

0150-10344-0002

**TRANSMITTAL**

TO  
City Council  
City Attorney

DATE  
07/08/2025

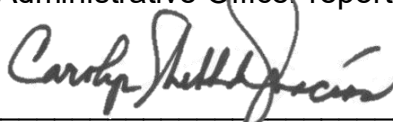
COUNCIL FILE NO.

FROM  
The Mayor

COUNCIL DISTRICT  
All

**Proposed Contract with American Express Travel Related Services Company, Inc.  
for Credit Card Acceptance Services**

Transmitted for further processing. See the  
City Administrative Officer report attached.



MAYOR

(Carolyn Webb de Macías for)

MWS:MA:09250120

**Report From**  
**OFFICE OF THE CITY ADMINISTRATIVE OFFICER**  
**Analysis of Proposed Contract**  
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 06/23/25	C.D. No. All	CAO File No.: 0150-10344-0002
Contracting Department/Bureau: Office of Finance		Contact: Ricardo Estrada (213) 648-8713	
Reference: Transmittal from the Office of Finance dated February 13, 2025			
Purpose of Contract: Contract with American Express Travel Related Services Company, Inc. (AMEX) for credit card acceptance services.			
Type of Contract: (X) New contract ( ) Amendment, Contract No.		Contract Term Dates: Five years, from February 12, 2025 through February 11, 2030	
Contract/Amendment Amount: Fees are based on transaction volume and a percentage of the transaction amount, compensation is 2.15 percent of the total payment collected for American Express credit card transactions.			
Source of funds: Office of Finance Bank Services Fees Account			
Name of Contractor: American Express Travel Related Services Company, Inc.			
Address: 3 World Financial Center 200 Vesey Street, 49 <sup>th</sup> Floor New York, NY 10285			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed			X
4. Proposals have been requested			X
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 0.5 %			
Contractor has complied with:		Yes	No
8. Business Inclusion Program			X
9. Equal Benefits & First Source Hiring Ordinances			X
10. Contractor Responsibility Ordinance			X
11. Disclosure Ordinances			X
12. Bidder Certification CEC Form 50		X	
13. Prohibited Contributors (Bidders) CEC Form 55		X	
14. California Iran Contracting Act of 2010		X	

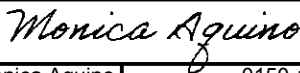
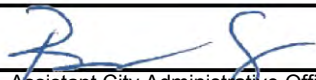
## RECOMMENDATION

That the Council, approve, and authorize the Director of the Office of Finance or designee, to execute, the proposed contract agreement with American Express Travel Related Services Company, Inc. (AMEX) for credit card acceptance services for a contract term of five years from February 12, 2025 through February 11, 2030, subject to the City Attorney review as to form.

## SUMMARY

In accordance with Executive Directive No. 3 (Villaraigosa series), the Office of Finance (Finance) requests authority to execute the proposed agreement with AMEX for credit card acceptance services for a contract term of five years from February 12, 2025 through February 11, 2030, with an option to extend for an additional five years.

AMEX entered into an initial agreement with the City for a five year term from February 12, 2015 through February 11, 2020 under contract C-125354. The contract was extended through a subsequent amendment for an additional five years until February 11, 2025 under the same terms and conditions.

 MA Monica Aquino 0150-10344-0002		 Assistant City Administrative Officer
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As AMEX is the sole provider of American Express Credit Card acceptance services and the City requires authorization from American Express to accept American Express Credit Cards for payment of monies due to the City, it is determined that the use of competitive bidding would be undesirable, impractical, or impossible pursuant to Los Angeles Administrative Code Section 10.15 (a)(10). Accordingly, the City entered into a sole source agreement with AMEX to be able to accept American Express Credit Cards for payment of amounts due to the City. The proposed contract was negotiated with AMEX to create a renewal agreement with the same terms as contract C-125354 and with discounted pricing that is offered to the State of California.

According to Finance, the City has accepted American Express credit cards for the payment of City services, taxes, and fees since 1999. These credit card acceptance services provide constituents with another method to provide payments to the City and for the City to collect revenue. The proposed contract contains a ratification clause in which the City accepts the services performed by American Express during the period from February 12, 2025, through the execution of the proposed contract. The City requested the continuation of services prior to execution of the proposed contract to protect the City from the loss of revenues that would otherwise have resulted from a delay in the acceptance of payments made using American Express credit cards.

The proposed merchant card fee is 2.15 percent of each transaction for payments made with the American Express card. This rate remains the same as the original contract executed in February 2015. Funding is available in the Department's Bank Service Fees account to compensate the contractor. As of May 30, 2025, the merchant card fees paid to American Express in FY 2024-25 total \$26,560. Compensation is based on transaction volume and a percentage of the transaction amount. The 2024-25 Adopted Budget and the 2025-26 Proposed Budget provides sufficient funds for these services in the Department's Bank Service Fees Account.

Pursuant to the Los Angeles Administrative Code (LAAC) Sections 10.8.2.1(i)2(b), 10.40.4(a)(3), 10.41.3(A)(9), 10.44.9(h), and 10.50.3(A)(9), the Contractor is exempted from the Equal Benefits and First Source Hiring Ordinance, Contractor Responsibility Ordinance, and Disclosure Ordinances.

In accordance with the Los Angeles Administrative Code, section 10.5(b)(1), Council approval of the proposed contract is required because the cumulative term exceeds three years. A Charter Section 1022 review was not applicable as the contract does not include a labor component.

## **FISCAL IMPACT STATEMENT**

There is no additional General Fund impact as sufficient funding is provided in the Department's Bank Service Fees Account.

## **FINANCIAL POLICIES STATEMENT**

The recommendation in this report complies with the City's Financial Policies to the extent that current expenditures will be funded by current revenues.

*MWS:MA:09250120*

Attachment



KAREN BASS  
MAYOR

February 13, 2025

The Honorable Karen Bass, Mayor  
City of Los Angeles  
200 North Spring Street  
Room 303, City Hall

Attention: Legislative Coordinator

**RE: EXECUTIVE DIRECTIVE NO. 3 TRANSMITTAL: REQUEST TO EXECUTE A CONTRACT WITH AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

Dear Legislative Coordinator:

In accordance with Mayor's Executive Directive No. 3, the Office of Finance (Finance) requests approval to renew the sole source agreement with American Express Travel Related Services Company, Inc. ("AMEX") for credit card acceptance services. Pursuant to the terms of the contract, American Express allows the City to accept payment through the American Express Card for monies due to the City. The City has numerous physical payment terminals as well as online payment platforms that accept AMEX cards under the current contract C-125354, resulting in the collection of over \$65 million annually in revenue.

