

CONTRACT #3
RFS # 321.06-00210
FA # NA
Edison # NV24800

Department of General Services
Motor Vehicle Management

VENDOR:
U.S. Bank National Association
ND



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

To: Tennessee Comptroller of the Treasury Office of Management Services
From: Central Procurement Office
Date: April 4, 2013
Re: U.S. Bank Amendment

I. Background

The State of Tennessee Department of General Services released a RFP for a Universal Card Program, RFP # 32106-00210, on November 18th, 2010, and awarded a contract to the best evaluated proposer, U.S. Bank National Association ND ("US Bank"). This contract, Edison #NV24800, provided for an initial contract period of April 1, 2011 to March 31, 2013 with options to renew for a total contract term of no more than five (5) years.

II. Timeliness and Negotiations

The Universal Card Program is highly utilized and the contract has a maximum liability of \$44 million dollars over a three (3) year period. As such, this contract was targeted by the Central Procurement Office (CPO) as a category to analyze and attempt to achieve increased savings for the State. The CPO's Strategic Sourcing consultant conducted market research and the CPO explored the potential benefits of re-procuring by having discussions with other providers; however, in the end it was determined that the best option for the State was to continue with U.S. Bank.

Unfortunately the process of analyzing spend, reviewing other market alternatives, and negotiating with U.S. Bank took longer than anticipated and therefore the proposed amendment was not finalized in time to get on the Fiscal Review Committee's agenda for approval prior to the expiration of the current contract term. This amendment will be presented for approval before the Fiscal Review Committee at their next scheduled meeting. The particulars of the non-competitive negotiation with U.S. Bank are detailed below:

- On Friday, March 8th the State represented by Jessica Robertson, Chief Procurement Officer; Mike Perry, Deputy Chief Procurement Officer; and Jenny Young, Service Contracts Coordinator held a conference call with U.S. Bank represented by Ryan Calloway, VP Sales, Public Sector; Piroshka Thomas, Relationship Manager; and Robert Hebert, Regional Vice President.

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

- The State, which is currently receiving on average a 1% rebate under the contract, asked U.S. Bank if they would be able to provide higher rebates to the State if the State elected to exercise its option to renew. U.S. Bank replied that they would be able to offer a rebate schedule with terms more favorable to the State for all three (3) remaining contract years. Their proposal included a guaranteed 1.6 % rebate rate for the first renewal year (April 1, 2013 – March 31, 2014) regardless of spend, and an early pay incentive or prompt pay discount. Currently, the State is submitting payment to U.S. Bank in approximately fourteen (14) days; therefore, the prompt pay discount should result in additional savings opportunity to the State.
 - The State asked U.S. Bank to memorialize this proposal in writing. On March 12, 2013 US Bank submitted its proposal, which is attached hereto as Attachment One.
- The State also asked U.S. Bank if they would agree to open the contract to use by local governments. While U.S. Bank was agreeable to this extension in theory; the details of this amendment could not be worked out given the tight time constraints and will be revisited at a later date.

III. **Best Interest of the State**

In addition to being the best evaluated proposer in a competitive procurement conducted in 2010, the CPO has analyzed current market conditions and has determined that exercising its option to renew is in the best interest of the State. While projecting gasoline prices and agency use over the duration of the contract is difficult at best, approval of this amendment would result in projected savings of \$85,418 for the period April 1, 2013 – March 31, 2014 based on current volume usage, and \$71,182 per year for each of the two succeeding renewal option years.

US Bank Voyager Fleet Systems Inc

Rebate Offering For:

State of Tennessee

VOLUME REBATE PERCENTAGE MATRIX:	
Minimum Quarterly Sales Volume	bps of Sales
\$ 1,250,000	1.1000%
\$ 2,500,000	1.3000%
\$ 3,750,000	1.5000%
\$ 5,000,000	1.6000%
\$ 6,250,000	1.6500%
\$ 8,750,000	1.7000%

Early Pay Incentive					
Client Held Days	Rebate	Client Held Days	Rebate	Client Held Days	Rebate
0	0.0750%	16	0.0350%	32	-0.0100%
1	0.0725%	17	0.0325%	33	-0.0150%
2	0.0700%	18	0.0300%	34	-0.0200%
3	0.0675%	19	0.0275%	35	-0.0250%
4	0.0650%	20	0.0250%	36	-0.0300%
5	0.0625%	21	0.0225%	37	-0.0350%
6	0.0600%	22	0.0200%	38	-0.0400%
7	0.0575%	23	0.0175%	39	-0.0450%
8	0.0550%	24	0.0150%	40	-0.0500%
9	0.0525%	25	0.0125%	41	-0.0550%
10	0.0500%	26	0.0100%	42	-0.0600%
11	0.0475%	27	0.0075%	43	-0.0650%
12	0.0450%	28	0.0050%	44	-0.0700%
13	0.0425%	29	0.0025%	45	-0.0750%
14	0.0400%	30	0.0000%		
15	0.0375%	31	-0.0050%		

* Client Held days are calculated by taking the sum of the daily accounts receivable balances for the rebate period divided by the total sales for the same rebate period inclusive of the beginning and ending dates less 15 days.

