by this addendum to said specifications offset only the portion of the words or paragraphs specifically mentioned herein, and the balance of the specifications remain in full force. It is the responsibility of all respondents to conform to this addendum.

The attached CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only.

Please direct all questions and concerns to B. J. Gibson, CPPO, at (503) 823-7665.

End of Addendum

Christine Moody
Chief Procurement Officer

CM:bg

An Equal Opportunity Employer

To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.

The following CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only:

1. Is the City currently using PayPal PayFlow Pro for their Merchant Bankcards Services today?
A: *This information may be referenced in Exhibit D: DESCRIPTION OF CITY'S CURRENT MERCHANT BANKCARD SERVICES.*
2. Is the City replacing PayPal or must the Merchant Bankcard vendor interface with PayPal?
A: *The Portland Parks & Recreation Bureau requires the PayPal gateway for their new ActiveNet software. For the City's Payment gateway, alternative gateway solutions must be analyzed by the City for their functionality and amount of implementation development work required by the City.*
3. What are PayPal's current rates?
A: *Most of the PayPal PayFlow Pro monthly charges are absorbed by the current merchant bankcard service provider. In the instances that are not, the charges are \$199/setup and \$31/month for internet.*
4. Is the City wanting pricing for both Agency Absorbed (the City pays the fees) or Convenience Fee (consumer pays convenience fee)?
A: *The City collects a convenience fee in only one application that is set up to receive tax payments. In this one instance, the application is set up with two merchant accounts with the first account collecting the tax payments and the second account collecting the convenience fee. The City pays the merchant bankcard fees on both accounts.*
5. Who currently provides the City with their General Banking and Merchant Bankcard Services?
A: *Wells Fargo Bank, N.A.; Wells Fargo Merchant Services, LLC*



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November 6, 2012

ADDENDUM NO. TWO (2)

RFP No. 114739

**GENERAL BANKING SERVICES
AND
MERCHANT BANKCARD SERVICES**
Proposals Due: November 29, 2012
By: 2:00 pm

This addendum provides changes to the specifications for the above-entitled project to be considered by each respondent. This addendum shall be included within the proposal. Any changes made by this addendum to said specifications offset only the portion of the words or paragraphs specifically mentioned herein, and the balance of the specifications remain in full force. It is the responsibility of all respondents to conform to this addendum.

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Please direct all questions and concerns to B. J. Gibson, CPPO, at (503) 823-7665.

End of Addendum

Christine Moody
Chief Procurement Officer

CM:bg

An Equal Opportunity Employer

To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.

The following CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only:

1. C-4 ... If one day settlement is not available at this time, is that an automatic dismissal?

A: *It is not an automatic dismissal, although delays past one-day settlement may affect the evaluation of the proposal.*

2. The RFP requires the processor to have been in business for 10 years. We have been in business for 8 1/2 years. Will this suffice?

A: *This would not be an automatic dismissal, although experience less than 10 years may affect the evaluation of the proposal.*

3. Not only do we price clients with the traditional Tier system (i.e., Qualified, Mid, and Non), we also offer Interchange plus pricing for high volume organizations such as yourself. Is the evaluation staff familiar with this price structure and would it be permissible?

A: Yes.

4. Our firm has just recently begun to market public sector clients. We have an extensive number of private sector clients but none in the public sector. Are we still allowed to bid and may we submit private sector references?

A: *Yes, although lack of public sector experience may affect the evaluation of the proposal.*



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

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186045

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Procurement Services

1120 S.W. Fifth Avenue, Rm. 750

Portland, Oregon 97204-1911

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November 14, 2012

ADDENDUM NO. THREE (3)

RFP No. 114739

GENERAL BANKING SERVICES AND MERCHANT BANKCARD SERVICES

Proposals Due: November 29, 2012

By: 2:00 pm

This addendum provides changes to the specifications for the above-entitled project to be considered by each respondent. This addendum shall be included within the proposal. Any changes made by this addendum to said specifications offset only the portion of the words or paragraphs specifically mentioned herein, and the balance of the specifications remain in full force. It is the responsibility of all respondents to conform to this addendum.

The attached CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only.

Please direct all questions and concerns to B. J. Gibson, CPPO, at (503) 823-7665.

End of Addendum

Christine Moody
Chief Procurement Officer

CM:bg

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To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.

The following CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only:

1. How many PayPal Pay Flow Pro Merchant Account gateway setups is the city's current provider absorbing for the City?
A: *Sixteen (16).*
2. Section B – Proposal Submission, 2. Proposals: would the City consider expanding maximum pages for responding banks other than the incumbent to allow for detailed transition plans that the current bank will not need to include in their responses?
A: *No. Please keep in mind that at this time the City is only asking for an overview of transition plans.*
3. The following question relates to volumes provided in Attachment 2, Costing Table: What is your check volume in your Controlled Disbursement account for AP?
A: *3,694 per month*
4. The following question relates to volumes provided in Attachment 2, Costing Table: Do the items identified as "Detail items in EDI report" (905) include ACH "received items" (401)?
A: *Yes.*

Regarding "Merchant Bank Card Services":

5. Is the connectivity method (PayFlow Pro) used by the Payment Gateway owned by the City, or provided by the current Payment Provider (Acquirer)?
A: *Three are owned and thirteen are provided.*
6. What Tender Retail Merchant Connect Multi version is being used by the Amano McGann equipment?
A: *Version 4.2.8.*
7. What Tender Retail version is being used by the Parks Bureau?
A: *Parks is currently using Version 4.2.8 also.*
8. Do you have relationships with multiple processors/acquirers/gateways?
A: *No, we contract with only one merchant bankcard services provider, which currently is Wells Fargo.*
9. How many processing end-points do you maintain?
A: *Please reference Exhibit D: Description of City's Current Merchant Bankcard Services.*
10. Who is your QSA?
A: *Coalfire*
11. How many data stores are used to contain that data?
A: *The City has three distinct bankcard processing environments (parks, garages, payment gateway).*
12. Describe data acceptance environment(s) (Points of card entry across your enterprise: in person, online (Virtual Terminals), MOTO, kiosk, etc.
A: *The City accepts cards in multiple environments.*
13. Do you have legacy POS systems that need to be secured? How are you protecting data:
A: *No.*

14. How much effort does the City spend maintaining PCI compliance?

A: *Maintaining compliance is an ongoing (daily) effort. Preparation for the assessment is not our end goal -- compliance is.*

15. Do you have a dedicated PCI audit staff?

A: *Compliance is conducted daily; audit is outsourced.*

NOTE: Regarding the following questions, the City's Bureau of Technology Services (BTS) has staff dedicated to Information Security all of whom work closely with Treasury. The Security Team works to maintain PCI compliance. The City outsources the audit function to Coalfire.

Due to system security any questions regarding system security, risk and fraud management, policies and processes, internal resources, and system procedures will not be addressed at this time.



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

Sam Adams, Mayor

Jack D. Graham, Chief Administrative Officer

Bryant Enge, Director, Bureau of Internal Business Services

186045

Christine Moody

Chief Procurement Officer

Procurement Services

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November 19, 2012

ADDENDUM NO. FOUR (4)

RFP No. 114739

GENERAL BANKING SERVICES AND MERCHANT BANKCARD SERVICES

Proposals Due: November 29, 2012

By: 2:00 pm

This addendum provides changes to the specifications for the above-entitled project to be considered by each respondent. This addendum shall be included within the proposal. Any changes made by this addendum to said specifications offset only the portion of the words or paragraphs specifically mentioned herein, and the balance of the specifications remain in full force. It is the responsibility of all respondents to conform to this addendum.

The attached CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only.

Please direct all questions and concerns to B. J. Gibson, CPPO, at (503) 823-7665.

End of Addendum

Christine Moody
Chief Procurement Officer

CM:bg

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To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.

The following CLARIFICATION QUESTIONS/ANSWERS are provided for clarification purposes only:

Regarding Banking Services:

1. Section B - Work Requirements - B.25: For the items processed through Electronic File Deposit today, is converting items to ACH a requirement or are you open to a bank providing a solution without ACH conversion that provides better pricing and equal or better availability?
A: *The City is open to other alternatives, although solutions requiring software reconfiguration (with its attendant costs) may impact the City's evaluation of the proposal.*
2. Does the City currently send an X9.37 format file for daily image cash letter/ACH conversion files? What is the model name and type of scanning equipment used for this process?
A: *Yes, using Unisys programming on a Burroughs (formerly Unisys) DP600 quantum high speed remittance processor.*
3. How many checks/what size would the City expect to be cashed at the bank's teller line using an employee ID card? Do your employee IDs include a photograph? What type of checks are expected to be cashed via teller line with employee ID? (payroll, etc.)
A: *As noted in this RFP, City ID cards include photos. Historical estimates of teller-cashed checks are: payroll 85/month, FPDR retirement/disability 4/month, AP 17/month. The City does not have data on dollar amounts for teller-cashed checks.*
4. What is the expected time frame for an uncollected funds usage scenario (number of days)?
A: *Check clearing time is usually a 2-day maximum.*
5. In accordance with section I B, may we request approval to submit differentiations of the minimum requirements, including 2013 service enhancements, according to our services structure, professional recommendations, and cost/time efficiencies, which may vary from the minimum requirements listed? Will our proposal success be affected by such variations, according to Section I B form, and may we offer such variations in conjunction with our signature on this form?
A: *The City is open to other alternatives, although differentiations may impact the City's evaluation of the proposal.*

Regarding "Merchant Bank Card Services":

6. Do you need access to card data for subsequent transactions?
A: *Yes, with some services, the City retains only the last 4 digits; in other cases, the City retains hashed data (e.g., for re-use with auto-pay). Credit cards are stored only until they expire, at which point they are no longer valid unless information is updated by card owner.*
7. What platforms are your in-house developed merchant services payment system certified to process on?
A: *Merchant Services – Verisign with First Data as the City's current back-end merchant services processor.*
8. In accordance with section I B, may we request approval to submit differentiations of the minimum requirements, including 2013 service enhancements, according to our services structure, professional recommendations, and cost/time efficiencies, which may vary from the minimum requirements listed? Will our proposal success be affected by such variations, according to Section I B form, and may we offer such variations in conjunction with our signature on this form?
A: *The City is open to other alternatives, although differentiations may impact the City's evaluation of the proposal.*

NOTE: Due to system security any questions regarding system security, risk and fraud management, policies and processes, internal resources, and system procedures will not be addressed at this time.



