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# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2008-0546	Request	In Committee
Communication from Manager; Purchasing/Central Services relative to Procurement Card Contract with JPMorgan Chase Bank, N.A.		
Introduced: 8/5/2008		Controlling Body: Administration & Finance Committee

### COMMITTEE RECOMMENDATION

*Approved*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
AUG 05 2008			Barczak				
			Czaplewski				
			Kopplin				✓
		✓	Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt				
			Sengstock				
			Vitale	✓			
			Weigel				
		TOTAL		4			1

### SIGNATURE OF COMMITTEE MEMBER

\_\_\_\_\_  
 Chair

*Kenneth Kitch*  
 Vice-Chair

\_\_\_\_\_  
 Member

### COMMON COUNCIL ACTION

### APPROVAL

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
AUG 05 2008			Barczak				✓
			Czaplewski	✓			
			Kopplin				✓
			Lajsic	✓			
		✓	Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
		✓	Vitale	✓			
			Weigel	✓			
		TOTAL		8			2



DEPARTMENT OF ADMINISTRATION & FINANCE  
PURCHASING/CENTRAL SERVICES DIVISION

Gene J. Baietto, C.P.M.  
Manager

Robert A. Barwick, A.P.P.  
Senior Buyer

414/302-8300  
414/302-8321 (Fax)

City Hall  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214  
purchasing@ci.west-allis.wi.us  
www.ci.west-allis.wi.us

July 31, 2008

The Honorable Mayor Dan Devine  
and Members of the Common Council  
7525 West Greenfield Avenue  
West Allis, WI 53214

This letter is to request your approval to enter into a contract with JPMorgan Chase Bank, N.A. for the use of their Commercial Card (MasterCard), which will be used for the City's Procurement Card Program. The card will benefit the City in two major areas. First, the ability to order products and services faster and with less transactional time and cost. Secondly, the City will benefit thru a rebate process from the dollars spent, which was negotiated by the V.A.L.U.E. in Local Government Cooperative Purchasing Organization. Presently there are 29 Agencies using the Procurement Card from JPMorgan Chase Bank, N.A. with no modifications to the contract.

The present contract was reviewed by our City Attorney and modifications were requested on 12 items. JPMorgan Chase has modified 10 of the 12 items, but has stated that it would be against Bank policy to make any further changes.

The remaining items for approval, due to unfavorable language in the contract are:

11. *Default.* One-sided language should inure to the benefit of both parties. (JPMorgan Chase is unable to change this language)

13. *Limitation of Liability and Indemnification* "The Client will indemnify the Bank for all claims, cost, demand, expenses, liabilities and losses, including reasonable legal fees and expenses, arising from any claim of a third party relating to any action taken or not taken by the Bank pursuant to this Agreement, unless the action or non-action constitutes the lack of ordinary care or willful misconduct by the Bank; or the breach of any provision of this Agreement. (JPMorgan Chase is not able to change this fourth sentence)

Despite these two provisions, I recommend that this contract be approved.

Sincerely,

Gene Baietto C.P.M.  
Mgr Purchasing / City of West Allis  
414-302-8301 phone  
414-302-8321 fax  
gbaietto@ci.west-allis.wi.us

cc: Scott Post

## COMMERCIAL CARD CLASSIC AGREEMENT

This Commercial Card Classic Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 2008, between City of West Allis, a Wisconsin municipal entity (the "Client"), and JPMorgan Chase Bank, N.A. (the "Bank"), a national banking association in connection with that certain Contract for Service No. 0547 awarded by Waukesha County on November 3, 2005 for commercial card services. Commencing on the date of this Agreement, the Bank and the Client hereby agree that the Bank will provide the Commercial Card Classic Program, as hereinafter defined, and the Client may participate in the Program subject to the terms and conditions of this Agreement.

1. *Definitions.* Terms defined in the singular shall include the plural and vice versa, as the context requires.

**"Access Code"** means the user identification code and password assigned to individuals authorized by the Client, for use in connection with the Program or the System.

**"Account"** means the MasterCard account number assigned to a Cardholder and/or the Client, the related account, and any Card bearing such account number.

**"Account Credit Limit"** means the upper limit established for an extension of credit that the Bank may authorize with respect to an Account.

**"Agreement"** means this Commercial Card Classic Agreement as it may be amended from time to time.

**"Association"** means MasterCard.

**"Authorized User"** means individuals authorized by the Client to access and use the Program and System.

**"Business Day"** means a day on which both the Bank and the Federal Reserve Banks are open for business.

**"Card"** means a MasterCard card that is issued by the Bank with respect to an Account.

**"Card Request"** means a written or electronic transmittal from the Client, requesting the Bank to issue a Card(s) or establish an Account(s).