The City Attorney has granted sole source approval for AMEX services for a contract term of five years, with an option to extend for an additional five years. The fees assessed by the contract are based on transaction volume and a percentage of the transaction amount.

**BACKGROUND**

It has been the City's goal to provide its constituents with an efficient and convenient method to provide payments to the City for various services provided by the City or monies due to the City. Accordingly, since 1999, the City has entered into an agreement with American Express to allow the City to accept payment through the American Express Card. Because of its convenience and efficiency, all of the City departments use this service to collect payments due to the City.



The current contract C-125354 is set to expire on February 11, 2025, and the Office of Finance has negotiated with AMEX to create a renewal agreement with the same terms as the current agreement and with discounted pricing that is also offered to the State of California.

As American Express is the sole provider of American Express Credit Card acceptance services and the City required authorization from American Express to accept American Express Credit Cards for payment, the City determined that the use of competitive bidding would be undesirable, impractical or impossible pursuant to Los Angeles Administrative Code Section 10.15 (a)(10).

### **FISCAL IMPACT**

There is no impact to the General Fund and budgeted funds are available for these services.

### **RECOMMENDATION**

Finance respectfully requests that the City Council, subject to the approval of the Mayor:

AUTHORIZE the Director of Finance to execute a contract with American Express Travel Related Services Company, Inc. for a period of five years, from February 12, 2025, to February 11, 2030, with an option to extend for an additional five years to February 11, 2035 subject to final review and approval by the Office of the City Attorney as to form and legality.

If you have any questions, please contact Jesse Bustamante, Senior Management Analyst, at (213) 978-1554 or by e-mail at [jesse.bustamante@lacity.org](mailto:jesse.bustamante@lacity.org).

Sincerely,



Diana Mangioglu  
City Treasurer / Director of Finance

Attachment: Draft Contract with American Express Travel Related Services Company, Inc

cc: Lidia Manzanares, Office of the Mayor  
Thomas Arechiga, Office of the Mayor  
Ha To, Office of the City Administrative Officer  
Monica Aquino, Office of the City Administrative Officer  
Mario Interiano, Office of Finance  
Ricardo Estrada, Office of Finance  
Angela Berumen, Office of Finance  
Thomas Juarez, Office of Finance

**AGREEMENT NO. C-\_\_\_\_\_**

**BETWEEN**

**THE CITY OF LOS ANGELES**

**OFFICE OF FINANCE**

**AND**

**AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

**FOR**

**CREDIT CARD ACCEPTANCE**

**AGREEMENT NO. C-\_\_\_\_\_**  
**BETWEEN**  
**THE CITY OF LOS ANGELES**  
**OFFICE OF FINANCE**  
**AND**  
**AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**  
**FOR**  
**CREDIT CARD ACCEPTANCE**

**This Agreement** ("Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation chartered by the laws of the State of California, acting by and through the Office of Finance ("**City**"), and American Express Travel Related Services Company, Inc. ("**Contractor**"), an American bank holding company and multinational financial services corporation that specializes in payment cards, referred collectively herein as the "Parties" or individually as "Party", with reference to the following:

**WHEREAS**, the City of Los Angeles desires to provide its constituents with an efficient and convenient method to provide payments to the City ("the SERVICES"); and,

**WHEREAS**, the Office of Finance, pursuant to the City Charter, is responsible for the provision of financial services, including credit card acceptance services, for the City of Los Angeles; and,

**WHEREAS**, the City has partnered with the Contractor since 1999 to allow the City to accept payment through the American Express® Card and the City wishes to continue this relationship with the Contractor to retain such services to be used by all City departments to collect payments for City services; and

**WHEREAS**, the previous contract C-125354 for credit card acceptance services with Contractor included an expiration date of February 11, 2025; and,

**WHEREAS**, the Contractor acts as an acquirer to merchants that accept the American Express® Card for the sale or provision of goods and services at such merchants; and

**WHEREAS**, the Contractor is the sole provider of certain American Express® Credit Card acceptance services and the City requires authorization from the Contractor to accept American Express® Credit Cards for payment of monies due to the City, the City hereby finds that the use of competitive bidding would be undesirable, impractical or impossible pursuant to Los Angeles Administrative Code Section 10.15 (a) (10) because the Contractor is the sole proprietor of the American Express® Card; and

**WHEREAS**, the City requires authorization from the Contractor to accept American Express® Credit Cards for payment of amounts due to the City;

**NOW, THEREFORE**, in consideration of the above premises and of the representations and covenants hereinafter set forth, the Parties hereto represent and covenant as follows:

## **1. PARTIES TO THE AGREEMENT AND REPRESENTATIVES**

### **1.1. Parties to the Agreement**

The Parties to this Agreement are:

City – The City of Los Angeles, Office of Finance, a municipal corporation, having its principal office at 200 N. Spring St., Room 220, Los Angeles, California 90012.

Contractor – American Express Company, having its principal office at American Express Tower, 200 Vesey Street, New York, NY 10281

### **1.2. Representatives of the Parties**

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications will be given are as follows:

#### **1.2.1. The City's representative is, unless otherwise stated in the Agreement:**

Diana Mangioglu, City Treasurer/Director of the Office of Finance  
Los Angeles Office of Finance  
200 N. Spring St., Room 220  
Los Angeles, California 90012

With copies to:

Mario Interiano  
Chief Management Analyst, Administrative Services Division  
Los Angeles Office of Finance  
200 N. Spring St. Room 220  
Los Angeles, California 90012

1.2.2. The Contractor's representative is, unless otherwise stated in the Agreement:

American Express Travel Related Services Company, Inc.  
P.O. Box 299051  
Fort Lauderdale, FL 33329 Attn: Department 87  
E-mail: American.Express.Contract.Keying@aexp.com  
Fax: (602) 744-8413  
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services Company, Inc.  
3 World Financial Center  
200 Vesey Street, 49th Floor  
New York, NY 10285  
Attn: General Counsel's Office / Merchant Services Practice Group

1.2.3. The designated Project Manager for the City is:

Saul Romo  
Director of Treasury Services  
Los Angeles Office of Finance  
200 N. Spring St. Room 220  
Los Angeles, California 90012  
E-mail: cashtreasury@lacity.org

1.3. Formal Notices

Formal notices, demands, and communications to be given hereunder by either Party must be made in writing and may be affected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated as of the date of receipt.

## **2. TERM OF THE AGREEMENT**

2.1. Term

The initial term of this Agreement shall be for five (5) years commencing on February 12, 2025 and ending on February 11, 2030, with an option to extend for an additional five (5) years upon mutual agreement by both parties.