SAMPLE REBATE CALCULATION:

Quarterly Sales	\$ 4,750,000
Client Held Days	30
Volume Rebate Percentage	1.6000%
Early Pay Rebate Percentage	0.0000%
Total Rebate Percentage	1.6000%
Total Quarterly Sales	\$ 4,750,000
Total Quarterly Rebate	\$ 76,000
Estimated Annual Rebate	\$ 304,000

CONDITIONS:

1. Client Held Days Must be 45 or less to earn any rebate; 30 days to avoid a penalty
2. All Rebates are net of losses.
3. Voyager will calculate sales in aggregate for all state agencies and political subdivisions to determine the point on the volume grid; early pay incentive will be calculated in aggregate for all state agencies and separately for each political subdivision; payments will be made quarterly
4. Voyager will guarantee 1.60% during the first year of the contract to qualifying agencies.
5. This Rebate offering expires: 5/7/2013
6. The agreement term in years is: 3



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

TO: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Jenny Young, Service Contracts Coordinator

DATE: March 19, 2013

SUBJECT: Request for Approval of Contract Amendment One with US Bank

Please consider the enclosed request for a non-competitive amendment with U.S. Bank Voyager Fleet Systems, Inc. The Department of General Services competitively procured a universal card program through RFP #32106-00210 and awarded the contract to U.S Bank on April 1, 2011.

The Department of General Services respectfully requests approval of the attached Amendment One which extends the contract term by one year, as contemplated by the original contract, and does not increase the maximum liability. The proposed amendment also provides for new rebate rates that are more favorable to the State.

Please contact me at (615) 741-1298 with any questions or concerns. We appreciate your consideration of this matter.

Attachments:

- Exhibit A: Supplemental Documentation Required for Fiscal Review Committee
- Exhibit B: Original Contract with Summary Sheet
- Exhibit C: Proposed Amendment One with Summary Sheet
- Exhibit D: Non-Competitive Amendment Request
- Exhibit E: Additional Documentation for Support, Edison Report CN_021 for FY12 and FY13

THE OFFICE OF SERVICES CONTRACTING

312 ROSA L. PARKS AVENUE, 24TH FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1298 • (615) 253-7819 • FAX: (615) 532-6257 • WWW.TN.GOV/GENERSERV/

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Jenny Young	*Contact Phone:	(615) 741-1298		
*Original Contract Number:	NV24800	*Original RFS Number:	#32106-00210		
Edison Contract Number: (if applicable)	NV24800	Edison RFS Number: (if applicable)			
*Original Contract Begin Date:	April 1, 2011	*Current End Date:	March 31, 2013		
Current Request Amendment Number: (if applicable)	One				
Proposed Amendment Effective Date: (if applicable)	April 1, 2013				
*Department Submitting:	Department of General Services				
*Division:	Motor Vehicle Management				
*Date Submitted:	March 19, 2013				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	The process of researching and negotiating the best possible rates for the State took longer than anticipated.				
*Contract Vendor Name:	U.S. Bank National Association ND				
*Current Maximum Liability:	\$44,000,000.00				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY 2015	
\$5,500,000	\$22,000,000	\$16,500,000			
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY: 2011	FY: 2012	FY: 2013			
\$0	\$9,235,388.02	\$8,702,210.60			
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been					

Supplemental Documentation Required for
Fiscal Review Committee

carried forward, please give the reasons and provide the authority for the carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:	State:		Federal:
Interdepartmental:	\$44,000,000		<i>Other:</i>
If “ <i>other</i> ” please define:			
Dates of All Previous Amendments or Revisions: (<i>if applicable</i>)		Brief Description of Actions in Previous Amendments or Revisions: (<i>if applicable</i>)	
N/A			
Method of Original Award: (<i>if applicable</i>)		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award?			

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED



COMMISSIONER OF FINANCE & ADMINISTRATION CPO

Request Tracking #	32106-00210	
1. Procuring Agency	Department of General Services	
2. Contractor	U.S. Bank National Association	
3. Contract #	24800	
4. Proposed Amendment #	1	
5. Edison ID #	NV24800	
6. Contract Begin Date	April 1, 2011	
7. Current Contract End Date – with ALL options to extend exercised	March 31, 2013	
8. Proposed Contract End Date – with ALL options to extend exercised	March 31, 2014	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 44,000,000	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 44,000,000	
11. Office for Information Resources Endorsement – Information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment	<p>The original contract term was for a two (2) year period with options to renew. Through this amendment, the State is now exercising its option to extend the contract term by a period of one (1) year, as provided for in the RFP and original contract award.</p> <p>This amendment also clarifies the requirements and delivery address surrounding replacement of the Universal Cards, adds a prompt pay discount, and improves the rebate rates provided for in contract section C.3. payment methodology from the rates initially proposed during the RFP process.</p>	

Request Tracking #	32106-00210
<p>15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i></p> <p>Ryan Calloway, VP Sales, Public Sector U.S. Bank Corporate Payment Systems 901 Fontaine Ct. Waxhaw, NC 28173 Phone: (704) 243-3278 Email: ryan.calloway@usbank.com</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>US Bank has been providing fuel and maintenance card services since 1995.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>US Bank was the best evaluated proposer in RFP # 32106-00210 for Universal Card Program (for purchase of fuel and automobile maintenance and minor repairs). In addition, prior to electing to exercise its option to renew, the current market of universal card providers was reviewed to insure that the rebate rates offered by US Bank remained competitive and that it was in the best interest of the State to renew.</p>	
<p>18. Justification – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>At this time, it is in the State's best interest to exercise its option to renew the contract that was competitively awarded to US Bank. Through non-competitive negotiations, US Bank has added a prompt pay discount and significantly increased the rebate scheme, both of which will result in significant savings to the State.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p><i>Steven D. Carter /MC</i> <i>1/3/13</i></p>	



CONTRACT AMENDMENT

Agency Tracking # 32106-00210	Edison ID NV24800	Contract # NV000000000000000000 024800	Amendment # 1
Contractor Legal Entity Name U.S. Bank National Association			Edison Vendor ID 18347

Amendment Purpose & Effect(s)
Extend the contract term by one year and no increase to the maximum liability.