**"Cardholder"** means (i) an individual in whose name a Card is issued, and (ii) any other employee, officer, director, or person authorized by the Client or named Cardholder to use a Card or Account.

**"Client Account"** means the account of the Client into which the outstanding balances of all Accounts are aggregated and for which the Client is liable.

**"Client Vendor"** means a travel agent, travel agency or any other vendor of Client authorized by the Client to charge Transactions to an Account.

**"Corporate Liability"** means the Client is liable for all Transactions on an Account and such liability shall be as agreed to by the parties and reflected on the Bank's records and subject to this Agreement.

**"Credit Limit"** means the upper limit established for an extension of credit that the Bank may authorize in connection with this Program under this Agreement.

**"Credit Losses"** means all amounts, including any related collection costs, due to the Bank in connection with any Account that the Bank has written off as uncollectible, excluding Fraud Losses.

**"Cycle"** means the monthly period ending on the same day each month, or, if that day is not a Business Day, then the following Business Day or preceding Business Day, as systems may require or such other period as the Bank may specify.

**"Fraud Losses"** means all amounts due to the Bank in connection with any Account that the Bank has written off as uncollectible as a result of an Account being lost, stolen, misappropriated, improperly used or compromised.

**"International Transaction"** means any Transaction that is made in a currency other than U.S. dollars or is made in U.S. dollars outside of the United States of America.

**"MCC"** means a Merchant Category Code as designated by MasterCard.

**"Losses"** means all Credit Losses and Fraud Losses.

**"Marks"** means the name, trade name, and all registered or unregistered service marks of the Client, the Association and the Bank.

**"MasterCard"** means MasterCard International, Inc.

**"Program"** means the commercial card system composed of Accounts, Card-use controls, and reports to facilitate purchases of and payments for, business goods and services, established in connection with this Agreement.

**"Program Administrator"** means an individual authorized by the Client to perform various administrative and security functions in connection with the Program and System.

**"System"** means the conduit through which the Client can access Account and Transaction data and reports.

**"Transaction"** means a purchase, a cash advance, charges or any other activity that results in a debit to an Account.

2. *Obligations of the Bank.* In connection with the Client's participation in the Program, the Bank shall:

A. Establish Accounts and where applicable issue Cards with such capabilities as may be elected by the Client and agreed to by the Bank from time to time. Any Cards and any Cardholder statements will be delivered to a U.S. address of the Client or Cardholder unless otherwise agreed. The Accounts are non-transferable and non-assignable. The Cards shall remain the property of the Bank.

B. The Bank may investigate the identity of the Client and any proposed or existing Cardholder by obtaining, verifying, and recording identifying information, and may if reasonably necessary obtain such information from third parties.

C. Make available to the Client any corporate liability waiver coverage extended by the Association in connection with suspected employee misuse of an Account.

3. *Obligations of the Client.* In connection with the Program, the Client shall:

A. From time to time provide to the Bank a Card Request. The Card Request shall be in a form approved by the Bank, shall include all information required by the Bank, and shall be accompanied by such evidence of authority for the Card Request as the Bank may require. All Card Requests shall be delivered to the Bank in a secure, encrypted, or password protected format. The Client shall initially request a minimum of ten (10) Accounts in connection with the Program. By submitting any Card Request, the Client represents to the Bank that the information contained therein is consistent with the Client's own records concerning the listed Cardholder or entity. The Client represents that the Cards and Accounts to be issued and established under this Agreement are substitutes for accepted cards and accounts, or will be sought and issued only in response to written requests or applications for such Cards or Accounts obtained by the Client from the prospective Cardholders in accordance with Section 226.12 (a) of Regulation Z of the Federal Truth in Lending Act. The Client shall retain such applications (paper or electronic) for any Account when such application is not provided to the Bank, for a period of twenty-five (25) months after the application has been received and acted upon. The

Client agrees to use reasonable security precautions to safeguard Accounts in connection with their storage, use, and dissemination of Accounts.

B. Notify each Cardholder that the Accounts are to be used only for business purposes, for purchase transactions, travel and expenses, cash advances, and fleet and fuel transactions in each case that benefit the Client either directly or indirectly.

C. Clearly disclose to each of its Cardholders the extent, if any, to which the Bank will provide Transaction and Account information to third parties.