## 2.2. Ratification

Due to the need for continuity of Contractor's services, Contractor may have provided services prior to the execution of this Agreement. To the extent that Contractor's services were performed in accordance with the terms and conditions of this Agreement, those services are hereby ratified.

## 3. SCOPE OF WORK

### 3.1. Overview of Services

The Contractor shall provide the City the ability to accept the American Express Card, as defined in Schedule A - Other Important Provisions for Card Acceptance, 1(a) of the AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE, attached hereto and incorporated into this Agreement as Attachment B. The Contractor shall provide for the acceptance of the American Express® Card for participating City entities as set forth in Schedule A, Exhibit 1 of the AGREEMENT FOR AMERICAN EXPRESS ® CARD ACCEPTANCE (Attachment B).

## 4. PAYMENT

### 4.1. Method of Payment

The City shall pay the Contractor as compensation for complete and satisfactory performance of the terms of this Agreement according to the Payment Terms included in Schedule A (2), Payment for Charges of the AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE, (Attachment B).

Contractor shall make available to the City an electronic format of an invoice with all relevant payment information for a settlement period with a minimum monthly date range. Contractor shall make available the following payment information:

1. Locations(s) charged;
2. Date of invoice and date range covered;
3. Total Count of transactions;
4. Total Charges, credits, discount, fees & incentives, and Settlement amount;
5. Payment terms, total due and due date;
6. Remittance address.

All invoices shall contain the contractor's official logo and identifying information such as name and address of Contractor. invoice(s) shall be submitted for review and approval to the following City representative:

Los Angeles Office of Finance, Treasury Services  
200 N. Spring St. Room 220  
Los Angeles, California 90012  
E-mail: [cashtreasury@lacity.org](mailto:cashtreasury@lacity.org)  
Phone: (213) 978-3790

## 5. NON-EXCLUSIVE

The City and Contractor understand and agree this is a non-exclusive Agreement to provide services to the City and that the City reserves the right to enter into agreement with other contractors/consultants to provide similar services during the term of this Agreement.

## 6. STANDARD PROVISIONS FOR CITY CONTRACTS

By entering into this Agreement with the City, the Contractor agrees to abide by the Standard Provisions for City Contracts (Rev. 6/24) [v.1], attached hereto and incorporated herein as Attachment A, subject to the amendments provided herein:

### 6.1. PSC-6 – Excusable Delays

Section PSC-6 of the Standard Provisions entitled "Excusable Delays" is hereby deleted in its entirety and the following is substituted in lieu thereof:

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods

or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

[3<sup>rd</sup> paragraph is intentionally omitted]

## 6.2. PSC-9 – Termination

Section PSC-9 of the Standard Provisions entitled "Termination" is hereby deleted in its entirety and the following is substituted in lieu thereof:

### A. Termination for Convenience

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees

and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.

5. Acts of Moral Turpitude

- a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
- b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
- c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
- d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse,

and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.

6. [Intentionally omitted]

- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

6.3. PSC 14 - Claims for Labor and Materials

Section PSC-14 of the Standard Provisions entitled "Claims for Labor and Materials" shall have no force or effect.

6.4. PSC 17 - Bonds

Section PSC-17 of the Standard Provisions entitled "Bonds" shall have no force or effect. There are no bonds required by the City under the terms of this Agreement.

6.5. PSC 18 - Indemnification

Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims,

losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by

Contractor or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. The provisions of PSC-18 shall survive expiration or termination of this Agreement.

Contractor's liability pursuant to Standard Provision PSC-18 shall be capped at \$3,000,000.00 (three million dollars) for each individual occurrence which gives rise to liability. Each claim against the City which arises out of Contractor's conduct shall count as an individual occurrence.

#### 6.6. PSC 19 – Intellectual Property Indemnification

Contractor, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the City, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by Contractor, or its subcontractors of any tier, in performing the work under this Agreement; or (2) as a result of the City's actual or intended use of any Work Product furnished by Contractor, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. The provisions of PSC-19 shall survive expiration or termination of this Agreement.

Contractor's liability pursuant to Standard Provision PSC-19 shall be capped at \$3,000,000.00 (three million dollars) for each individual occurrence which gives rise to liability. Each claim against the City which arises out of

Contractor's conduct shall count as an individual occurrence.

6.7. PSC 21 – Ownership and License

Section PSC-21 of the Standard Provisions entitled "Ownership and License" shall have no force or effect.

6.8. PSC 22 – Data Protection.

Section PSC-22 of the Standard Provisions entitled "Data Protection" is hereby deleted in its entirety and the following is substituted in lieu thereof:

For the avoidance of doubt, the exchange of CITY-provided data (the "City Data") is not contemplated by **CONTRACTOR** and **CITY**, pursuant to the course and scope of this Contract. However, if **CITY** inadvertently provides City Data to **CONTRACTOR**, **CONTRACTOR** shall protect City Data, using the most secure means and technology that is commercially available. **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, of **CONTRACTOR'S** discovery, and **CONTRACTOR** shall promptly return the City Data to **CITY**.

6.9. PSC 24 – Best Terms

Section PSC-24 of the Standard Provisions entitled "Best Terms" is hereby deleted in its entirety and the following is substituted in lieu thereof:

Contractor agrees to offer the City the same discount terms that it offers to the State of California for the goods and services to be provided hereunder throughout the term of the Agreement. The Contractor is presently providing the City a government discounted rate of 2.15% as provided for in the Agreement for American Express® Card Acceptance, Schedule A(3)(b).

6.10. PSC 26 – Mandatory Provisions Pertaining to Non-Discrimination in Employment

The requirements of the Los Angeles Administrative Code section 10.8.2.1 entitled "Equal Benefits Ordinance" shall have no force or effect pursuant to the exemptions provided in Los Angeles Administrative Code Section 10.8.2.1(i)(2)(b).

6.11. PSC 31 - Contractors Responsibility Ordinance

Section PSC-31 of the Standard Provisions entitled "Contractors Responsibility Ordinance" shall have no force or effect pursuant to the exemptions provided in Los Angeles Administrative Code Section 10.40.4(b)(6).

6.12. PSC 32 - Business Inclusion Program

Section PSC-32 of the Standard Provisions entitled "Business Inclusion Program" shall have no force or effect.

6.13. PSC 33 – Slavery Disclosure Ordinance

Section PSC-33 of the Standard Provisions entitled "Slavery Disclosure Ordinance" shall have no force or effect pursuant to the exemptions provided in Los Angeles Administrative Code Section 10.41.3.A(9).

6.14. PSC 34 - First Source Hiring Ordinance

Section PSC-34 of the Standard Provisions entitled "First Source Hiring Ordinance" shall have no force or effect pursuant to the exemptions provided in Los Angeles Administrative Code Sections 10.44.9(h).