Amendment Changes Contract End Date: YES NO **End Date:** March 31, 2014

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			\$0		
2012			\$9,236,000		
2013			\$16,500,000		
2014			\$18,264,000		
2015					
TOTAL:			\$44,000,000		

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Ronald A. Plumb

OCR USE

Speed Chart (optional)	Account Code (optional) 7011
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**AMENDMENT ONE
OF CONTRACT #NV24800
BETWEEN THE STATE OF TENNESSEE
AND
U.S. BANK NATIONAL ASSOCIATION ND**

This Amendment is made and entered by and between the State of Tennessee, Department of General Services, hereinafter referred to as the "State" and U.S. Bank National Association ND, formerly doing business as Voyager Fleet Systems Inc. (U.S. Bank), hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Attachment Three attached hereto is attached as a new attachment.

2. Contract Section A.5.b.3 is deleted in its entirety and replaced with the following:

A.5.b.(3) After the initial distribution, the Contractor will issue, at no cost to the State, new and replacement Universal Cards within one (1) business day of receipt of requests for replacement from the State's Contract Administrator for those requests received by Contractor by 11 AM Central Standard Time. Requests for replacement received by Contractor after 11 AM Central Standard Time will be issued no later than the end of the following business day. Unless a Universal Card has been terminated or canceled, as provided herein, all cards will expire upon the termination of this Contract. During the course of the Contract, the Contractor may, with reasonable notice (not less than 30 days) and at no cost to the State, replace all Universal Cards.

- i. Standard Universal Card replacement shall be available for, but not limited to, damaged, broken, malfunctioning magnetic strip, lost, or stolen cards.
- ii. Contractor will ship Universal Cards to the following address via certified or express mail, for delivery during standard State working hours, 8:00 a.m. to 4:30 p.m. Central Standard Time:

Department of General Services

Motor Vehicle Management
Vehicle Assignment Section
601 Mainstream Drive
Nashville, TN 37228

- iii. As designated by State staff, Universal Cards are to be delivered to other address(es) as may later be deemed necessary by the State.

3. The following is added as Contract Section A.10.

A.10. Prompt Pay Discount. The Contractor agrees to honor any prompt pay discounts as detailed in Attachment Three to this Contract.

4. Contract section B.1. is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period beginning April 1, 2011, and ending on March 31, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

5. Contract section C.3. is deleted in its entirety and replaced with the following:

C.3. Payment Methodology.

- a. The State shall compensate the Contractor for the actual amount of purchases made by the State, including any discounts offered to the State by retailers, and in a total amount not to exceed the Contract Maximum Liability established in Section C.1. Said payments shall be for purchases by use of authorized Universal Cards that can be appropriately reconciled. In NO event shall the Contractor add or the State pay processing fees of any kind whatsoever, and compensation shall be additionally contingent upon the Contractor's satisfactory completion of service defined in Contract Section A.

b. The Contractor shall remit to the State a quarterly Retail Purchases Rebate for actual retail purchases of fuel and maintenance (services and parts). The Contractor shall pay each Retail Purchases Rebate in a lump sum no later than forty-five (45) days after the end of each calendar year of the Contract Period. It is expressly understood and agreed that the obligation set forth in this section shall survive the termination of this Contract.

(1) Rebate Rates— The Quarterly Retail Purchases Rebate shall be based upon the actual Aggregate Quarterly Retail Purchase and the corresponding Rebate Rate as detailed in the following schedule:

Rebate Level Description	Rebate Rate (bps of sales) Year Three (April 1, 2013 – March 31, 2014)	Rebate Rate (bps of sales) Year Four (April 1, 2014 – March 31, 2015)	Rebate Rate (bps of sales) Year Five (April 1, 2015 – March 31, 2016)
Rebate Level 21: \$0 – \$1,249,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.1000 %	1.1000 %
Rebate Level 22: \$1,250,000.00 – \$2,499,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.1000 %	1.1000 %
Rebate Level 23: \$2,500,000.00 – \$3,749,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.3000 %	1.3000 %
Rebate Level 24: \$3,750,000.00 - \$4,999,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.5000 %	1.5000 %
Rebate Level 25: \$5,000,000.00 - \$6,249,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.6000 %	1.6000 %
Rebate Level 26: \$6,250,000.00 - \$8,749,999.99, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.6500 %	1.6500 %
Rebate Level 27: \$8,750,000.00 and greater, Aggregate Quarterly Retail Purchase Amount	1.6000 %	1.7000 %	1.7000 %

(2) Rebate Calculation— The Contractor shall calculate each Quarterly Retail Purchases Rebate as follows:

i. The Aggregate Quarterly Retail Purchase Amount shall equal the sum of the total of all State of Tennessee retail purchases (excluding exempted taxes). Quarterly is equivalent to a three (3) month calendar period.

8. Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

9. Amendment Effective Date. The revisions set forth herein shall be effective April 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

U.S. BANK NATIONAL ASSOCIATION ND

KELLY M. CASPERS, VICE PRESIDENT

DATE

STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES:

COMMISSIONER STEVEN G. CATES

DATE

ATTACHMENT THREE

Prompt Pay Discount

In addition to the Rebates provided for in Contract Section C.3., the Contractor shall provide a prompt pay discount in accordance with the schedule below:

Client Held Days	Rebate	Client Held Days	Rebate	Client Held Days	Rebate
0	0.0750%	16	0.0350%	31	-0.0050%
1	0.0725%	17	0.0325%	32	-0.0100%
2	0.0700%	18	0.0300%	33	-0.0150%
3	0.0675%	19	0.0275%	34	-0.0200%
4	0.0650%	20	0.0250%	35	-0.0250%
5	0.0625%	21	0.0225%	36	-0.0300%
6	0.0600%	22	0.0200%	37	-0.0350%
7	0.0575%	23	0.0175%	38	-0.0400%
8	0.0550%	24	0.0150%	39	-0.0450%
9	0.0525%	25	0.0125%	40	-0.0500%
10	0.0500%	26	0.0100%	41	-0.0550%
11	0.0475%	27	0.0075%	42	-0.0600%
12	0.0450%	28	0.0050%	43	-0.0650%
13	0.0425%	29	0.0025%	44	-0.0700%
14	0.0400%	30	0.0000%	45	-0.0750%
15	0.0375%				

CONDITIONS:

1. Client Held Days are calculated by taking the sum of the daily accounts receivable balances for the rebate period divided by the total sales for the same rebate period inclusive of the beginning and end dates less fifteen (15) days.
2. Client Held days must be forty-five (45) or less to earn any rebate.
3. Prompt pay discount will be calculated in aggregate for all state agencies.
4. Payments will be made on a quarterly basis.



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date April 1, 2011	End Date March 31, 2013	Agency Tracking # RFS #32106-00210	Edison Record ID 24800		
Contractor Legal Entity Name U.S. BANK NATIONAL ASSOCIATION ND			Edison Vendor ID 0000018347		
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #	FEIN or SSN (optional) 41-1881896		
Service Caption (one line only) Universal Fleet Card, for purchase of fuel and minor repairs/services for State-owned vehicles.					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			5,500,000		5,500,000
2012			22,000,000		22,000,000
2013			16,500,000		16,500,000
TOTAL:			44,000,000		44,000,000
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.				
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.				
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.				
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.				
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."				
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. <i>Ronald N. Plum</i>			OCR USE - FA		
Speed Code	Account Code				

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
U.S. BANK NATIONAL ASSOCIATION ND**

This Contract, by and between the State of Tennessee, Department of General Services, hereinafter referred to as the "State" and U.S. Bank National Association ND, by and on behalf of its wholly owned subsidiary, Voyager Fleet Systems Inc., hereinafter referred to as the "Contractor", is for the provision of a Universal payment card services program for the purchase of gasoline, minor maintenance, and repairs at retail locations for State of Tennessee owned vehicles, as further defined in the "SCOPE OF SERVICES."

The Contractor is a federally chartered national banking association.
Contractor Federal Employer Identification #41-1881896
Contractor Place of Incorporation or Organization: Minneapolis, Minnesota.

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract. In accordance with the scope of services detailed herein, the Contractor shall provide a "universal" charge card system of service, including pay-at-the-pump functionality, for the purchase of fuel, maintenance and repair services, and automotive parts for State vehicles and equipment (the "Card Program").

A.2. Definitions

- a. State of Tennessee, State, Tennessee State Government shall all include the primary contracting agency, Department of General Services, as well as any other State of Tennessee department, agency, or division utilizing the services available under this contract.
- b. Fiscal Year shall mean the State of Tennessee's official fiscal year, which is the period of July 1 of each calendar year through June 30 of the next calendar year.
- c. Aggregate Annual Purchases Volume shall mean the total amount of all Universal Card purchases made by the State using cards at retail sites during each contract year of the contract.
- d. Average Transaction Amount shall mean the aggregate average amount of all individual retail purchases posted to all accounts for all entities during the contract year.
- e. Retail Transactions shall mean purchases made by means of a Contractor-provided payment card (the Universal Card) at any participating retail establishment. The definition of "retail transactions" shall not include: (i) any credits, disputed items, fees, late fees, or charges such as returned check fees, collection costs, administrative fees, etc., or (ii) any charges to a card properly reported lost or stolen. It shall be understood by the Parties that invoices may include retail transactions from the previous billing cycle and may not necessarily include all retail transactions that occurred during the indicated invoice period.
- f. Volume Rebate shall mean the rebate provided, based upon aggregate annual retail purchase volume and average transaction amount to be paid in the form of a rebate at the end of each contract year.

- g. Volume Rebate Payment Date shall mean the date by which payment of any Volume Rebate reimbursements earned will be sent by Contractor to the entity entitled to such Volume Rebate. The date shall be 45 days after the end of each contract year.

A.3. Universal Card Program Overview

The Contractor shall be responsible for providing a Universal Card Program for the purchase of fuel, maintenance products, automotive parts and services for State vehicles, in accordance with the following requirements:

- a. The Contractor will provide a Universal charge card that is accepted for retail purchases of fuel and vehicle maintenance at retail locations within all 95 counties of Tennessee. The Universal Card shall also have nationwide acceptance at major fueling locations, including small and remote towns.
- b. Parts and services to be available for purchase with the Universal Card shall include, but are not limited to, the following:
- batteries
 - automotive hoses
 - fuel and maintenance filters
 - automotive belts
 - auto bulbs
 - headlamps
 - fuses
 - sparkplugs and other ignition components
 - oil change
 - transmission fluid and filters;
 - adding motor oil
 - fuel and maintenance conditioners
 - windshield wiper fluid
 - brake fluid
 - other automotive fluids
 - brake repair
 - cooling systems service or repair
- c. The Contractor shall not withhold the benefit of any promotions, offers, or discounts associated with any retail transaction.
- d. The Contractor's Universal Card shall deliver pay-at-the-pump functionality.
- e. Card assignment capability: It is the State's expectation that the majority of cards will have vehicle-specific assignment capability. Some cards will be required to be assigned to individuals, and the Contractor shall make this option available.