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

Sam Adams, Mayor
Jack D. Graham, Chief Administrative Officer
Bryant Enge, Director, Bureau of Internal Business Services

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November 26, 2012

ADDENDUM NO. FIVE (5)

RFP No. 114739

GENERAL BANKING SERVICES AND MERCHANT BANKCARD SERVICES Proposals Due: November 29, 2012 By: 2:00 pm

This addendum provides changes to the specifications for the above-entitled project to be considered by each respondent. This addendum shall be included within the proposal. Any changes made by this addendum to said specifications offset only the portion of the words or paragraphs specifically mentioned herein, and the balance of the specifications remain in full force. It is the responsibility of all respondents to conform to this addendum.

The following CLARIFICATION is provided for informational purposes only.

Part III, Section A.2 PROPOSAL REVIEW: There will be separate evaluation committees each charged with evaluating designated sections of the RFP: one committee will evaluate the General Banking Services, another will evaluate the Merchant Bankcard Services and a third will evaluate the Cost section of the proposal responses.

Please direct all questions and concerns to B. J. Gibson, CPPO, at (503) 823-7665.

End of Addendum

Christine Moody
Chief Procurement Officer

CM:bg

An Equal Opportunity Employer

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EXHIBIT 2



Elavon Payment Device Processing Agreement (v.11.01.12)

PAYMENT DEVICE PROCESSING AGREEMENT

This Payment Device Processing Agreement ("Agreement") is entered into as of the Effective Date by and among the entity identified below as the Merchant (together with any affiliated entities listed on Schedule B to the Agreement), referred to collectively as the "**Merchant,**" **Elavon, Inc.** ("Elavon") and **Member**, as designated on the Merchant Application, and includes the following Terms of Service (the "TOS") and all Schedules and other attachments to the Agreement, and all Schedules and other attachments to the Agreement as may be added from time to time, each of which is incorporated in full by this reference. The Agreement governs the Merchant's receipt and use of the Processing Services.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. Merchant elects the following Payment Device Processing Services as described in the Agreement (including all applicable Schedules) and subject to the additional terms and conditions of the applicable provisions of the Merchant Operating Guide (the "MOG"):

- ☒ TOS, General Provisions and the MOG
- ☒ Schedule A, Schedule of Fees
- ☒ Schedule B, Affiliated Entities
- ☒ Schedule C, Merchant Application (Large Relationship)
- ☐ Substitute Form W-9 (required for U.S. entities)
- ☐ Substitute Form W-8BEN (required for non-U.S. entities)

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

- ☐ Credit Card Services
- ☐ Debit Card (signature-based) Services
- ☐ Debit Card (PIN-based) Services
- ☐ Bill Payment (Pinless Debit) Services
- ☐ DCC Services
- ☐ Multi-Currency Pricing Services
- ☐ Wireless Services
- ☐ Contactless Services
- ☐ Schedule D, Electronic Gift Card Services
- ☐ Schedule E, Electronic Check Services
- ☐ Schedule J, Processing Services for Convenience Fees
- ☐ Schedule K, Biller Direct Services
- ☐ Schedule L, Safe-T Suite Services
- ☐ Schedule N, Internet PIN-Based, Debit Card Services
- ☐ Schedule O, Global eCommerce Gateway Services
- ☐ Schedule P, Payment Service Provider Processing Services

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired Processing Services):

- ☐ EBT Services
- ☐ Hospitality Services
- ☐ No Signature Required Program Services
- ☐ Schedule F, Petroleum Services
- ☐ Schedule I, Processing Services for Government Entities and Institutions

Payment Device Processing Services Available to Merchants Operating in Certain Jurisdictions (check desired Processing Services):

- ☐ Schedule G, Processing Services in Canada
- ☐ Schedule H, Processing Services in Puerto Rico

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

_____,
on behalf of itself and each of the affiliated entities
identified on Schedule B (the "MERCHANT"):

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

("Effective Date")

MEMBER

By: _____

Name: _____

Title: _____



TERMS OF SERVICE

Section A - General Provisions Applicable to All Services

1) **DEFINITIONS; RULES OF CONSTRUCTION.**

Capitalized terms used in the Agreement and in any applicable Schedule shall have the meanings ascribed to such terms in the Glossary set forth in Section B of this TOS or in such Schedules. All Schedules are expressly incorporated in their entirety and made a part of the Agreement. Captions in the Agreement and in the attached Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section A - General Provisions, and any applicable Schedule, the terms of the applicable Schedule shall prevail.

2) **ACCEPTANCE OF PAYMENT DEVICES.**

Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices and Processing Services it will agree to accept as a form of payment from its Customers by selecting the applicable Processing Services on page 1 of the Agreement and/or on the appropriate Schedule. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the "MOG"), incorporated herein by this reference and located at our website https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf. Each Schedule to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Schedule.

3) **TRANSACTIONS.**

a) **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing by Elavon from time to time.

b) **Settlement of Transactions.** Subject to the other provisions of the Agreement and subject to Merchant's compliance with the terms of the Agreement and the Payment Network Regulations, Elavon and Member will process Transactions daily, and if Merchant maintains its DDA with Member, provisional credit for Transactions (less recoupment of any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement) may be available as soon as the next

banking day after the banking day on which Elavon and Member process the Transactions. Regardless of where Merchant maintains its DDA, Merchant acknowledges and agrees that Elavon and Member may use either "direct" (ACH debit authority pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are debited from the DDA) or "net" (pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are netted from Transaction proceeds) methods to recover any amounts owed by Merchant to Elavon or Member under the Agreement. To the extent required, Merchant authorizes and appoints Elavon or Member to act as Merchant's agent to collect Transaction amounts from the Customer, the Issuer or the Customer's financial institution.

i) **Deposits.** Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Merchant acknowledges that its obligation to Elavon and Member for all amounts owed under the Agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.

ii) **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Elavon and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Elavon or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, Elavon may delay Merchant-issued Cardholder credits for up to five (5) business days for accounting verification. Cardholder credits issued by Merchant to PIN-Debit Cards will not be subject to this delay.



- iii) **Chargebacks.** Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction disputed by the Cardholder or Issuer for any reason under the Payment Network Regulations. Merchant authorizes Elavon and Member to offset from funds due Merchant or to debit the DDA or the Reserve Account for the amount of all Chargebacks. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks.
 - iv) **Original Transaction Receipts.** Under no circumstances will Elavon or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Elavon and Member.
 - c) **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement. Merchant irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement at Merchant's request, to initiate ACH debit and credit entries to the DDA or the Reserve Account for any products or services requested by Merchant in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Elavon and Member have been paid in full. Elavon and Member have the right to delay, within their reasonable discretion, crediting the DDA with funds related to Transactions in order to investigate any Transactions related to suspicious or fraudulent activity or funds for Transactions for which Elavon or Member have not received funding from the applicable Payment Networks. Elavon and Member will endeavor to investigate or process any delayed Transactions expeditiously and will endeavor to notify Merchant if any Transactions are delayed for more than forty-eight (48) hours. Elavon has the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the DDA as provided under the Agreement. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA.
 - d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA reasonably requested by Elavon and/or Member to debit or credit the DDA and to otherwise exercise their rights under the Agreement with respect to the DDA.
 - e) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and promptly notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days of the date of the Elavon statement containing the asserted error. If Merchant fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Elavon or Member for any loss or expense relating to any asserted error for forty-five (45) days immediately following Elavon's receipt of Merchant's written notice. During that forty-five (45) day period, Elavon (i) will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Elavon, and (ii) notify Merchant of its proposed resolution of the asserted error.
- 4) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
- a) **Security Interests.**
 - i) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Elavon and Member a security interest in and lien upon: (a) all funds at any time in the Reserve Account, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts in process by Member or Elavon (collectively, the "Secured Assets"). These security interests and liens will secure all of Merchant's obligations under the Agreement. Elavon and Member may execute this security interest, without notice or demand of any kind, by making an immediate



withdrawal or by restricting Merchant's access to the Secured Assets.

- ii) **Perfection.** Upon request of Elavon or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other Person has a security interest in the Secured Assets. With respect to such security interests and liens, Elavon and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Elavon and Member written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Elavon and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Elavon or Member. If Merchant fails to execute control agreements or other documents to evidence or perfect the security interest or lien within ten (10) days of Elavon's or Member's request, Merchant authorizes and appoints Elavon as Merchant's attorney in fact to sign Merchant's name to any control agreement or other documents used for the perfection of any security interest or lien granted hereunder.

b) **Reserve Account.**

- i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing security and a source of funds to pay Elavon and Member for any and all amounts that may be owed by Merchant hereunder. Elavon and Member shall have sole control of the Reserve Account.
- ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, Elavon

Elavon Payment Device Processing Agreement (v.11.01.12)

will determine, in its sole reasonable discretion, the applicable period considering factors such as Merchant's Transaction volume and seasonality.

- (A) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that a Merchant not approved by Elavon to engage in delayed delivery transactions has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of the Agreement for any reason or the occurrence of an event listed in Section (A)(12)(b)(ii)(B) or (C) giving Elavon or Member the right to terminate the Agreement, (f) nonpayment of amounts owed by Merchant to Elavon or Member, (g) fines or assessments imposed or reasonably expected to be imposed by the Payment Networks, (h) the occurrence of a material adverse change in Merchant's financial condition, (i) assignment of the Agreement by Merchant in violation of Section 15(e), and (j) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.

- iii) **Funding.** Elavon and Member may fund the Reserve Account (in each case up to the Reserve Amount) by any one or more of the following means.

- (A) Elavon and Member may require Merchant to deposit funds into the Reserve Account;
- (B) Elavon and Member may debit the DDA; and/or
- (C) Elavon and Member may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.