6.15. PSC 40 – Compliance with Identity Theft Laws and Payment Card Data Security Standards

Section PSC-40 of the Standard Provisions entitled " Compliance with Identity Theft Laws and Payment Card Data Security Standards " is hereby deleted in its entirety and the following is substituted in lieu thereof:

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS").

6.16. PSC 43 – Confidentiality

Section PSC-43 of the Standard Provisions entitled "Confidentiality" is hereby deleted in its entirety and the following is substituted in lieu thereof:

All documents, information and materials provided to **CONTRACTOR** by **CITY** or any Person or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall, in a commercially reasonable manner, notify **CITY** of any attempt by a third party to obtain access to any Confidential

Information. This provision will survive expiration or termination of this Contract.

6.17. Exhibit 1 – Insurance Contractual Requirements, Section 2 – Notice of Cancellation

Section 2 of Exhibit 1 – Insurance Contractual Requirement of the Standard Provisions entitled "Notice of Cancellation" is hereby deleted in its entirety and the following is substituted in lieu thereof:

All required insurance will be maintained in full force for the duration of its business with the CITY. Contractor shall provide, or cause its insurers to provide, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits of any required insurance policy prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

6.18. Exhibit 1 – Insurance Contractual Requirements, Section 7 – California Licensee

Section 2 of Exhibit 1 – Insurance Contractual Requirement of the Standard Provisions entitled " California Licensee" is hereby deleted in its entirety and the following is substituted in lieu thereof:

All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY.

## **7. MUNICIPAL LOBBYING ORDINANCE**

The Contractor is required to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if Contractor qualifies as a lobbying entity under Los Angeles Municipal Code §48.02. Agreements submitted without a completed CEC Form 50 by contractors that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 may be subject to penalties, termination of contracts, and debarment.

## **8. CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

At the end of this Agreement, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of the Contractor's performance during the term of this Agreement. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be

based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the Contractor assigns to the Agreement. A Contractor who receives a “Marginal” or “Unsatisfactory” rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The City will use the final City evaluation, and any response from the Contractor, to evaluate proposals and to conduct reference checks when awarding other personal services contracts.

## **9. COUNTERPARTS AND ELECTRONIC SIGNATURES**

This Agreement may be executed in one (1) or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one (1) instrument. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by email shall be deemed original signatures.

## **10. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

This Agreement, and any exhibits, attachments, including the or documents incorporated herein by inclusion or by reference, constitute the final, complete, and entire Agreement between the City and the Contractor, and supersedes all prior discussions between the Parties. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of each Party. Unless otherwise provided for in this Agreement, in the event of any inconsistencies between the bodies of this Agreement, exhibits, attachments, or documents, the order of precedence will be as follows:

1. This Agreement;
2. Attachment A - Standard Provisions for City Contracts (Rev. 6/24) [v.1]
3. Attachment B - AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

**[Signature page follows]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**The City of Los Angeles**

By: \_\_\_\_\_  
Diana Mangioglu  
City Treasurer/Director of Finance  
Office of Finance

Date: \_\_\_\_\_

**American Express Travel Related Services Company, Inc.**

By: \_\_\_\_\_  
[NAME]  
[TITLE]

Date: \_\_\_\_\_

By\*\*: \_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

HYDEE FELDSTEIN SOTO, City Attorney

By: \_\_\_\_\_  
Charles Hong  
Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST:**

HOLLY L. WOLCOTT, City Clerk

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

Date: \_\_\_\_\_

City Agreement Number: \_\_\_\_\_

Council File Number: N/A

NOTE: IF Contractor is a corporation, two signatures are required.

\*The signature of President, Chairman of the Board, Or Vice President is required here; and

\*\*an additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

**ATTACHMENT A**

**Standard Provisions for City Contracts**

**(Rev. 1/25) [v.1]**

## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. Applicable Law, Interpretation and Enforcement**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3. Time of Effectiveness**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

#### **PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

#### **PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

#### **PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

#### **PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services

suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

#### **PSC-9. Termination**

##### **A. Termination for Convenience**

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

##### **B. Termination for Breach of Contract**

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

#### **PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

#### **PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

#### **PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

#### **PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

#### **PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

#### **PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

#### **PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

#### **PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

## **PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

## **PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

## **PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Regional Alliance Marketplace for Procurement ("RAMP") at <https://www.rampla.org/s/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through RAMP. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance

under the Contract, and the principals of those Subcontractors (the “Restricted Persons”) shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38.** Contractors’ Use of Criminal History for Consideration of Employment Applications

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39.** Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

#### **PSC-43. Confidentiality**

All documents, information, City Data (as that term is defined in PSC-22), and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, any Confidential Information or their contents or any information therein either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

#### **PSC-44. Contractor Data Reporting**

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

## **EXHIBIT 1**

### **INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low-cost alternative for contractors who are unable to obtain City-required insurance.

### **CONTRACTUAL REQUIREMENTS**

#### **CONTRACTOR AGREES THAT:**

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

**ATTACHMENT B**

**AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE**



## AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

The Agreement, effective as of February 11, 2025 (*Effective Date*), is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and the City of Los Angeles, a municipal corporation. The parties agree as follows:

### **General Provisions**

#### **1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS**

a. Scope of the Agreement. The Agreement governs your acceptance of Cards in the United States, Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions. The Agreement covers you alone. You shall distribute all notices, statements, amendments, and other communications related to the Agreement that you receive from us to your Affiliates and any other Entities accepting the Card under the Agreement. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement.

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel are fully familiar with them. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We have the right to make changes to the Merchant Regulations as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes are provided in electronic form at the website specified below in the definition of “Merchant Regulations” or its successor website.

ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

c. Definitions. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated in section 1.a of Schedule A for ease of reference. Some definitions that appear in the Merchant Regulations are amended in section 1.b of Schedule A.

d. Participating City Entities. Exhibit 1 contains a list of certain Participating City Entities, and you must promptly notify us in writing of any changes to that list, provided that no City Entity may be added or deleted without our prior written consent. You and we acknowledge that we may notify the Participating City Entities listed in Exhibit 1 that this Agreement has been entered into between you and us, and that the terms of this Agreement shall govern their continued acceptance of the Card as of the Effective Date. You and we further acknowledge that we may refer any request for a copy of this Agreement made by a Participating City Entity to you.