A.4. General

a. Retail Purchases

The Contractor shall provide a Universal Card Program for use in retail purchases of fuel and maintenance of State of Tennessee vehicles, which shall include:

- Unleaded regular, unleaded plus, unleaded premium
 - Number 2 diesel fuel (low and ultra low sulfur)
 - Alternative fuel (E85 & B20)
 - Automotive maintenance and repair services (See A.3.b. above)
- b. The State will furnish the Contractor a listing of vehicles authorized to obtain fuel under the terms of this contract.

- c. The State will designate, in writing, the names of personnel authorized to set card limits and/or approve purchases exceeding card limits. When such approvals are granted, the State will issue authorization numbers for recording and monitoring purposes.
- d. Purchases by the State are exempt from all eligible State of Tennessee and Federal taxes. Taxes imposed by other states apply on purchases within their jurisdictions. The Contractor shall apply for tax exempt status for the State's purchases and the State's invoice shall reflect the fuel cost less said taxes.
- e. The State will develop its own policies and procedures for the issuance, security and operational matters related to the Universal Card Program. The Contractor shall assist the State with development, implementation, modification or enhancement of these policies and procedures.
- f. The Contractor will meet quarterly with the State to review contract performance. At such meetings, State representatives may evaluate the Contractor's performance and advise the Contractor of any concerns or issues. Within five (5) business days, the Contractor shall develop a written plan to resolve outstanding issues. The Contractor shall then receive written approval of the plan from the Contract Administrator prior to implementation.

A.5. Universal Card

The Contractor will provide the State with a Universal Fleet Card used to make payment for a wide variety of fuel and maintenance products, automotive parts and services with the following provisions:

- a. Card Design: The Contractor will provide a plastic magnetic-strip card designed specifically and exclusively for the State of Tennessee, Motor Vehicle Management (MVM), Universal Payment Card program. Each plastic card issued shall, at a minimum:
 - (1) Display on the face of the card, the name "State of Tennessee" and the State's official seal.
 - (2) Display on the face of the card, in embossed lettering the name of the applicable State of Tennessee agency.
 - (3) Display on the face of the card, the phrase "For Official Use Only – Tax Exempt."
 - (4) Display on the back of the card, the Contractor's toll-free "help" telephone number, for services 24 hours per day, 7 days per week, 365 days a year.
 - (5) Credit card number, assigned by the Contractor, shall be displayed on the front of the card.
 - (6) The card shall NOT contain any reference to Automatic Teller Machine (ATM) usage.
 - (7) The card shall NOT contain the words "purchasing" or "procurement" on the face of the card.
 - (8) The card issuer logo is acceptable as long as all of the State of Tennessee's required information is included. The card shall NOT display other wording, design or card formats unless agreed to by the Contractor and the State.
 - (9) Possess Personal Identification Number (PIN) secure functionality, which shall be assigned by the Contractor.
- b. Card Testing, Issuance, and Replacement:
 - (1) For testing purposes, the Contractor shall submit within thirty (30) days of contract start date the number of cards to be specified by the State at contract implementation.
 - (2) For go-live purposes, the Contractor will issue approximately 6300 Universal Cards to the State within sixty (60) days of the Contract start date. The Universal Card will be shipped via certified or express mail, for delivery during standard State working

hours, 8:00 am to 4:30 pm Central Time, to the address listed in item A.5.b.2.ii of the Contract.

- (3) After initial distribution, the Contractor will issue, at no cost to the State, new and replacement Universal Cards within one (1) business day of receipt of requests for replacement from the State's Contract Administrator. Unless a Universal Card has been terminated or canceled, as provided herein, all cards will expire upon the termination of this Contract. During the course of the Contract, the Contractor may, with reasonable notice (not less than 30 days) and at no cost to the State, replace all Universal Cards.

- i. Standard Universal Card replacement shall be available for, but not be limited to, damaged, broken, malfunctioning magnetic strip, lost, or stolen cards.
- ii. Contractor will ship Universal Cards to the following address via certified or express mail, for delivery during standard State working hours, 8:00 am to 4:30 pm Central Standard Time:

Department of General Services

Motor Vehicle Management
Vehicle Assignment Section
2200 Charlotte Avenue
Nashville, TN 37243-0552

- iii. As designated by State staff, Universal Cards are to be delivered to other address(es) as may later be deemed necessary by the State.

- (4) Card Restrictions:

The Contractor will provide the State with the ability to order, change, or cancel Universal Cards, through a web-based interface.

- i. Card Limits and Adjustments

- (a) The Contractor will provide an initial card limit setting of four hundred dollars (\$400) per transaction, for automotive services.
- (b) The Contractor will allow the State to establish higher or lower credit limits by secure means agreeable to both the State and the Contractor. Such secure means may include State submission of a written request to the Contractor, which shall be processed by the Contractor within 48 hours of receipt by the Contractor; or online account management functionality available to authorized State personnel.
- (c) The Contractor will provide web-based interface by which to approve purchases above card limit settings, on a case-by-case basis. This approval process will be available 24 hours per day, 7 days per week, 365 days a year.