- iv) **Use of Funds in Reserve Account.** Elavon or Member may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. Also, Elavon or Member may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to



- Elavon or Member. Further, Merchant agrees that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- v) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to Elavon and Member (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before two hundred seventy (270) days following the effective date of termination of the Agreement. Notwithstanding the foregoing, if Elavon and Member determine that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, Elavon and Member may, in their sole discretion, terminate the Reserve Account and/or release funds from the Reserve Account prior to the termination of the Agreement.
 - vi) **Alternate Security.** In lieu of or in addition to establishing and funding a Reserve Account, Elavon may, in its sole and absolute discretion, accept an alternative form of security ("Alternate Security") for the purpose of providing a source of funds to pay Elavon and Member for any and all amounts owed by Merchant. Elavon retains the right, at any time, to reject Alternate Security previously accepted by Elavon and/or to require funding of a Reserve Account so that the amount of funds held in a Reserve Account, taken together with amounts represented by any Alternate Security accepted by Elavon, equal the Reserve Amount.
 - c) **Recoupment and Set-off.** Elavon and Member have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them hereunder from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Merchant under the Agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to Elavon and/or Member hereunder, Elavon and Member may require the creation of a Reserve Account and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to Elavon and Member, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.
 - d) **Remedies Cumulative.** The rights conferred upon Elavon and Member in this section are not intended to be exclusive of each other or of any other rights and remedies of Elavon and Member under the Agreement, at law or in equity. Rather, each and every right of Elavon and Member under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
- 5) **PROCESSING SERVICES; FEES; OTHER AMOUNTS OWED; TAXES.** Elavon and Member will provide Merchant with Processing Services in accordance with the Agreement. Merchant will compensate Elavon and Member for Processing Services as indicated on Schedule A, Schedule of Fees, and in any other Schedules executed by Elavon, Member and Merchant.
- a) **Fees.** Merchant will pay Elavon and Member fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) or schedules provided by Elavon and Member in writing to Merchant. Such fees will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement.
 - b) **Research.** In addition, Merchant will pay Elavon at its standard rates for research as set forth on Schedule A including, but not limited to, research required to respond to any third party or government subpoena, levy, garnishment or required reporting on Merchant's account.
 - c) **Change of Fees.** The fees set forth in the Agreement and any additional application or set up form will not be amended by Elavon for the Initial Term of the Agreement except (i) as provided in Schedule A or (ii) to pass through to Merchant increases in interchange, assessments, or increased or new fees imposed by a third party.
 - d) **Other Amounts Owed.** Merchant will promptly pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, assessments (including all fines, penalties, or assessments by the Payment Networks as a result of Merchant's Transaction processing), and any other payments due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH. In the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Merchant will promptly pay Elavon or Member such amount upon demand. Elavon will



Elavon Payment Device Processing Agreement (v.11.01.12)

charge interest on all uncollected amounts owed to Elavon or Member that are more than thirty (30) days past due at a rate equal to the lesser of (i) the product of the uncollected amounts and the then-current Federal Funds Rate plus 10% (calculated and computed on the basis of a 365-day year), or (ii) the maximum daily rate of interest permitted under applicable law.

- e) **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement excluding the income taxes attributable to Elavon or Member. If Merchant is a tax-exempt entity, Merchant will provide Elavon and Member with an appropriate certificate of tax exemption.

6) **ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.**

- a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services, the form of entity (e.g., partnership, corporation, etc.), change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to the Merchant's business information.

b) **Indemnification.**

- i) **By Merchant.** Merchant will be liable for and indemnify, defend, and hold harmless Elavon, Member and their respective employees, officers, directors, and agents against all claims by third parties for losses, damages, liabilities or expenses, including all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Elavon, any Transaction processed under the Agreement, any breach by Merchant of the Agreement, Merchant's negligence, gross negligence or willful misconduct, any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or any Merchant Bankruptcy Proceeding, but excluding claims to the extent attributable to

Elavon's or Member's negligence, willful misconduct, or breach of the Agreement.

- ii) **By Elavon.** Elavon will be liable for and indemnify, defend, and hold harmless Merchant and its employees, officers, directors, and agents against all claims made by third parties for losses, damages, liabilities or expenses arising out of Elavon's breach of the Agreement, negligence, gross negligence, or willful misconduct, but excluding claims to the extent attributable to Merchant's negligence, gross negligence, willful misconduct, or breach of the Agreement.

- c) **Limitation of Liability.** Merchant acknowledges that fees for the Processing Services provided to Merchant by Elavon and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by Merchant to Elavon and Member during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars (\$50,000). In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to the Agreement for indirect, exemplary, punitive, special, or consequential damages.

- d) **Performance; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ELAVON AND MEMBER MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROCESSING SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ELAVON AND MEMBER DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No party hereto shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of such party and without the fault or negligence of such party.

7) **REPRESENTATIONS AND WARRANTIES; COVENANTS.**

- a) **Merchant Representations and Warranties.** Merchant represents and warrants to Elavon and Member the following as of the Effective Date:



- i) **Information.** Merchant is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all necessary authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Merchant conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Merchant Application, in the bid process if applicable, the assumptions in Schedule A or any other document submitted to Elavon or Member is true and complete and properly reflects the business, financial condition and ownership of Merchant in all material respects.
 - ii) **Authority and Power.** Merchant and the person signing the Agreement on Merchant's behalf have the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
 - iii) **MasterCard MATCH™ System and Consortium Merchant Negative File.** Merchant has never been (i) placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) named to the Consortium Merchant Negative File maintained by Discover, or (iii) placed on or named to any other negative or terminated merchant file of any other Payment Network or, if it has, it has disclosed this fact to Elavon in writing.
 - iv) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened that would reasonably be expected to materially impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would materially and adversely affect Merchant's financial condition or operations.
- b) **Merchant Covenants.** Merchant covenants the following to Elavon and Member during the Initial Term and any Renewal Term:
- i) **Compliance with Laws and Payment Network Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
 - ii) **Business Use.** Merchant is obtaining and using the Processing Services from Elavon and Member for business purposes only and to facilitate lawful business Transactions between Merchant and its Customers. Merchant will not submit Transactions for processing to Elavon or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Elavon. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
 - iii) **Transactions.** To the best of Merchant's knowledge, all Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the payment to Merchant or a return or adjustment related to such payment. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to Elavon and Member. No Transaction involves a Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing by Elavon. All Transactions will be accepted at entities properly identified to Elavon and Member on Schedule B attached hereto.
 - iv) **Responsibility for Actions.** Merchant is responsible for any violations of this Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control, but excluding all actions or failures to act to the extent attributable to Elavon's or Member's breach of the Agreement, negligence or willful misconduct.
- c) **Elavon and Member Representations and Warranties.** Elavon and Member, each on their own behalf and not on behalf of the other, represent and warrant to Merchant the following as of the Effective Date of the Agreement:
- i) **Information.** Elavon is a corporation validly existing and organized under the laws of the State of Georgia. Member is a banking association validly existing and organized in the United States.
 - ii) **Corporate Power.** Elavon, Member and the persons signing the Agreement on behalf of each of them have the power to execute and perform the Agreement. The persons executing the Agreement are duly authorized to bind



Elavon and Member, as applicable, to all provisions of the Agreement and such persons are authorized to execute any document and to take any action on behalf of Elavon and Member, respectively, which may be required to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which they are respectively subject.

- iii) **No Litigation.** There is no action, suit, or proceeding pending, or to Elavon's or Member's knowledge threatened, which if decided adversely would impair Elavon's or Member's ability to carry on their business substantially as now conducted or which would adversely affect Elavon's or Member's financial condition or operations.

- d) **Elavon and Member Covenants.** Elavon and Member, each on their own behalf and not on behalf of the other, covenants to Merchant the following during the Initial Term and any Renewal Term:

- i) **Compliance with Laws and Payment Network Regulations.** Elavon and Member will comply with all Laws and Payment Network Regulations including the requirements of the Payment Card Industry ("PCI") Data Security Standard, as applicable to them and their respective systems, for the Processing Services provided under the Agreement. The Merchant may review Elavon's current PCI compliance status on the Payment Network websites as available.
- ii) **Responsibility for Actions.** Elavon and Member are responsible for any violations of this Agreement that result from the actions of or failure to act by their officers, directors, employees and agents; but excluding actions or failures to act to the extent attributable to Merchant's breach of the Agreement, negligence or willful misconduct.

8) AUDIT AND INFORMATION.

a) Audit.

- i) **Elavon or Member Audit.** In the event that Elavon or Member reasonably suspects that they are subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes Elavon and Member to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at Elavon's or Member's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by Elavon or Member.
- ii) **Data Compromise, Security, and Payment Network Audit.** In addition to Merchant's obligations under Section 13(e)(i), in the event of a known or suspected data compromise,

security incident, the occurrence of suspicious activity, or otherwise if required by the Payment Networks, Merchant will obtain, at the request of Elavon, Member or any Payment Network, and submit a copy of a forensic audit from a qualified incident response assessor of the information security of Merchant's business at Merchant's expense. Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's operations to confirm compliance with the Payment Network Regulations.

b) Information.

- i) **Authority.** Merchant authorizes Elavon and Member to make, upon receipt of the Merchant Application and from time to time, any business credit or other inquiries they consider reasonably necessary to review the Merchant Application or continue to provide Processing Services under the Agreement. Merchant also authorizes any Person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
- ii) **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Within one hundred twenty (120) days after the end of each fiscal year, Merchant will furnish Elavon and Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time. Notwithstanding the foregoing, Merchant shall not be obligated to provide financial statements or similar information other than those included in Merchant's filings with the Securities and Exchange Commission so long as Merchant remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.
- iii) **Merchant Information.** Merchant agrees that any Merchant financial information, Transaction Data, and other information regarding Merchant, its principles, affiliates, or agents that Merchant or Merchant principle provides to Elavon or Member on the Merchant Application or otherwise obtained by Elavon or Member in connection with the Agreement may be: (i) used by Elavon, Member, and their respective service providers, affiliates, agents,



- and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes and to maintain Merchant's account pursuant to this Agreement; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) utilized to enhance or improve Elavon's products or services, generally, (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement. Elavon may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Elavon's customers or specific segments of Elavon's customers.
- c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.
- 9) **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions. Elavon and Member are under no duty to monitor Merchant's Transactions for fraudulent or other suspicious activity.
- 10) **BUSINESS CONTINUITY.**
- a) **Merchant.** Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions and will provide such information and data to Elavon or Member upon request in order to reconstruct any information or data lost due to any malfunction of Merchant's or Elavon's or Member's systems. Elavon is under no duty to recreate lost Transactions or Transaction Receipts unless such loss results from Elavon's breach of the Agreement.
- b) **Elavon and Member.** Elavon and Member are required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP").
- Elavon and Member maintain BCPs that are commercially reasonable within the industry for the Processing Services. Elavon and Member will continue to adhere to their respective BCPs and will modify those plans from time to time to meet the objectives and requirements of their respective businesses.
- 11) **THIRD PARTIES.**
- a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Elavon and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Neither Elavon nor Member is responsible for any Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.
- b) **Third Party Contractors.** Merchant acknowledges and understands that Elavon or Member may use the services of third party service providers in connection with the performance of their obligations under the Agreement, including any Schedule to the Agreement. Except as otherwise provided in the Agreement, Elavon and Member shall be responsible for the performance of their obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.
- 12) **TERM AND TERMINATION.**
- a) **Term.** Unless terminated as set forth below, the Agreement, including all Schedules hereto executed as of or following the Effective Date, will remain in effect for the Initial Term, as defined on Schedule A, Schedule of Fees, following the Effective Date set out on page 1 of the Agreement. Thereafter, the Agreement, including all Schedules thereto, will automatically renew for successive Renewal Terms, as defined on Schedule A, Schedule of Fees, unless terminated as set forth below. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.



b) Termination.

i) By Merchant.