## 2. ACCEPTING THE CARD

a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which method of payment to use. You are responsible and jointly and severally liable for the compliance by your Establishments with all provisions of the Agreement and for performance of all obligations of your Establishments under the Agreement.

b. Transaction Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.

ii. Authorization. For every Charge, you must obtain from and submit to us an Authorization Approval code. An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.

iii. Submitting Charges and Credits. Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

iv. Payment for Charges. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any amounts for which you have submitted Credits. Your initial Discount and payment plan are indicated in the Agreement or otherwise provided to you in writing by us. **In addition to your Discount the only other fee we may charge you are processing/gateway fees.**

v. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by (i) deducting, withholding, recouping from, or otherwise offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.

vi. Protecting Cardmember Information. You must protect Cardmember Information and provide to us documentation validating your compliance in accordance with the PCI DSS and other information security requirements described in the Merchant Regulations.

## 3. PROTECTIVE ACTIONS

a. Suspension. We may suspend Card acceptance by a Participating City Entity, upon written notice to you, if we determine, in our sole discretion, that: (i) such Participating City Entity will not be able

to perform any of its obligations under the Agreement, or (ii) we have, or will have, financial exposure or risk with respect to such Participating City Entity under the Agreement. Any such suspended Participating City Entity shall remain liable for all amounts due to us under the Agreement prior to the effective date of any such suspension or arising from Charges submitted prior to the effective date of any such suspension.

**b. Other Protections.** We may take other reasonable actions to protect our rights and the rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, offsetting any amounts due to you under the Agreement against amounts that you owe us or our Affiliates under the Agreement or any Other Agreement, or charging you fees for Disputed Charges.

**c. Providing Information.** You must provide to us promptly, upon request, information about your and your Participating City Entities' finances, creditworthiness, and operations, including the most recent certified financial statements.

#### **4. NOTICES**

**a. Notices.** Except as otherwise provided in section 4.b of the General Provisions, all notices under the Agreement must be provided in writing to the applicable location provided or described in section 4.c or 4.d: (i) by email, effective when sent; or (ii) by mail through the U.S. postal service or by expedited mail courier service, effective upon the earlier of (A) receipt or (B) two business days after being deposited with a nationally recognized expedited mail courier, three days after being deposited in the mail if mailed by first class postage, or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in a postal or electronic address for which no notice was appropriately given, then the notice is effective upon the rejection, refusal or inability to deliver.

**b. Other Notices from Us.** We may also provide notices to you by: (i) hand delivery, effective when delivered; (ii) facsimile, effective when sent; or (iii) by posting on an American Express website or via our merchant portal, effective when posted or otherwise made available to you. Other provisions in the Agreement may also provide for specific notices to be sent by other methods. When we provide notice by posting on an American Express website or via our merchant portal, as a courtesy, we may also make you aware of it on a statement or by mail, email, or through other communications

**c. Our Notice Address.** Unless we notify you otherwise, you shall send notices under sections 4.a and 4.b to us at:

American Express Travel Related Services Company, Inc.  
P.O. Box 299051  
Fort Lauderdale, FL 33329 Attn: Department 87  
E-mail: American.Express.Contract.Keying@aexp.com  
Fax: (602) 744-8413  
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services Company, Inc.  
3 World Financial Center  
200 Vesey Street, 49<sup>th</sup> Floor  
New York, NY 10285  
Attn: General Counsel's Office / Merchant Services Practice Group

**d. Your Notice Address.** Unless you notify us otherwise, we shall send notices to you at:  
City of Los Angeles Office of Finance  
200 N. Spring Street, Room 220

Los Angeles, CA 90012  
Attn: Saul Romo, Assistant Director of Finance  
E-mail: saul.romo@lacity.org  
Facsimile: (213) 978-1760

e. Your Contact Information. You must notify us immediately of any change to your contact information, including without limitation the contact information and address described in sections 4.a and 4.b above. Your failure to provide such updated contact information may result in a delay of the delivery of notices, statements and communications herein referenced; however, it will not impact our ability to give proper legal notice under this provision or the legal effectiveness of same.

## 5. LIMITATION OF LIABILITY

IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING CITY ENTITIES (IN YOUR CASE), SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT; TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE; OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS, INTERNET SERVICE PROVIDERS, OTHER COMMUNICATION NETWORKS OR THE BANKING SYSTEM, EXCEPT THAT OUR RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## 6. TERM AND TERMINATION

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and continues for a period of five (5) years (*Initial Term*). After the Initial Term, the Agreement will remain in effect for successive one year periods (*Renewal Terms*) unless terminated by either party by notice given to the other at least 180 days prior to the end of the Initial Term or any Renewal Term.

b. Grounds for Termination. In addition to the termination rights in sections 3.a and 6.a of the General Provisions, if you engage in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we may terminate the Agreement immediately upon notice to you. If we determine or have reason to believe, in our sole discretion, that you are involved (or knowingly participate or have participated) in a fraudulent or illegal business activity, we may terminate the Agreement immediately without prior notice to you.

c. Termination for Breach. If a party commits a material breach of the Agreement (other than as specified in the preceding subsection), without waiving its other rights and remedies, the other party has the right to send the breaching party a notice specifying the breach and providing the breaching party an opportunity to cure the breach within a period of time no less than thirty days (*Cure Period*). If the breach is not cured within the Cure Period, then the non-breaching party has the right to terminate the Agreement by notice to the breaching party, with termination to be effective not less than ten days following the end of the Cure Period.

d. Post-Termination. If the Agreement terminates, without waiving our other rights and remedies, we may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all

displays of our Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.

e. Effect of Termination. Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to (i) protect Cardmember Information, (ii) indemnify us, (iii) retain documents evidencing Transactions, and (iv) notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## 7. DISPUTE RESOLUTION

This section explains how Claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision.

a. Notice of Claim. Before filing a lawsuit or beginning a mediation or arbitration regarding a Claim, you and we agree to send a written notice (*Claim notice*) to each party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, your Merchant name, address, and Merchant Number and be sent to our notice address set forth in section 4.b of the General Provisions. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.

b. Mediation. In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement.

i. Initiation of Mediation. Before beginning a mediation, you or we must first provide the Claim notice described above and attempt to resolve the Claim in good faith through informal negotiations. If parties are unable to resolve the Claim through informal negotiations within sixty days of receiving the Claim notice, you or we will then have ninety days to submit the Claim to JAMS (1-800-352-5267, jamsadr.com) or the American Arbitration Association (“AAA”) (1-800-778-7879, adr.org) for mediation, or to an alternative mediator mutually agreed upon in writing by you and us.

ii. Conduct of Mediation. You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. Both parties will share equally the costs of any mediation proceedings but otherwise will be responsible for their own legal costs and expenses.

iii. Confidentiality/Tolling. All communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential, and no evidence of any such communication shall be admissible for any purpose or subject to discovery. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled for thirty days from the date you or we send the Claim notice and for sixty days or until termination of the mediation, whichever is earlier.

iv. Effect. If neither party elects mediation within ninety days after the completion of the sixty day informal negotiation period, or we do not reach a resolution within a period of ninety days from the first meeting of the parties in mediation, then the parties will settle the Claim through binding arbitration as set forth in section (c) below.

c. Arbitration. You or we may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a single neutral arbitrator.