D. Make commercially reasonable efforts to (i) maintain a process ensuring timely and accurate reimbursement of all business purchase transactions to its Cardholders, (ii) not exceed the Credit Limit or permit Cardholders to exceed the Account Credit Limits, and (iii) collect and destroy any Cards it no longer requires in connection with this Program.

F. Immediately notify the Bank of any Account for which the Client no longer has use.

G. Immediately notify the Bank by phone of any Account that the Client knows or suspects has been lost, stolen, misappropriated, improperly used or compromised.

H. Comply with all requirements of any corporate liability waiver coverage. Any balance outstanding associated with an Account for which a corporate liability waiver is requested shall become due and payable in accordance with the terms hereof.

I. Notify the Bank of any Transaction the Client disputes within sixty (60) days of the last day of the Cycle during which such Transaction is charged to the Client. The Client will use commercially reasonable efforts to assist the Bank in attempting to obtain reimbursement from the Merchant. The Bank will use commercially reasonable efforts to assist the Client in attempting to obtain reimbursement from the Merchant; provided, however, the Client understands that no chargebacks will be granted for Transactions resulting from Account usage where a Cardholder's name is not embossed on a Card or where there is no Card associated with such Account. The Client or Cardholder shall not be relieved of liability for any disputed Transaction if the chargeback is rejected in accordance with the Association chargeback policy. The Bank shall not be liable for any Transaction where notice of the disputed Transaction is received from the Client more than sixty (60) days after the last day of the Cycle during which such Transaction is charged to the Client. The Client shall not make a claim against the Bank or refuse to pay any amount because the Client or the person using the Card may have a dispute with any Merchant as to the goods or services purchased from such Merchant which has honored the Card for that purchase.

#### *4. Liabilities of the Client.*

A. Regardless of any established Credit Limits or Account Credit Limits, the Client agrees to pay and perform when due all of its obligations, including without limitation:

Pay the Bank the amount of all transactions billed to a Corporate Account made using any Card. The Client shall make payment monthly for all transactions posted to a Corporate Account as reflected on a periodic invoice during a cycle within fourteen days of the cycle date or if such day is a Saturday, Sunday or a Bank holiday, the next business day (the "Payment Date"). If all or any portion of a payment owed by the Client is not received by the Bank by the Payment Date, then the amounts outstanding shall bear interest, from the first day after the Payment Date to the date on which the Bank receives such payment in full, at the Finance Charge Rate listed in Schedule B. Such interest shall be calculated on the average daily outstanding balance for each day during such period and on the basis of a 360-day year. If all or any portion of a payment owed by the Client is not received by the Bank by the Payment Date more than two times in any six month period, the Bank reserves the right to demand, and the Client agrees to establish, fund and maintain, at a financial institution, an account to be electronically debited for the settlement of obligations owed by the Client to the Bank (the "Account"). The Client authorizes the Bank to transfer funds to the Bank in the amount of the payment due on the Payment Date by debiting the Account. In such case, the Client shall make payment monthly for all transactions posted to a Corporate Account as reflected on a periodic invoice during a cycle

within twenty-five days of the cycle date or if such day is a Saturday, Sunday or a Bank holiday, the next business day (the "Payment Date"). The Client agrees to deposit into, transfer to, or maintain on deposit in the Account immediately available and collected funds in an amount sufficient to fund those transactions and related fees, which may be charged against the Account. If such Account does not contain immediately available and collected funds in an amount sufficient to fund such payment due, then the amounts outstanding shall bear interest, from the first day after the Payment Date to the date on which the Bank receives such payment in full, at the Finance Charge Rate listed in Schedule B. Such interest shall be calculated on the average daily outstanding balance for each day during such period and on the basis of a 360-day year.

B. The Client shall be liable for Fraud Losses, excluding amounts resulting from Transactions made on an Account after the Bank has been notified by phone that such Account has been lost, stolen, misappropriated, improperly used or compromised, unless such Transactions occur as a result of the Client's lack of commercially reasonable security precautions and controls surrounding the Accounts or such use results in a benefit, directly or indirectly, to the Client or any Cardholder.

C. Payments under this Agreement shall be made in U.S. dollars drawn on a U.S. bank or a U.S. branch of a foreign bank.

D. If the Client allows a Client Vendor to charge Transactions to an Account, the Client is solely responsible for instructing such Client Vendor in the handling and processing of Transactions. Client Vendors are for all purposes agents only of the Client and not of the Bank. No fee shall be payable by the Bank to any Client Vendor for performing any services.

The Bank may require the Client to deliver to the Bank authorization information for each Client Vendor including, but not limited to (a) the name and address of each authorized individual of the Client Vendor, and (b) such other information in such format as the Bank may in its sole discretion require.