- ii. Standardized Classification of Products and Services: Restrictions

- (a) The Contractor shall establish charge authorization procedures to ensure certain transactions are denied. The Contractor shall have no liability or responsibility with respect to the verification or correction of SICs or MCCs selected by the State, or implemented with respect to any provider of goods and/or services. The Contractor shall be capable of providing such restrictions on an individual cardholder basis as well as on an agency-wide basis.
- (b) The State and the vehicle operator are not liable for unauthorized charges against a card that occur after the State notifies the Contractor of the loss, theft, or possible unauthorized use of that card.

iii. Universal Card Cancellation and Destruction

- (a) The Contractor shall, upon notification by the State, immediately terminate Universal Cards issued under this agreement. The State shall not be liable for any purchase or charge authorized after receipt of notice of termination or cancellation of a Universal Card by the Contractor from the Contract Administrator.
- (b) The Contractor will allow the State to destroy cards, in a manner mutually agreed upon, if they are damaged, cancelled, expired, or assigned to a decommissioned vehicle.

A.6. Universal Card Reporting and Invoicing

a. Technical Requirements

- (1) The Contractor shall provide a web-based program management and reporting system that is hosted by the Contractor, in the form of an Application Service Provider (ASP). The means of accessing the hosted reporting solution must be through a secure connection. In order for a connection to be deemed secure, each connection and/or connection method, and the associated security method employed, must adhere to the State's technical architecture (available upon request).
- (2) The Contractor shall establish and maintain a standard format for all electronic records. Electronic access shall consist of:
 - i. A web-based system, hosted by the Contractor, which shall allow designated State personnel to access at least 13 months of Universal Card data including, but not limited to, transaction data.
 - ii. Availability of data older than 13 months, upon request by the State.
 - iii. Availability of data in ASCII format that can be downloaded into software spreadsheets and SQL databases.
- (3) The Contractor shall ensure that the payment card services and/or applications provided under this contract are compliant with the Payment Card Industry Data Security Standards (PCIDSS). For details, please visit www.pcisecuritystandards.org.
- (4) The Contractor shall implement biannual third party security assessments (e.g. penetration tests, vulnerability scanning and reporting) to ensure that the portal remains as secure as possible over time. The Contractor shall ensure that the results are delivered to the State in a timely fashion and that there is a secure mechanism for the delivery of the assessment reports. Full audit trails must be maintained throughout the entire transaction lifetime. A rigorous change management and configuration management process shall be designed to ensure security and availability.

b. Reporting Requirements

- (1) The Contractor shall provide control access to its reporting solution by individual user IDs and passwords. The link to this information will be provided at contract implementation.

- (2) The Contractor shall provide the State with a customized transaction data extract file for upload into the State's system. This information is to be furnished on a weekly basis by a secure electronic transfer in a manner acceptable to the State. The data should be for transactions occurring on Monday through the following Sunday of every week. The data extract file will be compatible with the current State Information Architecture.
- (3)) The Contractor shall weekly submit to the State, at no additional cost, a minimum of Level III Reporting, which shall include the following information in electronic format acceptable to the State:

ITEM	MAXIMUM LENGTH	FORMAT
Purchase Date and Time	6	YYMMDD
Account Number	TBD	Numeric
Vehicle ID (unit or license #)	6	Alpha/Numeric
Odometer	7	999,999
Standardized Classification Code (Merchant Classification Code (MCC), Standard Industry Classifications (SIC), or Contractor-created standardized code acceptable to the State)	3	Alpha/Numeric
Merchant Site Unique Identifier	20	Alpha/Numeric
Merchant Name	12	Alpha/Numeric
Merchant Street Address	14	Alpha/Numeric
Merchant City, State, Zip	20	Alpha/Numeric
Number of Units (i.e., gallons)	11	999,999,999
Total Purchase Cost	10	999,999.99
Cost Per Gallon	6	Numeric
Driver Identification Number (Edison ID, if applicable)	20	Alpha/Numeric
Fuel Grade	2	Numeric
Service Type	5	Alpha/Numeric
Sales Tax (if applicable)	5	Numeric
Line Item Detail (for non-fuel purchases) ¹	25	Alpha/Numeric
Discount Amount	5	Numeric

S.S. Mc ² ¹  Line Item Detail must include, at a minimum, reasonably complete descriptions, quantities, and units of measure.

- (4) The State requires a complete management reporting package as part of the web-based program management and reporting system. The reporting system should provide a capability for State staff to query the system and create ad hoc reports, and to provide the ability to produce a series of standard reports, on a periodic basis and/or on demand. Standard reporting formats should include, but are not limited to, items listed below. The State reserves the right to request report(s) on a monthly or quarterly basis. If any of the following are not available directly from the web-based program management and reporting system, the Contractor will be expected to act in good faith to provide them at no additional cost, and within a reasonable timeframe.

i. Standard Report Formats:

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- (a) Agency Summary Report consisting of agency month-to-date and year-to-date summary data shall be directed to the Contract Administrator;
 - (b) Suspended Accounts Report provides summary data indicating Suspended Accounts, Number of Days Past Due and Undisputed Amounts Past Due;
 - (c) Master Activity Report tracks vendor sales and consolidates all Universal Card activity;
 - (d) Contract Administrator Summary Report provides month-to-date and year-to-date summary data.
 - (e) Account Information Report intended for Contract Administrator providing Universal Card custodian transaction detail information;
 - (f) Universal Card Custodian Activity Reports, listing all the card custodian's fuel and maintenance activity intended for fuel and maintenance use;
 - (g) Merchant Category Detail Report lists all purchases made with each Universal Card subtotaled by a standardized code acceptable to the State, which may include the Merchant Category Code (MCC), the Standard Industry Classifications (SIC), or a Contractor-created standardized code. Information includes: Date of Transaction, Credit Card Number, Vehicle License Number, Merchant Category Code, Merchant Name, and Transaction Amount;
 - (h) Financial Summary Report serves as the official invoice, to be provided to the Contract Administrator. This monthly report provides summary information for the State.
 - (i) 1099 Reporting capability to meet Federal guidelines/requirements.
 - (j) Finance and Audit Reports designed for 1099 reporting.
- (5) The Contractor shall ensure that transmission of reports is accomplished through secure means (i.e., encrypted site/file transfer/storage).
 - (6) The State reserves the right to reject acceptance of the electronic transfer of data if it contains pricing errors that are "global" in nature (i.e., correction is not feasible). The Contractor must resubmit the data with corrections before proceeding with the transfer for the next billing cycle. Such resubmission shall not affect the State's receipt of the Volume Rebate Provision as stated in C.3.b. of the Contract.
 - (7) The Contractor shall comply with the Letter of Diversity Commitment as stipulated in Contract Attachment Two.

A.7. Fraud Detection

- a. The Contractor shall implement all necessary procedures to monitor, prevent, and identify fraudulent transactions associated with the Contractor-provided Universal cards, and shall alert the State to potential related issues. Such procedures and associated Contractor performance shall be subject to evaluation and acceptance by the State at any time during the contract period.
- b. The Contractor will provide fraudulent usage reporting through the customer service number, 7 days a week, 365 days a year, from 7:00 A.M. to 6:00 P.M.

A.8. Customer Service - All Services Provided Hereunder Shall Be At No Additional Cost To The State.

- a. The Contractor shall provide an electronic training plan for the State's Web-Based Program Management and Reporting System, for State staff people in charge of administering the Contract.



- b. The Contractor shall provide a 24-hour/365-days toll-free telephone help line to assist the State and its vehicle operators with the program. The help line shall be available at no additional cost to the State. At minimum, the customer service line will provide:
- instruction regarding payment card usage;
 - instruction regarding access to roadside assistance;
 - information regarding locations of fuel and maintenance sites;
 - fraudulent usage reporting; and
 - reporting lost or stolen cards.
- c. Customer Service Personnel
- (1) The Contractor shall provide program support services by having a minimum of the following Core Team personnel:
- i. One Relationship Manager with a minimum of two (2) years of current experience in managing large payment card programs with outstanding interpersonal and communication skills. The Relationship Manager must have management responsibility for program quality and meeting time frames. He/she must have sufficient authority to act independently to resolve quality related issues at the program level. The Relationship Manager must maintain current knowledge of the program's status and be accessible to State program and contract managers.
 - ii. One Customer Service Representative with a minimum of one (1) year of current experience as a Customer Service Representative with excellent interpersonal and communication skills. The Customer Service representative is expected to be the lead role for the day-to-day operations and interactions that may occur between the State and the Contractor. Areas of knowledge should include, but not be limited to billing, card issuance, card controls, denials disputes, and reporting. This individual must be available in person or by phone during normal business hours.
 - iii. One Technical Solutions Representative with a minimum of one (1) year of current experience in the payment card industry. The technical solutions representative is expected to coordinate the successful resolution of technological issues associated with contract delivery.

A.9. Implementation/Deliverable Schedule: The Contractor shall adhere to the following schedule.

Item	Deliverable Date
1. Provide a current list of service providers who have indicated a commitment to accepting the universal card for fuel and maintenance purchases. Please indicate by vendor and by State.	Not later than seven (7) calendar days following contract start date.
2. Customer Service Personnel assignments (Section A.8.c. et seq. of the Contract).	Not later than 10 calendar days following contract start date.
3. Reporting and Invoicing Set-up (Section A.6. et seq. of the Contract)	Not later than 15 calendar days following contract start date.
4. Conduct testing of Universal Card, which shall include, but not necessarily be limited to: <ul style="list-style-type: none"> • Invoicing procedures; • Point of purchase usage (by issue to key individuals within the Department of General Services); • System interfacing, as applicable. 	Not later than 30 calendar days following contract start date.

5. Issue initial Universal Cards (Section A.5.b.(2)) of the Contract).

Not later than 60 calendar days following contract start date.

B. CONTRACT PERIOD:

B.1. This Contract shall be effective for the period beginning April 1, 2011, and ending on March 31, 2013. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed FORTY-FOUR MILLION DOLLARS (\$44,000,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology.

a. The State shall compensate the Contractor for the actual amount of purchases made by the State, including any discounts offered to the State by retailers, and in a total amount not to exceed the Contract Maximum Liability established in Section C.1. Said payments shall be for purchases by use of authorized Universal Cards that can be appropriately reconciled. In NO event shall the Contractor add or the State pay processing fees of any kind whatsoever, and compensation shall be additionally contingent upon the Contractor's satisfactory completion of service defined in Contract Section A.

b. The Contractor shall remit to the State an annual Retail Purchases Rebate for actual retail purchases of fuel and maintenance (services and parts). The Contractor shall pay each Retail Purchases Rebate in a lump sum no later than forty-five (45) days after the

end of each calendar year of the Contract Period. It is expressly understood and agreed that the obligation set forth in this section shall survive the termination of this Contract.