**If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited.** The arbitrator's authority is limited to Claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. **Other rights you or we would have in court may also not be available in arbitration. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding.**

**i. Initiation of Arbitration.** Before beginning an arbitration, you or we must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within thirty days after receiving notice of our selection. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if you and we agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (*FAA*). Any arbitration hearing that requires the physical presence of the parties shall take place in New York, New York unless the parties agree in writing to an alternate venue.

**ii. Limitations on Arbitration.** **If either party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There is no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Merchants or other persons similarly situated.** This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

**iii. Previously Filed Claims/No Waiver.** You or we may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Either you or we may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and without limiting its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Merchant Regulations, or any similar provisions of any prior Card acceptance agreement, that was filed against us prior to the Effective Date of the Agreement.

**iv. Arbitrator's Authority.** The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.

**v. Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking

enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered.

**vi. Small Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of the General Provisions is not subject to the requirements of this section. This section is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

**vii. Governing Law/Arbitration Procedures/Entry of Judgment.** This section 7.c is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and shall apply the same substantive law, statutes of limitations and privileges as would apply in court. Arbitration will not be deemed commenced for statute of limitations purposes until you either pay your share of arbitration filing fees or file a written demand for arbitration that includes a written request that we advance your share of arbitration filing fees. Neither sending a claim notice nor requesting mediation constitutes commencement of arbitration for statute of limitations purposes. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have 15 days to make objections, and the arbitrator shall notify the parties of his/ her decision within 20 days of any objecting party's submission. If a Claim is for: (1) \$100,000 or less, you or we may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization; (2) more than \$100,000 and less than \$1,000,000, you and we shall be entitled to limited discovery, which shall include reasonable discovery of hard-copy and electronically-stored information, including not more than four custodians, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by the other party; or (3) \$1,000,000 or more, or includes a request for injunctive relief, or the amount of damages are not defined (A) you and we shall be entitled to reasonable document and deposition discovery, including reasonable discovery of electronically-stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by the other party; and (B) either party can initiate an appeal by notifying the arbitration organization and all parties in writing within 60 days after the arbitrator's award is issued, after which the parties will select a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision (or award (if no written decision is timely requested)) is final and binding; the appeal will otherwise proceed pursuant to the arbitration organization's appellate rules. At the timely request of a party, the arbitrator(s) shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision is final and binding, subject to each party's right to appeal as stated in this section 7. c and/or to challenge or appeal an arbitration award pursuant to the FAA. If more than 60 days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where the other party's headquarters or assets are located.

**viii. Confidential Proceedings.** The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution, negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents,

employees, experts or attorneys, or by the mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.

**ix. Costs of Arbitration Proceedings.** You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees). At your written request, we will consider in good faith making a temporary advance of your share of any arbitration fees or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

**x. Additional Arbitration Awards.** If the arbitrator rules in your favor for an award in an amount greater than any final offer we made to you before any arbitration award is announced, that arbitrator's award will include: (A) any money to which you are entitled pursuant to the award, but in no case less than \$5,000; plus (B) any reasonable attorneys' fees, costs and expert and other witness fees. If the arbitrator determines that the claims or defenses of a party to the arbitration lacked merit and were presented in bad faith or for purposes of harassment, the arbitrator shall award to the other party such fees and costs as reasonably incurred in responding to the improperly-presented claims or defenses.

**xi. Interest.** To the extent permitted by Applicable Law, the parties expressly disclaim any entitlement to prejudgment, post-verdict, or post-judgment interest imposed by New York law or any other Applicable Law. If Applicable Law does not permit disclaiming such interest, any interest awarded by a court, tribunal, or arbitrator related to a Claim shall be calculated using a rate equivalent of the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment, but in no event shall the interest rate exceed 5%. Any award for prejudgment, post-verdict, or post-judgment interest, if not permitted to be disclaimed under Applicable Law pursuant to the first sentence of this paragraph, shall use this rate and this rate only.

**d. Definitions.** For purposes of section 7 of the General Provisions only, (i) *we*, *our*, and *us* include any of our Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) *you* and *your* include any of your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

**e. Continuation.** This section will survive termination of this Agreement, any legal proceeding to collect a debt, any bankruptcy and any sale of you or your assets (in the case of a sale, its terms will apply to the buyer). If any portion of this Dispute Resolution section, except as otherwise provided in the *Limitations on Arbitration* subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Dispute Resolution section, the Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

## **8. MISCELLANEOUS**

**a. Confidentiality.** You and we, respectively, must keep confidential and not disclose to any non-Affiliated third party the provisions of the Agreement and any information that it receives from the other under the Agreement that is not publicly available, except: (i) pursuant to an order, decree, subpoena or other validly issued judicial or governmental agency process (including through requests for information or by oral questions ; or (ii) if such information is requested from us by our or any of our Affiliates' regulators.

**b. Proprietary Rights and Permitted Uses.** Except as otherwise expressly specified in the Merchant Regulations, neither party has any rights in the other party's Marks nor shall one party use the other

party's Marks without its prior written consent, except that we may use your name, address (including your website address or URLs), and customer service telephone numbers and/or industry classification in any media at any time.

**c. Representations and Warranties.** You represent, warrant and covenant to us that as of the date that the Agreement is effective, and continuing during the term of the Agreement: (i) every statement made to us on your application or other information provided to us in relation to the Agreement is true, correct and complete; (ii) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (iii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iv) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts under the Agreement as they become due; (v) there is no circumstance existing, threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts under the Agreement; (vi) you are authorized to enter into the Agreement on behalf of your Affiliates and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (vii) you are not doing business under a name or style not previously disclosed to us; (viii) you will use the services provided under the Agreement only for your own proper business purposes and will not resell, directly or indirectly, any part of those services to any individual or Entity unless expressly permitted in the Merchant Regulations or authorized by us; (ix) you will not submit Transactions between Cardmembers and any other individual or Entity, except as explicitly permitted by and in compliance with Chapters 13 and 14 of the Merchant Regulations (e.g., you will not engage in factoring or "laundering" of Transactions); (x) you own and control the Bank Account; (xi) you will not at any time during the term of the Agreement grant or pledge, any security interest or lien in the Reserve Assets or Bank Account to any individual or Entity without our consent; (xii) you have not assigned to any third party any payments due to you under the Agreement; (xiii) (A) all payments due to you arising from Charges are for bona fide sales of goods or services (or both) at your Establishments; and (B) all payments due to you arising from Charges are free of any liens, claims, or encumbrances other than ordinary sales taxes or liens or other security interests that you grant pursuant to credit facilities obtained in the ordinary course of business from your commercial banks or other financial institutions; (xiv) you are not (A) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (B) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (C) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; and (xv) you have read the Agreement and kept a copy for your file. If any of your representations, warranties, or covenants in the Agreement become untrue, inaccurate, or incomplete at any time, you must immediately notify us and we may immediately suspend or terminate the Agreement with or without notice in our sole discretion.