- (A) The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least ninety (90) days prior to the expiration of the then current term.
- (B) The Agreement may be terminated by Merchant if any of the following conditions remain uncured thirty (30) days after Merchant provides Elavon and Member written notice of the existence of the condition:
 - (1) Elavon has failed to pay Merchant an undisputed amount owed to Merchant under the Agreement; or
 - (2) Elavon or Member has failed to perform a material obligation under the Agreement.

ii) By Elavon or Member.

- (A) The Agreement may be terminated by Elavon or Member effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Merchant at least ninety (90) days prior to the expiration of the then current term.
- (B) The Agreement may be terminated by Elavon or Member if, after providing thirty (30) days written notice, any of the following conditions remain:
 - (1) The occurrence of Excessive Activity.
 - (2) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon and Member in the Agreement or an amendment to the Agreement.
 - (3) The failure to pay Elavon or Member any amount Merchant owes Elavon or Member.
 - (4) The failure by Merchant to perform a material obligation of the Agreement.
- (C) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:
 - (1) The occurrence of a material adverse change in Merchant's financial condition.
 - (2) The garnishment or attachment of Merchant's deposit accounts with Member, Alternate Security, the DDA, the Reserve Account, or any of Merchant's property in the possession of Elavon or Member.
 - (3) The commencement of a Bankruptcy Proceeding by or against Merchant.

- (4) Any representation, warranty or covenant by Merchant is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the term of the Agreement.
- (5) Any Payment Network requires Elavon or Member to terminate the Agreement or cease processing transactions for Merchant.
- (6) Any change, not approved by Elavon, that constitutes a material change in the types of goods and services Merchant sells or in the methods by which Merchant sells them, or any change that results in Merchant's violation of Elavon's or Member's underwriting policy.
- (7) Assignment of the Agreement or a change in control of Merchant without Elavon's written consent.
- (8) Revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement, if applicable.

The parties' rights of termination under the Agreement are cumulative. A party may exercise its termination rights with respect to an individual Schedule to the Agreement or the participation of any affiliate without terminating other Processing Services or Schedules, provided that any termination of the Agreement in whole shall automatically terminate all related Processing Services and Schedules. A specific right of termination in this section shall not limit any other right of the party to terminate the Agreement or any Schedule expressed elsewhere.

c) Notice of Termination.

- i) Notice of termination by Merchant, Elavon, or Member must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) Action upon Termination.

- i) **Accounts.** All obligations of a party regarding Transactions processed prior to termination will



survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant pays all amounts Merchant owes Elavon or Member or for which Merchant is liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination.

- ii) **Equipment.** If Merchant's equipment is leased, Merchant is obligated to honor the terms and conditions of Merchant's leasing contract. If Merchant's equipment is owned or supplied by Elavon, Merchant must return all equipment to Elavon and pay Elavon any amounts Merchant owes for such equipment within thirty (30) days of termination.
- iii) **Early Termination Fee.** If Merchant terminates the Agreement before the end of the Initial Term, except for termination pursuant to Section (A)(12)(b)(i)(B), Merchant will immediately pay Elavon and Member, as liquidated damages, an early termination fee as specified on Schedule A, Schedule of Fees. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. In addition to the foregoing, if Merchant terminates the Agreement during the Initial Term, other than a termination under Section (A)(12)(b)(i)(B), any incentives, discounts or credits granted by Elavon to Merchant, as reflected on Schedule A, Schedule of Fees, will be immediately due and payable to Elavon in accordance with Schedule A.

13) COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.

- a) **Compliance with Laws and Payment Network Regulations.** Merchant, Elavon and Member agree to comply with all applicable Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from or charges to a consumer account, as applicable, and with any policies and procedures provided by Elavon or Member. Merchant, Elavon and Member further agree to comply with all Laws applicable to the selected Processing Services, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction

Receipts provided to Cardholders. Merchant will execute and deliver to Elavon and Member all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

- b) **Privacy Laws.** In addition to Section (A)(14)(b), each party hereto must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c) **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to Elavon's and Member's fulfillment of the obligations related to the listing of Merchant in such databases, and Merchant waives all claims and liabilities Merchant may have as a result of such reporting.
- d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to



or disclosure of such information. All Value Added Servicers must comply with the requirements of those Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents.

e) **Data Compromise.**

i) **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Elavon and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances, (b) the form, number and range of compromised account information, (c) specific account numbers compromised, and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Elavon and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Elavon and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Elavon and Member may request. In addition, Merchant must provide all audit reports to Elavon and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Elavon and

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Member. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Merchant will allow Elavon or Member to perform or have performed such audits at Merchant's expense.

ii) **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with Elavon and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.

iii) **Liability for Data Incident.** Without waiving any of Elavon's and Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Elavon or Member incur as a result of such Data Incident, including any fees, fines, penalties and/or assessments by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.

iv) **Elavon Data Compromise.** If Elavon suffers a data incident and Cardholder, Customer, or Transaction information has been accessed from Elavon, its employees or agents, or systems within Elavon's control, then Elavon will follow all applicable Payment Network Regulations with respect to such data incident including providing the required reporting and forensic audits to the Payment Networks.

f) **Office of Foreign Assets Control Compliance.** Elavon and Member are entities governed by the Laws of the United States of America and as such, neither Elavon nor Member may provide any products or services to Merchant or its Customers that contravene the Laws of the United States of America, including, without limitation, the Laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any successor thereto.

14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**

a) **Use of Trademarks.** Merchant shall use and display the Payment Networks' marks as may be required or requested by the Payment Networks, and shall display such marks in accordance with the standards for use established by the Payment Networks. Merchant's right to use all such marks



will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials provided by the Payment Networks will not indicate, directly or indirectly, that such Payment Networks endorse any goods or services other than their own and Merchant may not refer to any Payment Networks in stating eligibility for Merchant's products or services.

b) **Confidentiality.**

i) **Cardholder and Transaction Information.**

Merchant, Elavon and Member shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant, Elavon and Member must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that they no longer deem necessary or appropriate to maintain. Further, Merchant, Elavon and Member must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed to unauthorized parties or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement.

ii) **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including any Bankruptcy Proceeding, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties and Merchant must:

- (A) Return this information to Elavon, or
- (B) Provide acceptable proof of destruction of this information to Elavon.

iii) **Confidential Information Generally.** Each party acknowledges that during the Initial Term and any Renewal Term of this Agreement, a party may disclose certain Confidential Information to the other party. Each party agrees to protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise

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disseminate the other party's Confidential Information, except in connection with the performance of its obligations under this Agreement. Each party recognizes that the disclosure or unauthorized use of Confidential Information will injure the Disclosing Party. Each party further recognizes and agrees that the injury that the Disclosing Party will suffer for any actual or threatened breach by the Receiving Party of the covenants or agreements contained herein cannot be compensated by monetary damages alone, and the Receiving Party therefore agrees that the Disclosing Party, in addition to and without limiting any other remedies or rights which it may have under the Agreement or otherwise, shall be entitled to equitable relief, including injunction and specific performance. The Receiving Party further agrees to waive any requirement for the securing or posting of any bond in connection with such equitable remedy. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

c) **Passwords.** If Merchant receives a password from Elavon to access any of Elavon's databases or services, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or Person to use the password or gain access to Elavon's or any of its agent's databases or services; (iii) be liable for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold Elavon and Member harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.

d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon, unless specifically agreed to in a separate license or use agreement between Merchant and Elavon.



Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.

- e) **Actions upon Termination.** Upon the request of the Disclosing Party or upon the termination of the Agreement, the Receiving Party shall promptly return all Confidential Information and all copies of such Confidential Information in the Receiving Party's possession or in the possession of its agents and/or will deliver to the Disclosing Party, destroy or irreversibly erase, as the Disclosing Party shall request, all originals and copies prepared by the Receiving Party or its agents or prepared for the Receiving Party's use containing or reflecting any Confidential Information of the Disclosing Party. In the event a dispute arises between the parties in relation to the Confidential Information (or a part thereof) or the Agreement, the Receiving Party may retain a copy of such Confidential Information (or part thereof) as, in the Receiving Party's discretion, reasonably exercised, is necessary for its defense of the dispute and its retention and use of such Confidential Information shall continue to be subject to the terms of the Agreement.
 - f) **Disclosure of Confidential Information.** In the event that the Receiving Party and/or its agents become legally required or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 14. In the event that such protective order or other remedy is not obtained, and regardless of whether the Disclosing Party waives compliance with the terms of this Section 14, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party, as advised by the written opinion of counsel, is legally required to be disclosed and to exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.
- 15) **MISCELLANEOUS PROVISIONS.**
- a) **Entire Agreement.** The Agreement (including all Schedules, attachments, exhibits, addenda and other documents incorporated by reference into the Agreement or any of its Schedules, attachments, exhibits or addenda) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any amendment or Schedule to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time.
 - b) **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the Laws of the State of Georgia. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Jurisdiction and venue for any claim or cause of action arising under the Agreement (other than collection actions by Elavon or Member relating to amounts owed by Merchant under the Agreement) shall be exclusively in the United States District Court for the Northern District of Georgia, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Georgia, then the exclusive forum and venue for any such action shall be the courts of the State of Georgia located in Fulton County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. Merchant, Elavon and Member hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Elavon and Member each represents to the other that this waiver is knowingly, willingly and voluntarily given.
 - c) **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Elavon and Member as contemplated by the Agreement without Elavon and Member's written consent.
 - d) **Construction.** Any alteration or strikeover in the text of the Agreement or any Schedule thereto will have no binding effect and will not be deemed to amend the Agreement. The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their



mutual intent, and no rule of strict construction will be applied against any party.

- e) **Assignability.** The Agreement may not be assigned by Merchant, directly or by operation of law or by change in control of Merchant, without the prior written consent of Elavon. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. Elavon will not transfer or assign the Agreement without the prior written consent of Merchant, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon shall merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- f) **Notices.** Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Merchant's last address shown on the records of Elavon, or to Elavon at 7300 Chapman Highway, Knoxville, TN 37920.
- g) **Bankruptcy.** Merchant will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Merchant. Merchant will include Elavon on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Merchant acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- h) **Customer Contact.** Merchant authorizes Elavon and Member to contact Merchant's Customers or their Issuer if Elavon or Member determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- i) **Telephone Recording.** For quality assurance and training purposes Merchant authorizes Elavon to monitor and record telephone conversations at any time. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.
- j) **Communication with Merchant.** Merchant agrees that Elavon and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by facsimile, telephone, mobile telephone and/or electronic mail.
- k) **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be

in writing and signed by the parties. Notwithstanding the foregoing, Elavon and Member may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. Elavon or Member will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided.