The Client shall immediately notify the Bank upon revoking a Client Vendor's authority. The Client shall give that notice as described in Section 14. Notwithstanding anything to the contrary in this Agreement, the Client shall be liable for all amounts owing and payable under or in connection with each such Account and this Agreement.

5. [Not Applicable]

6. *Credit.*

A. The Bank, at its sole discretion, may authorize extensions of credit with respect to (i) each Account up to the Account Credit Limit, and (ii) all Accounts up to the Credit Limit. The Bank is entitled but not obligated to decline authorization of any Transaction that would result in any Credit Limit or Account Credit Limit being exceeded. Notwithstanding the foregoing, if the Client and/or the Cardholder exceed the Credit Limit and/or the Account Credit Limit, the Client and/or Cardholder shall pay all amounts exceeding the Credit Limit and/or Account Credit Limit as applicable.

B. The Client shall provide the Bank with copies of its consolidated audited financial statements, including its annual income statement and balance sheet or such other similar financial information as agreed to by the Bank, prepared in accordance with GAAP, as soon as available and no later than 120 days after the end of each fiscal year. The Client shall provide such other current financial information as the Bank may request from time to time. If applicable, the Client will notify the Bank within five Business Days of any change in the Client's bond rating. The Bank shall be entitled to receive, and to rely upon, financial statements provided by the Client to Bank affiliates, whether for purposes of this Agreement or for other purposes.

C. The Bank at any time may cancel or suspend the right of Cardholders to use any Account or Accounts, or decline to establish any Account. The Bank may, at any time, increase or decrease any Account Credit Limit or the Credit Limit or modify the payment terms. If the Bank exercises its rights hereunder, the Bank shall provide the Client with notice of such action within a commercially reasonable timeframe.

D. The Bank may from time to time require MCC authorization restrictions in connection with the Program, provided, however, that the Bank agrees to provide notice to the Client within a commercially reasonable timeframe after such restrictions have been implemented.

E. Notwithstanding the foregoing, the Bank shall not be obligated to extend credit or provide any Account to the Client or any Cardholder in violation of any limitation or prohibition imposed by applicable law.

7. *Program and System Access.*

A. The Bank may provide the Client with password-protected daily access to Account and Transaction data, reports, and account maintenance functions through use of an Access Code. The Bank shall assign an initial Access Code to the Program Administrator. The Program Administrator shall create and disseminate Access Codes to Authorized Users. Such access shall be provided in accordance with such manuals, training materials, and other information as the Bank shall provide from time to time.

B. The Client agrees to be bound by and follow the security procedures, terms and conditions that the Bank may communicate from time to time upon notice to the Client.

C. The Client shall safeguard all Access Codes and be responsible for all use of Access Codes issued by the Program Administrator. The Client agrees that any access, Transaction, or business conducted using an Access Code may be presumed by the Bank to have been in the Client's name for the Client's benefit. Any unauthorized use of an Access Code (except for unauthorized use by a Bank employee) shall be solely the responsibility of the Client.

D. The Bank is authorized to rely upon any oral or written instruction that designates an Authorized User until the authority of any such Authorized User is changed by the Client by oral or written instruction to the Bank, and the Bank has reasonable opportunity to act on such instruction. Each Authorized User, subject to written limitation received and accepted by the Bank, is authorized on behalf of the Client to: open and close Accounts, designate Cardholders, appoint and remove Authorized Users, execute or otherwise agree to any form of agreement relating to the Program, including, without limitation, materials related to security procedures; and give instructions, by means other than a written signature, with respect to any Account opening or closure, designation of Cardholders, or appointment of Authorized Users, and any other matters in connection with the operation of the Program or the System.

E. In connection with use of the System, the Client may instruct the Bank to furnish specific Transaction data to third parties that provide reporting products or services to the Client. The Bank will transmit the Transaction data, without representation or warranty to such third parties identified in such instructions.

8. *Representations and Warranties.* Each party represents and warrants that this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms, and that execution and performance of this Agreement (i) does not breach any agreement of such party with any third party, (ii) does not violate any law, rule, or regulation, or any duty arising in law or equity applicable to it, (iii) are within its organizational powers, and (iv) have been authorized by all necessary organizational action of such party.

9. *Fees and Charges.* The Client agrees to pay the fees and charges as specified by the Bank, from time to time. The fees initially applicable are specified in Exhibit B attached hereto. The Bank may change the fees and charges payable by the Client at any time provided the Bank notifies the Client at least thirty (30) days prior to the effective date of the change. Should there be a need to perform services other than those specified in Exhibit B, the Client agrees to pay the fees and charges associated with any such service.