**d. Compliance with Laws.** You and we, respectively, shall comply with all Applicable Laws and governmental regulations and rules.

**e. Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Subject to section 7 of the General Provisions, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any Claim of lack of jurisdiction or forum non conveniens.

**f. Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term “or” is not exclusive; (iii) the term “including” means “including, but not limited to;” (iv) the term “day” means “calendar day;” (v) all amounts are stated in U.S. dollars; (vi) references to a “party” means us, on the one hand, and you, on the other hand; (vii) the term “may” (unless followed by “not”) means “has the right, but not the obligation, to;” (viii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (ix) any reference to a website or a URL (or both) refers to its successor website or URL; (x) all captions, headings, and similar terms are for reference only; and (xi) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Regulations and the provisions of any accompanying schedules or exhibits shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

**g. Assignment.** You shall not assign the Agreement, or any of your rights, interests, or obligations under the Agreement, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment without our prior written consent is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations under the Agreement, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

**h. Waiver; Cumulative Rights.** A party’s failure to exercise any of its rights under the Agreement or its delay in enforcing any right shall not constitute a waiver of its rights, nor shall a party’s waiver of its rights on any occasion constitute a waiver of such rights on any other occasion. No course of dealing by a party in exercising any of its rights constitutes a waiver of those rights. No waiver of any provision of the Agreement is effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

**i. Savings Clause.** Other than as set forth in the last sentence of section 7.c.ii of the General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties’ intentions, with the balance of the Agreement remaining unaffected. If the provision that was previously held to be illegal or unenforceable is subsequently found to not be illegal or unenforceable as a result of a legislative, regulatory or judicial mandate or agreement of an authority with competent jurisdiction, such provision shall be reinstated in the Agreement and shall supersede the replacement provision. If any such legislative, regulatory or judicial mandate that caused a provision to be held illegal or unenforceable is subsequently modified in any manner, the provision shall be replaced by an enforceable provision that most closely reflects the parties’ intentions as shown by the original contract provision.

**j. Amendments.** Except as specifically indicated herein, any amendment to the Agreement must be in writing and duly signed by both parties (except that an e-mail or other electronic communication does not constitute such a signed writing), provided that we shall change the Merchant Regulations pursuant to the provisions set forth below. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card.

(i) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. We may change the provisions of the Merchant Regulations in scheduled releases (sometimes called “Notification of Changes” in our materials) as follows

- a release of scheduled changes, to be published every April, with changes that take effect in the following October or on such other date as we set forth in the Notification of Changes, and
- a release of scheduled changes, to be published every October, with changes that take effect in the following April or on such other date as we set forth in the Notification of Changes.

Where a scheduled change is to take effect during the period between two editions of the Merchant Regulations, we will also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change.

(ii) Unscheduled Changes. We may also change the provisions of the Merchant Regulations in separate unscheduled releases at any time, which shall take effect ten days after notice to you unless another effective date is specified in the notice.

k. Entire Agreement. The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter of the Agreement and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding such subject matter..

l. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.c OF THE GENERAL PROVISIONS, WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES RELATING TO THE AGREEMENT WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

m. No Third-Party Beneficiaries. The Agreement does not and is not intended to confer any rights or benefits on any individual or Entity that is not a party to the Agreement and none of the provisions of the Agreement are enforceable by any individual or Entity other than the parties to the Agreement, their successors and permitted assigns.

n. Press Releases. Neither party shall issue any press release or make any public announcement (or both) in respect of the Agreement or the other party without the other party’s prior written consent.

o. Independent Contractors. You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

p. Counterparts and Facsimile/E-mail Versions. The parties are entitled to sign and transmit an electronic signature of the Agreement. To the extent either party signs the Agreement by electronic signature, each party acknowledges and agrees that this electronic method of signature is as conclusive of the signing party’s intention to be bound by the Agreement as if that party had signed the Agreement by manuscript (pen and paper) signature.

IN WITNESS WHEREOF, the parties have caused their respective authorized representatives to execute this Amendment as of the Effective Date.”

**AMERICAN EXPRESS TRAVEL  
RELATED SERVICES COMPANY, INC.**

**CITY OF LOS ANGELES**

DRAFT – DO NOT SIGN

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

Colleen J. Taylor  
President and General Manager  
Merchant Services – US  
American Express Travel Related  
Services Company, Inc.

Date: \_\_\_\_\_

DRAFT – DO NOT SIGN

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

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

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

Date: \_\_\_\_\_



## Schedule A

### Other Important Provisions for Card Acceptance

#### 1. DEFINITIONS

a. Notwithstanding anything to the contrary in the Agreement, the following definitions appear in the Merchant Regulations and are repeated in this section 1.a of Schedule A for ease of reference only and do not supersede the definitions in the Merchant Regulations:

*Agreement* means the General Provisions, the Merchant Regulations, and any accompanying schedules and exhibits, collectively (sometimes referred to as the “Card Acceptance Agreement” in our materials).

*American Express Card* or *Card* mean (i) any card, account access device, or payment device or service in each case bearing our or our Affiliates’ Marks and issued by an Issuer or (ii) a Card Number.

*Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card. (Cardmember is sometimes referred to as “Card Member” in our materials.)

*Charge* means a payment or purchase made on the Card, excluding any payment or purchase that you route to a network other than the American Express Network.

*Chargeback* when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right, or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal. (Chargeback is sometimes called “full recourse” or “Full Recourse” in our materials).

*Claim* means any claim (including initial claims, counterclaims, cross-claims, and third-party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, except for the validity, enforceability, or scope of section 7.c of the General Provisions.

*Credit* means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

*Discount/Discount Rate* means an amount that we charge you for accepting the Card, which amount is a percentage of the face amount of the Charge that you submit, or a flat per-Transaction fee, or a combination of both.

*Disputed Charge* means a Charge about which a claim, complaint, or question has been brought.

*Entity* means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

*General Provisions* means the provisions set out in the Agreement other than the provisions in the Merchant Regulations or any accompanying schedule and exhibit.