- l) **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. None of the failure, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by a party must be signed by the waiving party.
- m) **Independent Contractors.** Elavon, Member, and Merchant will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- n) **Survival.** All of the obligations of each party hereto that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections 3, 4, 5, 6, 7, 10, 12, 13, 14, and 15(b) of the TOS, shall so survive and remain binding upon and for the benefit of the parties hereto.
- o) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.
- p) **Force Majeure.** Elavon and Member shall not be considered in default in performance of their obligations to the extent such performance is delayed by force majeure affecting their ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples,



revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of Elavon and Member.

Section B - Glossary

- 16) **ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.
- 17) **Agreement:** The Payment Device Processing Agreement, including the TOS, MOG, any Schedules, attachments, exhibits, addenda, the Merchant Application, amendments, or additions as permitted under the terms of the Agreement.
- 18) **Alternate Security:** The security described in Section (A)(4)(b)(vi).
- 19) **American Express:** American Express Travel Related Services Company, Inc.
- 20) **ACH:** Automated Clearing House.
- 21) **ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.
- 22) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- 23) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- 24) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- 25) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.
- 26) **Cardholder Data:** One or more of the following data elements pertaining to a Cardholder's account: card number, Cardholder name (if applicable), card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's card program.
- 27) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 28) **Confidential Information:** All information or items proprietary to any party to the Agreement, of which another party to the Agreement obtains knowledge or access as a result of the relationship formed as a result of the Agreement, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- 29) **Convenience Fee:** A fee charged by Merchant for an added convenience to the Cardholder for the use of a



- Payment Device in a Transaction in accordance with the Payment Network Regulations.
- 30) **Credit Card:** A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant. A "Credit Card" includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.
 - 31) **Credit Card Associations:** (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; (vii) UnionPay; and (viii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
 - 32) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
 - 33) **Debit Card:** A card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder's designated deposit account. A "Debit Card" includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.
 - 34) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement.
 - 35) **Diners:** Diners Club International Ltd.
 - 36) **Disclosing Party:** The party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).
 - 37) **Discover:** DFS Services LLC.
 - 38) **Discover Network:** The payment network operated and maintained by Discover.
 - 39) **EBT Card:** A card utilized for electronic benefits transfers.
 - 40) **ECS Association:** NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or Demand Drafts or other legal replacements or substitutes for a Paper Check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association used by Elavon and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.
 - 41) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
 - 42) **Effective Date:** The date set forth in the signature block of Elavon on page 1 of the Agreement.
 - 43) **Elavon:** As applicable, Elavon, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.
 - 44) **Electronic Check Services (ECS):** The service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.
 - 45) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
 - 46) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
 - 47) **Excessive Activity:** The occurrence, during any monthly period, of Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of Transactions.
 - 48) **Interchange:** The clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between Elavon and the Issuer through the applicable Payment Network.
 - 49) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
 - 50) **JCB:** JCB International Co., Ltd.



- 51) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 52) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- 53) **MasterCard:** MasterCard International Incorporated.
- 54) **Member:** The sponsoring Member designated on the Merchant Application or on a particular Schedule hereto, as applicable. Any Member may be changed by Elavon at any time and the Merchant will be provided notice of same.
- 55) **Merchant:** The entity set out in the first page of the Agreement and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.
- 56) **Merchant Application:** The Merchant Application attached hereto as Schedule C and any additional document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for Processing Services, including documents submitted by Merchant as a part of the bid process, if applicable.
- 57) **Merchant Operating Guide (MOG):** Elavon's operating manual that prescribes rules and procedures governing Transactions and Merchant's use of the Processing Services. The MOG may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Merchant.
- 58) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 59) **Payment Device:** Any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.
- 60) **Payment Network:** Any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- 61) **Payment Network Regulations:** Individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- 62) **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- 63) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.
- 64) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 65) **Receiving Party:** The recipient of Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the other party).
- 66) **Reserve Account:** The account established pursuant to Section (A)(4).
- 67) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 68) **Reserve Event:** The events designated in Section (A)(4).
- 69) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.
- 70) **Servicer:** See "Elavon."
- 71) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 72) **Transaction:** Any action between a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- 73) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- 74) **UnionPay:** China UnionPay Co., Ltd.
- 75) **Value Added Servicer:** Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as an agent of Elavon performing Elavon's obligations under the Agreement.
- 76) **Visa:** Visa U.S.A., Inc.

SCHEDULE A - SCHEDULE OF FEES

I. ASSUMPTIONS / MERCHANT PROFILE

Legal Entity Name	City of Portland
Business Segment	Services_Government
Category Description	Government Services-Not Elsewhere Classified
MCC	9399
Multiple MCCs?	Yes
Locations	30
Initial Contract Term (yrs)	5
Date Fees Last Updated	March 28, 2013

	Annual Volume	Average Ticket	Annual Transactions
VISA	\$ 78,177,948	\$ 12.50	6,254,236
MasterCard	\$ 22,409,016	\$ 15.00	1,493,934
Discover	\$ -	\$ -	0
UnionPay	\$ -	\$ -	0
American Express	\$ -	\$ -	0
JCB & Diners	\$ -	\$ -	0
PIN-Debit	\$ 184,968	\$ 245.00	755
Checks	\$ -	\$ -	0
EBT	\$ -	\$ -	0
Total	\$ 100,771,932		7,748,925

II. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

	Merchant Fee	Application	Comments
Account Set-Up & Implementation Fee	\$ -		
Application Fee	\$ -		
Rush Fee	\$ -		
Monthly Statement Fee	\$ -		
Supply Fee	\$ -		
Terminal reprogram Fee (per unit)	\$ -		
Onsite Training	\$ -		
Research Fee	\$ -		
Other Fee	\$ -		

III. CARD PROCESSING FEES

Pricing Type: **Pass-Through**

All Visa, MasterCard, Discover, UnionPay, and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Servicer Transaction processing fees include:

	Auth Fee (\$)	Settle Fee (\$)	Settle Fee (%)
Visa	\$ 0.0225		
MasterCard	\$ 0.0225	\$ -	
Discover	\$ 0.0225	\$ -	
UnionPay	\$ 0.0225	\$ -	
PIN-Debit	\$ 0.0225	\$ -	

Billing Method: **Net**

Interchange fees will be assessed on net (sales minus returns) Visa, MasterCard, Discover, and UnionPay settled volume. Assessments will be paid on all settled volume. Assessments are not refunded on returns or chargebacks.

Servicer may adjust Merchant's pricing if (i) Merchant's annualized Visa/MasterCard/Discover/UnionPay average ticket or volume falls below projections by more than twenty percent (20%), or (ii) Merchant's Visa/MasterCard/Discover/UnionPay average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover/UnionPay average ticket or volume during the same month the previous calendar year.

IV. AUTHORIZATION FEES - Servicer

	Combination	IP %	Dial %
Telecom Method	N/A	70.00%	30.00%
Additional Fee for Telecom			
American Express	\$ 0.1000		
Diners	\$ -		
JCB	\$ -		
EBT	\$ -	0.0000%	
Other Card Type	\$ -	0.0000%	
Voice (VRU) Authorization	\$ 0.75		
Voice Authorization with Address Verification	\$ 0.90		
Operator-Assist Authorization	\$ 1.25		
Bank Referral Authorization	\$ 4.00		
End to End Encryption (E2EE)	\$ -		

V. OTHER TRANSACTION FEES & SERVICES

SCHEDULE A - SCHEDULE OF FEES

AVS Fee (per occurrence)	\$ -
ACH Fee (per occurrence)	\$ -
ACH Returned Item Fee (per occurrence)	\$ -
FedWire Settlement (per occurrence, where available)	\$ -
Chargeback Fee (per occurrence)	\$ 10.00
Monthly Minimum (per location)	\$ -
Monthly Minimum Start Date	6/1/2013
OCM Setup Fee	\$ -
Monthly Maintenance Fee 1-5 Users	\$ -
6-10 Users	\$ -
11+ Users	\$ -

VI. OPTIONAL SERVICES

A. Reporting

Merchant Connect Premium	
Setup Fee	\$ -
Monthly Fee 1 User	\$ -
2-5 Users	\$ -
6-10 Users	\$ -
11+ Users	\$ -

B. Foreign Networks & Gateways

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

	Dial	IP	IP SSL
<input type="checkbox"/> TSYS Acquiring Solutions (Vital) Foreign Network			
<input type="checkbox"/> ADS Foreign Network			
<input type="checkbox"/> BuyPass Foreign Network			
<input type="checkbox"/> Global (Mapp or NDC) Foreign Network			
<input type="checkbox"/> FDMS (Envoy or Nashville) Foreign Network			
<input type="checkbox"/> MerchantLink Gateway			
<input type="checkbox"/> Other			

C. Equipment/Software

Equipment Options-Hardware	
MagTek BulleT~VM Mobile (Blackberry/Droid)	\$50 purchase
MagTek iDynamo~VM Mobile (Older Apple)	\$50 purchase
MagTek uDynamo~VM Mobile (New Apple)	\$50 purchase
Hypercom T4210 (Dial) Terminal/Printer	\$300 purchase
Hypercom T4220 (IP) Terminal/Printer	\$400 purchase
VeriFone Vx510 (Dial) Terminal/Printer	\$250 purchase
VeriFone Vx570 (IP) Terminal/Printer	\$400 purchase
PIN Pad Hypercom P1300/Verifone 1000SE	\$85 purchase
RDM Synergy II—ECheck/Terminal/Printer	\$625 purchase
VeriFone VX510 (Dial) Terminal/Printer	\$15 monthly for 36 months*
VeriFone VX 570 (IP) Terminal/Printer	\$30 monthly for 36 months*
Hypercom T4210 (Dial) Terminal/Printer	\$20 monthly for 36 months*
Hypercom T4220 (IP) Terminal/Printer	\$25 monthly for 36 months*
RDM Synergy II	\$35 monthly for 36 months*
EMV Terminal-Peripheral	
Ingenico ICT250 Terminal/Printer	\$500 purchase
VeriFone Vx520 Terminal/Printer	\$550 purchase
VeriFone Vx820 PIN Pad	\$350 purchase
Ingenico ICT250 Terminal/Printer	\$25 monthly for 36 months*
VeriFone Vx520 Terminal/Printer	\$30 monthly for 36 months*
Verifone Vx820 PIN Pad	\$18 monthly for 36 months*
Equipment Options-Wireless	
Hypercom T4230GPRS	\$475 purchase
Hypercom M4230GPRS	\$575 purchase
Hypercom SIM Card	\$20 per device
VeriFone Vx610CDMA	\$700 purchase
Miscellaneous Accessories	Varies
Set up Fee (Hypercom/Verifone)	\$20 per device
Monthly Fee (Hypercom/Verifone)	\$19 per device
Hypercom T4230GPRS	\$30 monthly for 36 months*
Hypercom M4230GPRS	\$35 monthly for 36 months*