10. *Termination.* This Agreement shall have an initial term from the date first written above through February 28, 2009 unless otherwise terminated pursuant to the provisions of this paragraph. Thereafter, this Agreement shall be successively renewed for two one-year terms upon the anniversary of the effective date unless the Client notifies the Bank at least thirty days prior to such anniversary that it does not agree to such extension. This Agreement may be terminated by the Bank at any time for any reason and the Bank may refuse to allow further Transactions or revoke any of the Accounts at any time and for any reason. The Client also may terminate this Agreement and/or cancel any of the Accounts at any time and for any reason. The Client shall immediately pay

all amounts owing under this Agreement, without set-off or deduction, and destroy all physical Cards furnished to Cardholders. The Bank will assign the Client all its rights concerning such amounts paid. In the event collection is initiated by the Bank, and the Client is proven to be at fault, the Client shall be liable for payments of reasonable attorneys' fees, including but not limited to reasonable counsel fees incurred by the Bank. Sections 2.B, 3.D, 3.G, 3.H, 3.I, 4, 5, 6.A, 7, 9, 10, 11, 12, 13, 15, 16.A, 16.C, 16.F, 16.G, 16.H, 16.I, 16.L, and 16.N shall survive the termination of this Agreement.

11. *Default.* As used herein, "Default" includes (i) the Client failing to remit any payment to the Bank as required by this Agreement; (ii) either party filing or suffering a petition as debtor in any bankruptcy, receivership, reorganization, liquidation, dissolution, insolvency, or other similar proceedings, or making any assignment for the benefit of creditors; (iii) default by the Client under any material debt owed to any Bank related entity; (iv) any material adverse change in the business, operations or financial condition of the Client.

12. *Remedies and Damages.* Either party may terminate this Agreement or the Bank may, at its sole option, suspend its services or obligations upon the event of a Default. Except for remedies expressly provided herein, termination will be a party's sole remedy for breach of this Agreement. In no event shall termination or expiration release or discharge the Client from its obligation to pay all amounts payable under this Agreement.

13. *Limitation of Liability and Indemnification.* The Bank will be liable only for direct damages if it fails to exercise ordinary care. The Bank shall be deemed to have exercised ordinary care if its action or failure to act is in conformity with general banking usages or is otherwise a commercially reasonable practice of the banking industry. Neither party shall be liable for any special, indirect or consequential damages, even if it has been advised of the possibility of these damages. Subject to the limits of sec.893.80, Wis Stats. The Client will indemnify the Bank for all claims, costs, demands, expenses, liabilities and losses, including reasonable legal fees and expenses, arising from any claim of a third party relating to any action taken or not taken by the Bank pursuant to this Agreement, unless the action or non-action constitutes the lack of ordinary care or willful misconduct by the Bank; or the breach of any provision of this Agreement. This provision shall survive termination of this Agreement as to matters that occurred during its terms.

14. *Notices.* All notices and other communication required or permitted to be given under this Agreement shall be in writing except as otherwise provided herein and shall be effective on the date on which such notice is actually received by the party to which addressed. All notices shall be sent to the address set forth below or such other address as specified in a written form from one party to the other.

To the Bank: JPMorgan Chase Bank, N.A.  
300 South Riverside Plaza, Suite IL1-0199  
Chicago, Illinois 60670-0199  
Attn: Commercial Card Contracts Manager

To the Client: City of West Allis  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214  
Attn: Gene Baietto

15. *Confidentiality.* (i) Except as expressly provided in this Agreement, all information furnished by either party in connection with this Agreement, the Program, or Transactions thereunder shall be kept confidential and used by the other party only in such connection, except to the extent such information (a) is already lawfully known when received, (b) thereafter becomes lawfully obtainable from other sources, (c) is required to be disclosed to, or in any document filed with the Securities and Exchange Commission, banking regulator, or any other governmental agencies, or (d) is required by law to be disclosed and notice of such disclosure is given (when legally permissible) by the disclosing party. Notice under (d), when practicable, shall be given sufficiently in advance of the disclosure to permit the other party to take legal action to prevent disclosure. Each party shall advise all employees, consultants, agents, and other representatives (collectively, "Representatives") who will have access to confidential information about these obligations. A party shall disclose confidential information only to its Representatives involved in this Agreement, the Program, or the Transactions. Upon termination of this Agreement, each party shall, at its option, return, destroy or render unusable, and discontinue use of all