*Marks* mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

*Merchant Number* means a unique number we assign to your Establishment.

*Merchant Regulations* means the American Express Merchant Regulations – U.S., which are available at [www.americanexpress.com/merchantpolicy](http://www.americanexpress.com/merchantpolicy) and can be accessed by entering your online Merchant Account user ID and password.

*Other Payment Products* mean any charge, credit, debit, stored value, prepaid, or smart cards, account access devices, or other payment cards, services, or products other than the Card.

*We, our, and us* mean American Express Travel Related Services Company, Inc., a New York corporation.

b. The definition of *you* and *your* in the Merchant Regulations are hereby deleted and replaced with the following:

(*You* and *your* mean the governmental Entity indicated on the signature page hereof, and the Participating City Entities. (sometimes called the “Merchant,” “Service Establishment,” or “SE” in our materials)

(iii) The following definitions are added:

*Participating City Entities* means (i) the City Entities listed in Exhibit 1, attached hereto, as may be amended from time to time; and (ii) the City Entities that sign an agency participation agreement substantially in the form attached hereto as Exhibit 2.

*City Entities* means your departments, agencies, institutions, offices, and other city agencies or units of city government that perform sovereign functions.

(iv) Any and all references in the Merchant Regulations to Affiliate(s), as it applies to you, are hereby deleted and replaced with references to Participating City Entity(ies).

## **2. PAYMENT FOR CHARGES**

You shall advise us which of the below mentioned payment options you select or if you change from one option to another:

**OPTION 1 (Gross Pay / ACH Debit):**

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit that we are unable to deduct from our payments to you. If we cannot debit your Bank Account, we may invoice you for such amounts. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice(s), we may offset such amounts from future payments we would otherwise make to you

**OPTION 2 (Gross Pay / Invoice WITHOUT a debit exclusion):**

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) any amounts you owe us or our Affiliates, (ii) any amounts for which we have Chargebacks, and (iii) any Credits you submit that we are unable to deduct from our payments to you. We may invoice you for (A) the Discount, and (B) any amounts described in subsections (i) through (iii) of this section 2 that we are unable to debit your Bank Account for. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice, we may offset such invoiced amounts from future payments we would otherwise make to you.

**OPTION 3 (Gross Pay / Invoice WITH a debit exclusion):**

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may invoice you for all applicable deductions, rejections, and withholdings, which include: (i) the Discount; (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit that we are unable to deduct from our payments to you. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice, we may offset such invoiced amounts from future payments we would otherwise make to you.

**3. SETTLEMENT**

a. Discount and Fees. Your initial Discount and payment terms are set forth below. In addition to the Discount, we may charge you Gateway Fees for processing. We may adjust the Discount and Gateway Fee upon prior written notice.

b. Payment Terms.

Discount Rate (Non-CPC):	2.15%
Discount Rate (CPC):*	2.05%
Prepaid Card Rate:	1.15%
Payment Plan:	Next Day

\*The Discount Rate (CPC) is available for Transactions in which you capture additional or reformatted Transaction Data on the Charge Record, and Transmission Data on the Transmissions, pursuant to the Technical Specifications set forth in the Merchant Regulations.

c. Third Party Providers. You acknowledge that you and the City Entities may have the option to contract for American Express Card acceptance through third parties, and that the rates through such third-party service providers may differ from the rates under this Agreement.

d. City Entity Participation. Notwithstanding anything to the contrary in the Agreement, you acknowledge that a City Entity will not be covered by this Agreement if it enters into a separate Card Acceptance Agreement with us.

#### **4. ADDITIONAL REQUIREMENTS**

You must also comply with the following special provisions. All General Provisions and requirements of the Agreement apply to you as well.

Within thirty days of the Effective Date, you must provide us, in an electronic format, a list of City Entities that accept Other Payment Products (*List*) containing at least the following information: (a) name and telephone number of the City Entity and decision maker, (b) address of the City Entity, including street, city, state, and zip code, and (c) an indication whether the City Entity accepts Other Payment Products. If a City Entity accepts Other Payment Products, you must cause it to accept the Card should you have authority to do so. You must provide us with a current and accurate List at least annually. We may use the List for the purposes of working with you to contact such City Entities to encourage Card acceptance, including the use of mailings and letters of endorsement from you, and preparing internal tracking reports showing which City Entities accept the Card. You must provide us with a mutually acceptable letter of endorsement and any assistance as reasonably required. We will only use the List for internal purposes and will not share the List with any third party sales agents.



## EXHIBIT 1

### PARTICIPATING CITY ENTITIES

The Participating City Entities, as of the Effective Date, are set forth in the table below.




## EXHIBIT 2

### AGENCY PARTICIPATION AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE [CITY ENTITY]

This Agreement and any attachments hereto (*Agency Participation Agreement*) is between **AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.** (*we, us or our*), and the [CITY ENTITY] (*you and your*).

For good and valuable consideration, receipt of which is hereby acknowledged, both parties agree as follows:

1. The terms and conditions of the Agreement for American Express® Card Acceptance between the [GOVERNMENT MASTER MERCHANT] and us (*Master Agreement*) are incorporated herein by this reference as if fully set forth herein and all references therein to “you” and “your” apply to you. Capitalized terms used but not defined herein have the same meaning as in the Master Agreement, unless specified to the contrary.
2. You agree to accept the Card under the terms of the Master Agreement. You represent that you have received all the necessary approvals from the City Treasury Department to allow you to enter into this Agency Participation Agreement.
3. Notwithstanding anything to the contrary contained herein, all terms and conditions of the Master Agreement shall remain unchanged and in full force and effect, and this Agency Participation Agreement shall continue in effect for so long as the Master Agreement is in full force and effect. If the Master Agreement terminates for any reason, this Agency Participation Agreement shall also immediately terminate without further notice.

## Required Insurance and Minimum Limits

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

Date: \_\_\_\_\_

Agreement/Reference: \_\_\_\_\_

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

### Limits

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**Workers' Compensation (WC) and Employer's Liability (EL)**
WC Statutory

EL \_\_\_\_\_

☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

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**General Liability**
☐ Products/Completed Operations☐ Sexual Misconduct \_\_\_\_\_☐ Fire Legal Liability \_\_\_\_\_☐ \_\_\_\_\_

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**Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

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**Professional Liability** (Errors and Omissions)

Discovery Period \_\_\_\_\_

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**Property Insurance** (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood \_\_\_\_\_☐ Builder's Risk☐ Earthquake \_\_\_\_\_☐ \_\_\_\_\_

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**Surety Bonds - Performance and Payment (Labor and Materials) Bonds**


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**Crime Insurance**


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**Other:**


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