SCHEDULE A - SCHEDULE OF FEES

VeriFone Vx610CDMA	\$45 monthly for 36 months*
* Lease Terms available in 12, 24, and 48 months	
Equipment Options-Software	
Internet Secure	\$200 purchase + \$5 monthly
Virtual Merchant Web/Terminal (Unlimited MIDs/Users)	\$200 purchase + \$10 monthly
Magstripe Credit Card Reader (USB/PS2)	\$85 purchase
VeriFone Pin Pad 1000SE	\$85 purchase
RDM 6111F Imager/Card Reader(Virtual Merchant, SS)	\$400 purchase
Epson ReadyPrint T20 Printer	\$250 purchase
Epson Printer Cable (15')	\$9.70...shipping included

Description	Amount	Exchange / Upgrade
Dial Terminal Exchange	\$149	Includes Hyper T7P Memory Upgrade, Hyper T7PF Printer Upgrade, Nurit 2085 NOS Upgrade, Eclipse Terminal Exchange (with NO ECS), Omni 3740 and FD 50 Exchange for a USED VX510LE.
	\$199	Includes Hyper T7P Memory Upgrade, Hyper T7PF Printer Upgrade, Nurit 2085 NOS Upgrade, Eclipse Terminal Exchange (with NO ECS), Omni 3740 and FD 50 Exchange for a NEW VX510LE.
Verifone 3750 Memory Upgrade	\$199	Exchange a 2.5 or 3.0 meg memory, for a USED vx570 Terminal.
IP Terminal Upgrade	\$199	Includes any Elavon supported Dial Terminal, FD 50, 100 and 200 Terminals, and the Heartland E3 terminal Exchanged for a USED T4220IP Terminal.
	\$249	Includes any Elavon supported Dial Terminal, FD 50, 100 and 200 Terminals, and the Heartland E3 terminal Exchanged for a NEW T4220IP Terminal.
Verifone VX610 Wireless Exchange	\$449	Exchange Nurit 8000S or a Verifone VX610 that is not SPRINT CDMA Exchanged for a USED Verifone VX610 Sprint CDMA.
Eclipse, FD 200, Synergy 1 Terminal Exchange (with ECS)	\$249	Exchange Eclipse, FD 200 or Synergy 1 Terminal WITH ECS for a USED Synergy2 Terminal.

Notes: 1) Shipping and handling fees are included in the equipment price. 2) All newly purchased equipment from Servicer is warranted for one year from date of purchase. Servicer will replace defective equipment. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. After the first year, merchant will be quoted a new equipment cost based on market pricing. 3) Merchant owned equipment is not warranted by Servicer, but Merchant may purchase new equipment at market pricing from Servicer. 4) See additional pricing sheet as needed.

Notes: 1) Other fees or charges may be applied by Servicer as set forth in the lease agreement. 2) Each location will require a separate lease contract. 3) Servicer will replace defective equipment during the term of the lease. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. 4) All previously leased equipment is not warranted by Servicer. 5) See additional pricing sheet as needed.

SCHEDULE A - SCHEDULE OF FEES

VII. VALUE ADDED PRODUCTS

Electronic Check Service

A. Service Level and Processing Fees:

Conversion with Guarantee***

Guarantee Rate Per Transaction

Conversion with Verification

Per Transaction*

Conversion with Verification and Collections**

Per Transaction*

Conversion Only

Per Transaction*

ACH

Per Transaction*

Combination Service (Select any two)

Conversion with Guarantee***

Transactions from to Guarantee Rate Per Transaction

Conversion with Verification

Transactions from to Per Transaction*

Conversion Only

Transactions from to Per Transaction*

Returns Management***

Per Returned Item

*The Per Transaction fee applies to the original ECS transaction, voids/reversals, declines, and to any resubmissions of returned Items.

**Collections service options are not available for WEB, TEL, PPD, or CCD Transactions

***No return or resubmission fees apply to returned conversion with guarantee transactions

Maximum Check Amount

Guarantee Check Limit

ECS Monthly Minimum Fee (Per MID)

NSF Fee (per occurrence)

IX. TERM

Term:

Initial Term of five (5) years with one (1) year Renewal Terms

MERCHANT ACKNOWLEDGEMENT

Signature: _____

Name: _____

Title: _____



Elavon Payment Device Processing Agreement (v.01.01.10)

SCHEDULE B
AFFILIATED ENTITIES

Check one:

☐ Merchant named on page 1 only, and all locations will operate under Federal Tax ID Number _____.

☐ Merchant named on page 1, with Federal Tax ID Number _____ and the following affiliate(s) (a separate Form W-9 must be submitted for each entity identified below):

Name	Tax ID Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**MERCHANT, on behalf of itself and each of the
affiliated entities identified above:**

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

 Date: _____
 (Schedule B "Effective Date")

MEMBER

By: _____

Name: _____

Title: _____



Elavon Payment Device Processing Agreement (v.11.01.12)

SCHEDULE C
MERCHANT APPLICATION (LARGE RELATIONSHIP)

[Separately Provided]

Request Information		Corporate Information		Merchant Processing Information		Solution Support Information		Other	
Use the F1 Key for Help Files									
Large Merchant Request Form									
Please Complete all fields									
<input type="checkbox"/> Pre-Qualification Request		<input type="checkbox"/> Legal Contract Request <small>All custom contracts require Pre-Qual</small>		<input type="checkbox"/> Sales / Solution Support Request		<input checked="" type="checkbox"/> Implementation Request			
DO NOT SUBMIT ANY APPLICATIONS TO BOARDING. ALL SUBMISSIONS WILL BE COORDINATED BY CSIG.									
Industry <input type="checkbox"/> Retail <input type="checkbox"/> Hospitality <input type="checkbox"/> Supermarket <input type="checkbox"/> Airline <input type="checkbox"/> Internet <input checked="" type="checkbox"/> Public		<input checked="" type="checkbox"/> US <input type="checkbox"/> Canada <input type="checkbox"/> Puerto Rico <input type="checkbox"/> Global		Type - <input type="checkbox"/> Restaurant <input type="checkbox"/> Healthcare <input type="checkbox"/> Pay at Pump <input type="checkbox"/> T&E <input type="checkbox"/> MO/TO /Gov't		Existing Elavon MIDs: <input type="checkbox"/> Yes (list all in Other or attach)			
Client Group #: 3		Entity #: 61305		Sales Channel: US Bank Government					
Sales Rep Code: 15778		Sales Rep Name: Michael F. Hodge		Sales Rep Phone # / Ext and/or Cell #: (503)477-5544 /		Sales Rep Email: michael.hodge@usbank.com			
Bank Referral #: 210066575		Banker Contact Name: Wendy Sifford		Banker Contact Phone # / Ext.: (503)275-3498 /		Banker Contact Email: wendy.sifford@usbank.com			
Full Legal/Corporate Name (Must Match Agreement / Tax ID / Financials): City of Portland				Tax ID / Corp #: -		<input type="checkbox"/> Multiple Tax IDs/Legal Entities (please list on separate attachment)			
Legal/Corporate Physical Address: 1120 SW 5 th Ave				Financials: <input type="checkbox"/> Publicly Traded (Symbol) <input checked="" type="checkbox"/> Government <input type="checkbox"/> Private <input type="checkbox"/> Tax Exempt					
Legal/Corporate City: Portland State: OR Zip Code: 97205				Main or Corporate Website: www.portlandoregon.gov					
Main Contact Name: Tbd				Main Contact Phone # / Ext.: /		Fax #:			
Main Contact Title/Position:				Main Contact Email:					
Visa – MasterCard – Discover		AMEX		Debit Card		ECS		EGC	
Annual Volumes: \$ 100,586,960		\$ 962,376		\$ 184,968		\$		\$	
Total # transactions: # 7684608		# 313188		# 756		#		#	
MIDs Expected: #		Avg. Ticket: \$ 13		Expected DIA: \$		Days Delayed Delivery:			
PCI Information:		PCI Certified: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No PCI Level: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 (PCI Level 1, 2, 3 require a PCI NEW Account Exception Pricing form) Level 4> <input type="checkbox"/> Standard Grid Pricing <input type="checkbox"/> Exception Pricing (requires PCI NEW Account Exception Pricing form)							
MCC/SIC Code		Describe Product/Service: General Govt							
Additional Comments (This section will expand as necessary to allow additional pages):									
<input checked="" type="checkbox"/> Credit AMEX> <input checked="" type="checkbox"/> Existing <input type="checkbox"/> One Point <input type="checkbox"/> ESA <input type="checkbox"/> Union Pay <input type="checkbox"/> UPOP (Union Pay Online Processing) <input type="checkbox"/> Visa Tax Service (VI, MC, DS) <input checked="" type="checkbox"/> Debit Card <input type="checkbox"/> EBT <input type="checkbox"/> EGC <input type="checkbox"/> Healthcare <input type="checkbox"/> Convenience Fee <input type="checkbox"/> Petroleum <input type="checkbox"/> Platinum <input type="checkbox"/> Other (use Other section) <input type="checkbox"/> Hospitality <input type="checkbox"/> DCC <input type="checkbox"/> Private Label									
<input type="checkbox"/> ECS Check Type: <input type="checkbox"/> POP <input type="checkbox"/> ARC <input type="checkbox"/> WEB <input type="checkbox"/> TEL <input type="checkbox"/> PPD <input type="checkbox"/> BOC <input type="checkbox"/> Add'l Svcs (describe in Other section) Service Level: <input type="checkbox"/> Conversion Only <input type="checkbox"/> Conversion w/ Verification <input type="checkbox"/> Guarantee <input type="checkbox"/> Collections (not applicable to Guarantee)									
Please list any other Products/Services not listed above:									
Current Processor/Solution: Multiple solutions will be clarified									
Proposed Solution (list all)		<input checked="" type="checkbox"/> Certified to Elavon (Has been validated with Sales Support the product and product versions are certified and compliant) <input type="checkbox"/> Certification Required (Sales Support should engage and begin certification process) <input type="checkbox"/> Elavon Software Integration (Product developers guide has been provided to the merchant and TSIG should be engaged)							
Network:		<input checked="" type="checkbox"/> Elavon <input checked="" type="checkbox"/> Other		Solution Type:		<input checked="" type="checkbox"/> Third Party POS (VAR) Type: <input type="checkbox"/> Distributed <input type="checkbox"/> Hosted		<input checked="" type="checkbox"/> Gateway/Software Type: <input type="checkbox"/> Distributed <input type="checkbox"/> Hosted <input type="checkbox"/> Terminal	
Third Party Manufacturer:		Amano Mcgann							
Third Party Product:		Tender Retail Mult							
Third Party Version:									
Gateway/Software:		Paypal Payflow Pro							
Gateway/Software Version:									
Terminal Model(s):		Varies							
Pin Pad (encryption required):		(Any PIN Pads used by the merchant that are not supported by Elavon will require vendor encryption)							
Check Imager/Reader:									
Reporting:		<input type="checkbox"/> Basic <input checked="" type="checkbox"/> Premium <input checked="" type="checkbox"/> OCM <input type="checkbox"/> ACS <input type="checkbox"/> Mailed Statements <input type="checkbox"/> DMR/Exec Mgmt <input type="checkbox"/> Other							
Features:		<input type="checkbox"/> E2EE <input type="checkbox"/> P2P <input type="checkbox"/> Tokenization							
Solution Support Additional Comments (This section will expand as necessary to allow additional pages):									
Field Implementation Sold: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Desired Target Date: 06/01/13 Implementation Comments:									
Company:		Name:		Phone # / Ext:		Email:			
				/					
				/					
				/					
Please review email outline solutions detailed by City.									
Please send all documentation including completed application packet by email to: CSIG@elavon.com OR by fax to (800) 233-9734 or (865) 403-3760 After Submission: Within 24 business hours, your submission will be reviewed and appropriate action will be determined.								CSIG Use Only	



Schedule I – Processing Services for Government Entities and Institutions (v.11.01.12)

SCHEDULE I
PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services for government entities and institutions, as such services are further described in this Schedule and the Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Schedule I.