copies of the other party's Confidential Information upon request of the other party. The party receiving such request may, because of system requirements or as may be required by its own record keeping requirements, retain any of the other party's Confidential Information, provided, however, its obligation of confidential treatment shall remain in place. If requested in writing, such party shall certify its compliance with the foregoing provisions. The Bank may exchange Client and Cardholder confidential information with affiliates. The Bank may also disclose confidential information to service providers in connection with their supporting the Bank's provision of Program services. Such providers shall be obligated to keep that information confidential under the same terms and conditions as set forth above obligating the Bank. The Bank may exchange credit or other information concerning the Client or Cardholders with credit reporting agencies and merchants (and, in the case of Cardholder information, with the Client), including but not limited to information concerning Transactions, payment history, reimbursements, and employment status and location. The Bank may in its sole discretion make an adverse report to credit reporting agencies if a Cardholder fails to pay or is delinquent in paying an Account.

The restrictions on use in this Section 15 shall not apply to information or data in aggregated and/or anonymized form, and shall not prohibit the use by Bank of any statistical, aggregate information that is not identified with the Client or any Supplier for creation of statistical marketing studies for research, product development and promotion or strategic planning.

15(ii). *Information Sharing.* Notwithstanding the foregoing, the Client hereby acknowledges and agrees that the Bank may share with Waukesha County Confidential Information including, but not limited to, commercial card transaction spending volumes, average transaction size, purchase limit data and other information deemed necessary by the Bank and Waukesha County in connection with the management of the commercial card program under Contract for Services. The parties to the Contract for Services agree: (i) that such Confidential Information relating to the Client shall be used by Waukesha County as applicable to perform its obligations to manage the commercial card program pursuant to the terms of the Contract for Services and (ii) that such Confidential Information relating to the Client shall not be disclosed, directly to any third party.

#### 16. *Miscellaneous.*

A. Except as otherwise provided herein, neither party shall use the name or logo of the other party without its written consent. If the Client elects to have its Marks embossed on the Cards or provide them to the Bank for other uses, the Client hereby grants the Bank a non-exclusive limited license to apply the Marks to the Cards solely for use in connection with the Program and for no other purpose.

B. If any provision in this Agreement is held to be inoperative, unenforceable, or invalid, such provision shall be inoperative, unenforceable, or invalid without affecting the remaining provisions, and to this end the provisions of this Agreement are declared to be severable. Failure of either party to exercise any of its rights in a particular instance shall not be construed as a waiver of those rights or any other rights for any purpose.

C. Nothing in this Agreement shall constitute or create a partnership, joint venture, agency, or other relationship between the Bank and the Client. To the extent either party undertakes or performs any duty for itself or for the other party as required by this Agreement, the party shall be construed to be acting as an independent contractor.

D. In the regular course of business, the Bank may monitor, record and retain telephone conversations made or initiated to or by the Bank, from or to the Client or Cardholders.

E. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Client and the Bank and their respective successors and assigns. This Agreement, or any of the rights or obligations hereunder, may not be assigned by the Client without the prior written consent of the Bank. In no event shall the Client be relieved of liability to the Bank arising hereunder unless and until a purchaser, transferee, assignee, or other successor in interest to the Client's business shall expressly assume such liability in writing and the Bank accepts such assumption of liability in writing, which acceptance by the Bank shall be solely within the Bank's discretion.

F. Neither party shall be held responsible for any act, failure, event, or circumstance addressed herein if such act, failure, event, or circumstance is caused by conditions beyond its reasonable control.

G. Waukesha County's Service Contract No. 0547 and this Agreement embody the entire agreement and understanding between the Client and the Bank and supersede all prior agreements and understandings between the Client and the Bank relating to the subject matter thereof. Where conflicts in the terms and conditions exist, this Agreement will prevail. All representations and warranties of the Client contained in this Agreement shall survive the execution of this Agreement and consummation of the transactions contemplated hereunder.

H. This Agreement may be amended or waived only by notice to the Client in writing from the Bank. All remedies contained in this Agreement or by law afforded shall be cumulative and all shall be available to the parties hereto.

I. Any taxes (excluding federal and state income taxes on the overall net income of the Bank) or other similar assessments or charges payable or ruled payable by any governmental authority in respect of the Agreement or the Transactions contemplated hereunder shall be paid by the Client together with interest and penalties, if any.

J. To the extent that the Client would have or be able to claim sovereign immunity in any action, claim suit or proceeding brought by the Bank, the Client irrevocably waives and agrees not to claim such immunity.

K. Section headings in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Agreement. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement, as a whole and not to any particular provision of this Agreement.

L. *International Transactions and Fees.* If an International Transaction is made in a currency other than U.S. dollars, the Association will convert the Transaction into U.S. dollars using its respective currency conversion procedures. The exchange rate each Association uses to convert currency is a rate that it selects either from the range of rates available in the wholesale currency markets for the applicable processing date (which rate may vary from the rate the respective entity itself receives), or the government-mandated rate in effect on the applicable processing date. The rate in effect on the applicable processing date may differ from the rate on the date when the International Transaction occurred or when the Account was used. The Bank reserves the right to charge an International Transaction Fee, as specified in Exhibit B. The International Transaction Fee will be calculated on the U.S. dollar amount provided to the Bank by the Association. The same process and charges may apply if any International Transaction is reversed.

M. This Agreement may be signed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same Agreement. This Agreement shall become effective as of the date first appearing above when each of the parties hereto shall have signed a counterpart hereof.

N. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF WISCONSIN, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS. CLIENT HEREBY WAIVES ANY RIGHT TO PERSONAL SERVICE OF ANY PROCESS IN CONNECTION WITH ANY ACTION, AND HEREBY AGREES THAT SERVICE MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE CLIENT AS SPECIFIED IN SECTION 16. THE PARTIES HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY. ANY ACTION CONCERNING THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED IN MILWAUKEE COUNTY, STATE OF WISCONSIN.

JPMORGAN CHASE BANK, N.A.

CITY OF WEST ALLIS

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_



**Client Attestation:**

The undersigned, a duly authorized officer or representative of the Client, does hereby certify that the Client has been duly authorized to enter into and perform this Agreement and that the person signing above on behalf of the Client, whose execution of this Agreement was witnessed by the undersigned, is an officer, partner, member or other representative of the Client possessing authority to execute this Agreement.

By: \_\_\_\_\_ \*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**\*Note:** The person signing the attestation shall be someone different from the person signing above on behalf of the Client.

**EXHIBIT A**  
**MASTERCOVERAGE® LIABILITY PROTECTION PROGRAM GUIDE**  
**(separate document sent electronically)**

**EXHIBIT B**  
**TO COMMERCIAL CARD CLASSIC AGREEMENT**  
**INCENTIVES & FEES**

**DEFINITIONS**

“Average Annual Spend per Participating Agency” means the annual Charge Volume for the entire consortium programs divided by the number of Participating Agencies.

“Average Transaction Size” means Charge Volume divided by the total number of transactions included in the calculation of Charge Volume for any given period.

“Charge Volume” means total U.S. dollar charges made on a Bank Commercial Card, net of returns, and excluding cash advances, and fraudulent charges.

“Consortium Average Transaction Size” means aggregate Consortium Charge Volume divided by the total number of transactions included in the calculation of Consortium Charge Volume for any given period.

“Consortium Charge Volume” means aggregate Charge Volume made by all Participating Agencies.

“Contract Year” means a twelve-month period commencing on March 1 each year and ending on February 28 of the following year for the term of this Agreement.

“Credit Losses” means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible, excluding Fraud Losses.

“Fraud Losses” means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible as a result of a card being lost, stolen, misappropriated, improperly used or compromised.

“Losses” means all Credit Losses and Fraud Losses.

“Participating Agencies” means (i) City of Green Bay, Waukesha County, City of Brookfield, City of Oconomowoc, Racine County, Walworth County, Waukesha County School District and (ii) such other public sector entities within the State of Wisconsin that has estimated commercial card Charge Volume of at least \$200,000.

“Participating Agency Charge Volume” means Charge Volume transacted by each individual Participating Member.

“Settlement Terms” means the combination of the number of calendar days in a billing cycle and the number of calendar days following the end of a billing cycle to the date the payment is due. Settlement Terms are expressed as X & Y, where X is the number of calendar days in the billing cycle and Y is the number of calendar days following the end of a billing cycle to the date the payment is due.

“Speed of Payment” means the number of calendar days after a billing cycle end until the date that full payment of the cycle end balance is received by the Bank.