Elavon Fee Collection Model (check one):

- ☐ Direct Debit
☐ Monthly Net Settlement
☐ Invoice (when available)

Capitalized terms used and not otherwise defined in this Schedule I shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule I to the Agreement.

on behalf of itself and each of the affiliated entities
identified on Schedule B to the Agreement (the
"MERCHANT"):

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

(Schedule I "Effective Date")

MEMBER

By: _____

Name: _____

Title: _____



Section A – General Provisions Applicable to All Merchants under this Schedule

- 1) **Fees.** Elavon and Member will be compensated for the Processing Services provided under this Schedule as provided in the Agreement as such Agreement may be modified by this Schedule.
- 2) The following provisions hereby replace the like-numbered provisions of the Agreement or are hereby inserted or deleted from the Agreement, as indicated, for Merchants operating under this Schedule.
 - a) **Section (A)(4)(a)(i) Security Agreement.** is deleted.
 - b) **Section (A)(4)(a)(ii) Perfection.** is deleted.
 - c) **Section (A)(6)(a) Accuracy of Information.** is revised to read as follows:
 “a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services provided under this Schedule, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant’s place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Merchant will be responsible for all losses and expenses incurred by Elavon or Member arising out of Merchant’s failure to provide proper notice or requested information for any such change, and will not make any claims against Elavon or Member for any losses sustained by Merchant as a result of such failure. Elavon may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant’s business information. Merchant may request written confirmation of Elavon’s consent to the changes to the Merchant’s business information.”
 - d) **Section (A)(6)(b)(i) Merchant Responsibilities.** is revised to read as follows:
 “i) **Merchant Responsibilities.** As between Merchant, Elavon and Member, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with (A) any dispute with a Customer, Cardholder or any third party relating to any Transaction, (B) any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or (C) any breach by Merchant of any obligation under this Agreement. Merchant will not make any claims against Elavon or Member for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.”
 - e) **Section (A)(6)(b)(ii) Elavon Responsibilities.** is revised to read as follows:
 “ii) **Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (A) Elavon’s breach of the Agreement, or (B) Elavon’s negligence, gross negligence or willful misconduct.”
 - f) **Section (A)(8)(b)(ii) Financial Information.** is revised to read as follows:
 “ii) **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish Elavon and Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time.”
 - g) **Section (A)(11)(a) Products or Services.** is revised to read as follows:
 “a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any Value Added Servicer unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant’s use of any Value



Added Servicer. Neither Elavon nor Member is responsible for the Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.”

h) **Section (A)(12)(d)(iii) Early Termination Fee.** [DELETED]

i) **Section (A)(13)(d) Security Program Compliance.** is revised to read as follows:

“d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network as to which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, “Security Programs”). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information. All Value Added Servicers from whom Merchant procures services must comply with the requirements of those Security Programs. Merchant, and not Elavon or Member, is responsible for Merchant’s own actions or inactions, those of Merchant’s officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, “Merchant’s Agents”). Merchant shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by Merchant or any of Merchant’s Agents.”

j) **Section (A)(14)(c) Passwords.** is revised to read as follows:

“c) **Passwords.** If Merchant receives a password from Elavon to access any of Elavon’s databases or services, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon’s databases or services; (iii) be responsible for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon

if Merchant believes Elavon’s databases or services or Merchant’s information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and be responsible any losses, costs, or expenses that arise from Merchant’s use or misuse of such third party passwords.”

k) **Section (A)(15)(b) Jurisdiction and Venue; Governing Law.** is deleted.

l) **Section (A)(15)(c) Exclusivity.** is deleted.

3) In addition to the termination rights set forth in Section (A)(12)(b)(i) of the Agreement, Merchant shall have the following termination right added to the Agreement as Section (A)(12)(b)(i)(C):

“C) The Agreement may be terminated by Merchant in the event that sufficient legislative appropriation is not available, provided that Merchant gives Elavon and Member sixty (60) days notice prior to termination.”

Section B – Elavon Fee Collection Models

4) **Direct Debit Fee Collection Model.** If Merchant elects the Direct Debit fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement remains unchanged and in full force and effect.

5) **Monthly Net Settlement Fee Collection Model.** If Merchant elects the Monthly Net Settlement fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated daily and will be offset by Elavon and Member against amounts owed by Elavon and Member to Merchant for: (i) on the first day of each month for the prior month’s Processing Services, and (ii) following the first day of the month for fees and other amounts owed to Elavon and Member pursuant to Schedule A that are not available or reasonably calculable as of the last day of a particular month. In the event that the funds owed by Elavon and Member to Merchant on the first day of a calendar month are insufficient to offset amounts Merchant owes to Elavon and Member for Processing Services provided during the prior month, Elavon and



Member may offset any unpaid balance owed by Merchant against future amounts Elavon and Member owe or will owe to Merchant until Merchant's financial obligations are fully satisfied.

- 6) **Invoice Fee Collection Model.** If Merchant elects the Invoice fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

- a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated once each month for the previous month's activity. Elavon will send Merchant an invoice reflecting the fees due, which Merchant must pay within thirty (30) days of the invoice date. In addition to all other available remedies, Elavon and Member may offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe Merchant under the Agreement.

Section C – Government/Public Institution Service Fees

- 7) **Government/Public Institution Service Fees.** If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined on Exhibit B hereto) and has elected on Exhibit A to manage or to have Elavon manage Government/Public Institution Service Fees, then Merchant shall comply with the Government/Public Institution Service Fee Terms and Conditions attached hereto as Exhibit B.



EXHIBIT A
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE ENROLLMENT

ENROLLMENT FORM FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE PROGRAMS

Date:	Pricing Quote #:	<input type="checkbox"/> New Location <input type="checkbox"/> Add/Update Service	Rep Name:	Rep Phone #:
-------	------------------	--	-----------	--------------

Merchant Information	Existing MID:	Chain #:
	DBA Name:	DBA Phone #:
	Contact Name (first & last):	DBA Fax #:
	DBA Address:	City, State, Zip:
	Contact Name (First and Last):	Training Phone # (if different):
	Goods or Services Sold:	Federal Tax ID:

Processing Options	<p>Processing Options:</p> <p><u>Government/Public Institution Service Fee Funding Model (check one if Merchant elects Government/Public Institution Service Fees (GPISF) assessment):</u></p> <p><input type="checkbox"/> Elavon-managed¹ <input type="checkbox"/> Merchant-managed²</p> <p><u>Government/Public Institution Service Fee Services Programs (check all that apply, but only if Merchant elects GPISF assessment):</u></p> <p><input type="checkbox"/> MasterCard Convenience Fee Program for Education and Government Merchants <input type="checkbox"/> Visa Government and Higher Education Payment Program</p> <p><u>Government/Public Institution Service Fee Pricing (applicable only if Merchant elects GPISF assessment):</u></p> <p>Card Service Fee % _____ Visa Consumer Debit (tax only): \$ _____ ACH (via Electronic Check Services): \$ _____ Minimum Annual Fees (if applicable): \$ _____ Implementation Fee (if applicable): \$ _____</p> <p><u>Payment/Transaction Types for GPISF Assessment (not all payment/transaction types are supported for all programs) (check all that apply, but only if Merchant elects GPISF assessment):</u></p> <p><input type="checkbox"/> Credit – (check all that apply): <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover (available if Elavon-acquired) <input type="checkbox"/> Signature Debit – (check all that apply): <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover (available if Elavon-acquired) <input type="checkbox"/> PIN-Based Debit <input type="checkbox"/> ACH (via Electronic Check Services)</p> <p><u>Elavon Product Supporting GPISF Assessment to be Used by Merchant (check all that apply):</u></p> <p><input type="checkbox"/> Biller Direct Services (Schedule K required if checked)(check one option below, but only if Merchant elects Biller Direct Services) <input type="checkbox"/> Bill Payment Portal <input type="checkbox"/> Enterprise Billing Solutions <input type="checkbox"/> Service Fee Terminal (VeriFone vx570 or equivalent) <input type="checkbox"/> Limited Acceptance (Visa, MasterCard, and Discover credit cards only) <input type="checkbox"/> MasterCard and Discover credit cards and signature debit cards <input type="checkbox"/> Merchant Proprietary Solution or Value-Added Servicer <input type="checkbox"/> Other _____</p>
---------------------------	--

Merchant Acknowledgment	<p>By signing below, Merchant warrants the truthfulness and accuracy of the information provided, agrees to pay the fees set forth herein and agrees to abide by the Terms & Conditions for Assessment of Government/Public Institution Service Fees.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Signature _____ </div> <div style="width: 30%;"> Name & Title _____ </div> <div style="width: 30%;"> Date _____ </div> </div>
--------------------------------	---

1. "Elavon-managed" means that Elavon establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee in lieu of Merchant's obligation to pay Elavon the per transaction fees as set forth in the Agreement.
2. "Merchant-managed" means that Merchant establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee. Merchant pays Elavon the per transaction fees as set forth in the Agreement for all such Transactions.

**EXHIBIT B****TERMS AND CONDITIONS FOR ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES**

ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. Terms and Conditions (“T&Cs”) for Assessment of Government/Public Institution Service Fees.