**REBATES**

**Charge Volume Rebates**

Bank will calculate a rebate rate based on the Consortium Charge Volume and then apply the rebate tier achieved by each individual Participating Agency according to the following schedule:

Annual Consortium Charge Volume	Annual Participating Agency Charge Volume												
	\$300K	\$500K	\$750K	\$1MM	\$2MM	\$3MM	\$4MM	\$5MM	\$6MM	\$7MM	\$8MM	\$9MM	\$10MM
\$3,000,000	0.00%	0.00%	0.00%	0.30%	0.36%	0.41%	0.49%	N/A	N/A	N/A	N/A	N/A	N/A
\$5,000,000	0.00%	0.09%	0.15%	0.30%	0.36%	0.41%	0.49%	0.56%	0.61%	N/A	N/A	N/A	N/A
\$7,000,000	0.10%	0.13%	0.22%	0.32%	0.38%	0.43%	0.51%	0.58%	0.63%	0.66%	0.71%	0.74%	N/A
\$10,000,000	0.10%	0.15%	0.29%	0.37%	0.48%	0.49%	0.57%	0.64%	0.69%	0.72%	0.77%	0.80%	0.81%
\$15,000,000	0.11%	0.18%	0.34%	0.39%	0.50%	0.51%	0.59%	0.66%	0.71%	0.75%	0.79%	0.82%	0.83%
\$20,000,000	0.12%	0.20%	0.34%	0.42%	0.52%	0.53%	0.61%	0.68%	0.73%	0.77%	0.81%	0.84%	0.85%
\$25,000,000	0.13%	0.22%	0.34%	0.44%	0.54%	0.55%	0.63%	0.70%	0.75%	0.80%	0.83%	0.86%	0.87%
\$30,000,000	0.14%	0.24%	0.34%	0.47%	0.56%	0.57%	0.65%	0.72%	0.77%	0.81%	0.85%	0.88%	0.89%
\$35,000,000	0.15%	0.24%	0.34%	0.47%	0.58%	0.59%	0.67%	0.74%	0.79%	0.83%	0.87%	0.90%	0.91%

Participating Agencies may elect 30/25 Settlement Terms, provided, however, such election will result in a reduction of 10 basis points from the above rebate schedule.

If the Average Annual Spend per Participating Agency is at least \$1,000,000 then 10 basis points will be added to the above-non-zero rebate grids.

**General Rebate Terms**

Rebates will be calculated annually in arrears based on the applicable Contract Year. Rebate amounts are subject to reduction by all Losses, subject to Section 4B of the Agreement. If Losses exceed the rebate earned for any calendar year, Bank will invoice the Client for the amount in excess of the rebate, which amount shall be payable within 14 days. Upon termination of the Program, the Losses for the six-month period immediately preceding the termination will be deemed to be equal to the Losses for the prior six-month period. In no event shall the Bank pay the Client a rebate for the year in which this Agreement is terminated.

Rebate payments will be calculated after February 28 for the previous twelve months and paid in the following quarter via Automated Clearing House (“ACH”) credit to an account designated by the Client.

The annual rebates provided will be applied based on the following timeframes:

- Year 1: For the period 3/1/06 through 2/28/07
- Year 2: For the period 3/1/07 through 2/28/08
- Year 3: For the period 3/1/08 through 2/28/09

To qualify for any rebate payment, all of the following conditions apply.

- a. Settlement must be by centrally billed account(s) and ACH or wire or check.
- b. Payments must be received by Bank in accordance with the Settlement Terms. Delinquent payments shall be subject to a Finance Charge as specified below. Settlement Terms are 30 & 14.
- c. The Average Transaction Size must be greater than \$100 for the calendar year.
- d. The Client is not in Default under the Agreement.
- e. Account(s) must be current at the time of rebate calculation and payment.
- f. Rebates must be at least \$300 to be paid.
- g. Participating Agencies must have annual Member Charge Volume of at least \$300,000 to qualify for rebates. .
- h. The Consortium Charge Volume must be at least \$3,000,000 to qualify for rebates.
- i. Customer must have a satisfactory JPMorgan Chase credit risk rating.

**FEES**

**Annual Card Fees**

**WAIVED**

**Incidental Fees**

Plastic Design (assessed per order)

Standard

Graphix Card Design (one standard color)\*

\*(Available only for programs with 20 or more cards)

No Charge

\$350 per side per proof

Copy Retrieval Fee (applies only to non-disputed items)

\$8.00 per receipt

FAST Card (24-hour card replacement)

\$20 per card

Cash Advance

2% (\$3.00 minimum)

Finance Charge Rate (applies only to past due accounts)

Prime Rate + 2%

International Transaction Fee:

up to 1% of the transaction amount

**Reporting Fees**

Smart Data OnLine – Monthly Subscription Fee

**WAIVED**

**Data File Fees** (T&E Expense System or ERP System)

Set Up Fee

\$300 per program

Monthly Fee

\$50 per program per month

**Other**

Should Customer request services not in this schedule Customer agrees to pay the fee associated with such service.