1) APPLICABILITY OF AGREEMENT. If Merchant has requested authority to charge or to have Elavon charge a Government/Public Institution Service Fee to its Customers for Eligible Transactions, the following provisions apply to such Eligible Transactions and the related Government/Public Institution Service Fees charged. Any other Transactions or fees, including Convenience Fees, are governed by the standard provisions set forth in the Agreement, as modified by the applicable Schedules thereto. Merchant agrees to the following provisions, as and to the extent applicable, in addition to the terms and conditions of the Agreement.

2) RULES OF CONSTRUCTION. These T&Cs are intended to complement and are subject to your Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the MOG. In the event of a conflict between these T&Cs and other terms of the Agreement or the MOG, the terms of these T&Cs shall prevail.

3) DEFINITIONS.

a) Agreement. The Terms of Service (TOS) or the Payment Device Processing Agreement, as applicable.

b) Government/Public Institution Service Fee. The fee charged by Elavon or Merchant, at Merchant’s election, to Customers conducting Eligible Transactions (as described herein, as applicable) at Merchants operating in certain designated merchant category codes (“MCCs”). For the avoidance of doubt, fees referred to as a “service fee” or “convenience fee” (in the context of the MCCs described herein) as used in the applicable rules of the Credit Card Associations, where the fee is processed as a separate Transaction from the underlying purchase or payment Transaction, are included within the definition of, and are referred to herein, as a “Government/Public Institution Service Fee.”

4) GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE SERVICES.

a) Government/Public Institution Service Fee Services. At Merchant’s election, Merchant may choose to charge a Government/Public Institution Service Fee (a Merchant-managed Government/Public Institution Service Fee) or to have Elavon charge a Government/Public Institution Service Fee (an Elavon-managed Government/Public Institution Service Fee) to its Customers for Eligible Transactions, in each case provided that Merchant is in compliance with the Payment Network Regulations and Laws, including the Electronic Fund Transfer Act and Regulation E. If Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that any Government/Public Institution Service Fee

collected in connection with an Eligible Transaction will be retained by Elavon and Member and that such amount constitutes Elavon’s and Member’s property, and Merchant has no right, title or interest in such amounts. Further, if Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that Elavon may adjust the Government/Public Institution Service Fee amount from time to time as necessary or appropriate to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, Elavon may immediately terminate the Processing Services for Government/Public Institution Service Fees if Merchant’s Chargeback rates materially exceed industry averages. If Merchant elects a Merchant-managed Government/Public Institution Service Fee, Merchant will receive and retain the Government/Public Institution Service Fee collected in connection with Eligible Transactions and will pay regular per transaction fees to Elavon and Member for the Processing Services provided by Elavon and Member with respect to such Transactions. Merchant agrees that the minimum annual Transaction fees (which includes any Elavon-retained Government/Public Institution Service Fees) paid to Elavon and Member for Transactions processed under this Schedule shall be at least equal to the “Minimum Annual Fees” amount identified on Exhibit A hereto. For any partial period of less than a full year during the term of this Schedule, the actual amount of fees paid by Merchant to Elavon for Transactions processed under this Schedule shall be annualized to determine if Merchant has satisfied this obligation. At the end of each year (the first of which shall begin on the Schedule I Effective Date and each successive year of which shall begin immediately upon the conclusion of the preceding year), Elavon may notify Merchant if the actual Transaction fees paid by Merchant in respect of this Schedule is less than the Minimum Annual Fees amount. In the event that Merchant’s actual Transaction processing fees under this Schedule for any such period are less than the Minimum Annual Fees, Merchant shall promptly pay Elavon and Member the difference.

b) Conflict of Laws. To the extent Merchant’s state or other governing body has passed legislation that requires assessment of Government/Public Institution Service Fees or other fees or charges by government agencies as a component of card acceptance, such laws will control in the event of any conflict with Payment Network Regulations. To the extent that assessment of any Government/Public Institution Service Fees or other fees or charges by government agencies as a component of card acceptance is not required by law, Merchant bears all responsibility and liability associated with the assessment



of such fees in connection with the Agreement, including all assessments, fees, fines and penalties levied by the Payment Networks.

5) REQUIREMENTS FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. This Section 5 sets forth the requirements of the Credit Card Associations applicable to Government/Public Institution Service Fees. Where a Merchant accepts both Visa and MasterCard-branded Credit Cards and/or signature Debit Cards for Eligible Transactions (as defined herein), the Merchant must comply with the most restrictive of these Credit Card Association requirements for all Transactions so as not to discriminate among different Payment Devices or Payment Networks. A Merchant may assess or have Elavon assess a Government/Public Institution Service Fee to Transactions involving Discover Network Payment Devices on the same terms as Government/Public Institution Service Fees are assessed to the other Payment Devices the Merchant accepts. Elavon may update or revise the provisions of this Section 5 upon written notice to Merchant.

a) Merchants Accepting Visa Cards for Eligible Transactions. The following requirements apply to Merchants accepting Visa Credit Cards and/or Visa signature Debit Cards that desire to charge or to have Elavon charge a Government/Public Institution Service Fee on certain Transactions.

i) Eligible Merchants. Merchants operating in MCC 8220 (College Tuition), 8244 (Business), 8249 (Trade Schools), 9211 (Court Costs), 9222 (Fines), 9311 (Tax) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(a)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee on any Transaction involving payment for goods or services (including tax payments) to the Eligible Merchant (each an “Eligible Transaction”).

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(a).

1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon’s registration of Merchant in the “Visa Government and Higher Education Payment Program” and the convenience fee program of Discover Network, in each case to the extent applicable and required.

2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.

3) Merchant may not also assess a separate Convenience Fee (as such term is defined in Visa’s Payment Network Regulations).

4) The Government/Public Institution Service Fee must be disclosed as a fee assessed by Merchant or Elavon.

5) Merchant must accept Visa as a means of payment in all channels (i.e., face-to-face, mail/telephone, and Internet environments, as applicable).

6) Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.

b) Merchants Accepting MasterCard Cards for Eligible Transactions. The following requirements apply to Merchants accepting MasterCard Credit Cards and/or signature Debit Cards that desire to charge or to have Elavon charge Government/Public Institution Service Fees on Eligible Transactions.

i) Eligible Merchants. Merchants operating in MCCs 8211 (Elementary Schools), 8220 (Colleges/Universities), 9211 (Courts), 9222 (Fines), 9311 (Taxes) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(b)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee only in connection with the following “Eligible Transactions”:

1) Payments to elementary and secondary schools for tuition and related fees, and school-maintained room and board;

2) Payments to colleges, universities, professional schools and junior colleges for tuition and related fees, and school-maintained room and board;

3) Payments to federal courts of law that administer and process court fees, alimony and child support payments;

4) Payments to government entities that administer and process local, state and federal fines;

5) Payments to local, state and federal entities that engage in financial administration and taxation; or

6) Payments to Merchants that provide general support services for the government.

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(b).

1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon’s registration of Merchant in the “MasterCard Convenience Fee for Eligible Government and Education Payments” program and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.

2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.

3) The Government/Public Institution Service Fee must apply in the same amount regardless of the Credit Card or signature Debit Card type accepted for payment of a given Eligible Transaction within a particular payment channel. This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.

4) The Government/Public Institution Service Fee must not be advertised or otherwise communicated as an offset to the merchant discount rate.



c) Additional Requirements for Merchants Utilizing Proprietary Solutions or Value Added Servicers.

i) POS Devices. Merchant is responsible for ensuring that its software, POS Devices and card acceptance procedures fully comply with Elavon's instructions, including with respect to programming of software and POS Devices to handle Eligible Transactions to ensure proper assessment of Government/Public Institution Service Fees. If the Government/Public Institution Service Fee is Elavon-managed, Merchant is further responsible for complying with all requirements as provided by Elavon from time to time to appropriately process the Eligible Transactions to qualify for optimal Interchange rates within five (5) days of Elavon's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or card acceptance procedures requested by Elavon within five (5) days of the request, Elavon may, in its discretion, discontinue the program or suspend a certain payment type. Further, if Merchant fails to make such changes and the Government/Public Institution Service Fee is Elavon-managed, Elavon may adjust the Government/Public Institution Service Fee amount, bill the Merchant for charges in excess of the Government/Public Institution Service Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or for applicable Credit Card Associations' reimbursement programs, including, but not limited to, losses related to Merchant's failure to distinguish between pricing of Visa signature Debit Cards and all other card types for transactions processed within the Visa Government and Higher Education Payment Program.

ii) Approval Required to Charge or Adjust Government/Public Institution Service Fee. Merchant may not charge or adjust Government/Public Institution Service Fees unless Merchant has disclosed such fees to Elavon previously in writing and Merchant has been approved by Elavon to charge or adjust such Government/Public Institution Service Fees. If Merchant charges or adjusts a Government/Public Institution Service Fee without having disclosed such fee or adjustment previously in writing and obtained Elavon's consent, Merchant will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to pursuing any other remedies available under the Agreement, Laws and Payment Network Regulations.

iii) Value Added Servicer. Merchants accepting Visa cards for Eligible Transactions must include the words "Service Fee" in the "Merchant name" field of the Visa Transaction clearing record for the collection of the Government/Public Institution Services Fee. Additionally, if the Merchant uses a Value Added Servicer to manage and assess the Merchant's Government/Public Institution Service Fee, the "Merchant name" field of the Visa Transaction clearing record must include the name of the Value Added Servicer (rather than the name of Merchant).

6) ADDITIONAL PROCESSING REQUIREMENTS.

If Merchant voids an underlying Eligible Transaction, the associated Government/Public Institution Service Fee must be voided as well. If Merchant processes a refund for an underlying Eligible Transaction, Merchant must disclose to Customers that Government/Public Institution Service Fees are non-refundable. Merchants that desire to charge or to have Elavon charge Government/Public Institution Service Fees will be assigned separate MIDs for use in connection with Eligible Transactions and related Government/Public Institution Service Fees. MIDs assigned for use with Eligible Transactions and/or Government/Public Institution Service Fees may not be used to process Transactions that are not Eligible Transactions.

7) PAYMENT AND TRANSACTION TYPES SUPPORTED.

Government/Public Institution Service Fee capability for Credit Cards and/or signature Debit Cards depends on the Merchant's MCC, as described above, and the Payment Network Regulations of the applicable Credit Card Association. Government/Public Institution Service Fee capability is supported only through Elavon products specified on Exhibit A hereto. Not all payment and transaction types are supported for all products. Additionally, Merchant proprietary software, POS Devices, or Value Added Servicers may be certified to process Elavon-managed Government/Public Institution Service Fee Transactions. Closed network prepaid cards, electronic benefits transfer, and dynamic currency conversion are not supported for Government/Public Institution Service Fee processing.