- (1) **Rebate Rates**— The annual Retail Purchases Rebate shall be based upon the actual Aggregate Annual Retail Purchase and Annual Average Transaction Amounts and the corresponding Rebate Rate as detailed in the following schedule:

Rebate Level Description	Rebate Rate
Rebate Level 1: \$0 – \$14,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$0.01 – \$24.99, Annual Average Transaction Amount	0.6000 %
Rebate Level 2: \$0 – \$14,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$25.00 – \$29.99, Annual Average Transaction Amount	0.7500 %
Rebate Level 3: \$0 – \$14,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$30.00 – \$34.99, Annual Average Transaction Amount	0.8500 %
Rebate Level 4: \$0 – \$14,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$35.00 – \$39.99, Annual Average Transaction Amount	0.9000%
Rebate Level 5: \$0 – \$14,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$40.00 and greater, Annual Average Transaction Amount	0.9500 %
Rebate Level 6: \$15,000,000.00 – \$19,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$0.01 – \$24.99, Annual Average Transaction Amount	0.6500 %
Rebate Level 7: \$15,000,000.00 – \$19,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$25.00 – \$29.99, Annual Average Transaction Amount	0.8000 %
Rebate Level 8: \$15,000,000.00 – \$19,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$30.00 – \$34.99, Annual Average Transaction Amount	0.9000 %
Rebate Level 9: \$15,000,000.00 – \$19,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$35.00 – \$39.99, Annual Average Transaction Amount	0.9500 %
Rebate Level 10: \$15,000,000.00 – \$19,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$40.00 and greater, Annual Average Transaction Amount	1.0000 %
Rebate Level 11: \$20,000,000.00 – \$24,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$0.01 – \$24.99, Annual Average Transaction Amount	1.2500 %



Rebate Level Description	Rebate Rate
Rebate Level 12: \$20,000,000.00 – \$24,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$25.00 – \$29.99, Annual Average Transaction Amount	1.4000 %
Rebate Level 13: \$20,000,000.00 – \$24,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$30.00 – \$34.99, Annual Average Transaction Amount	1.5000 %
Rebate Level 14: \$20,000,000.00 – \$24,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$35.00 – \$39.99, Annual Average Transaction Amount	1.5500 %
Rebate Level 15: \$20,000,000.00 – \$24,999,999.99, Aggregate Annual Retail Purchase Amount <u>and</u> \$40.00 and greater, Annual Average Transaction Amount	1.6000 %
Rebate Level 16: \$25,000,000.00 and greater, Aggregate Annual Retail Purchase Amount <u>and</u> \$0.01 – \$24.99, Annual Average Transaction Amount	1.3000 %
Rebate Level 17: \$25,000,000.00 and greater, Aggregate Annual Retail Purchase Amount <u>and</u> \$25.00 – \$29.99, Annual Average Transaction Amount	1.4500 %
Rebate Level 18: \$25,000,000.00 and greater, Aggregate Annual Retail Purchase Amount <u>and</u> \$30.00 – \$34.99, Annual Average Transaction Amount	1.5500 %
Rebate Level 19: \$25,000,000.00 and greater, Aggregate Annual Retail Purchase Amount <u>and</u> \$35.00 – \$39.99, Annual Average Transaction Amount	1.6000 %
Rebate Level 20: \$25,000,000.00 and greater, Aggregate Annual Retail Purchase Amount <u>and</u> \$40.00 and greater, Annual Average Transaction Amount	1.6500 %

(2) Rebate Calculation— The Contractor shall calculate each annual Retail Purchases Rebate as follows:

- i. The Total Annual Retail Purchase Amount shall equal the sum of the total of all State of Tennessee retail purchases (excluding exempted taxes).
- ii. The Total Number of Annual Retail Transactions shall equal the sum of the total number of all State of Tennessee retail purchases.
- iii. The Annual Average Transaction Amount shall equal the quotient calculated by dividing the Total Annual Retail Purchase Amount by the Total Number of Annual Retail Transactions Volume, as in the formula below:

$$\frac{\text{Total Annual Retail Purchase Amount}}{\text{Total Number of Annual Retail Transactions}} = \text{Annual Average Transaction Amount}$$

- iv. The applicable Rebate Rate shall correspond to the Rebate Level defined by the Annual Retail Purchase Amount and the Annual Average Transaction Amount in the schedule at section C.3.b.(1), above.
- v. The annual Retail Purchases Rebate (payable to the State) shall equal the product of the actual amount of the State's total retail purchases during the subject calendar year multiplied by the applicable Rebate Rate, as in the formula below:

<i>Total Annual Retail purchases (by the State)</i>	X	<i>applicable Rebate Rate</i>	=	<i>Retail Purchases Rebate (payable to the State)</i>
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- C.4. On the terms and subject to the conditions hereof, Contractor agrees to make available to the State a revolving loan available through the Universal Cards, for the period set forth in Section B of this Agreement, during which period the State may borrow, repay and reborrow in accordance with the provisions hereof, provided that the total credit extended to the State shall not at any time exceed Seven Million Dollars (\$7,000,000).
- C.5. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.6. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

State of Tennessee
 Department of General Services
 Motor Vehicle Management
 2200 Charlotte Avenue
 Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of General Services, Motor Vehicle Management
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced; and
 - ii. Itemized details as stipulated in A.6.b.(3). and A.6.b.(4).
- b. The Contractor understands and agrees that an invoice under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;

- (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.6.
- c. For any State of Tennessee agency, as defined in A.2.a., individual billing addresses shall be supplied to the Contractor within one week after contract award.
- C.7. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.8. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.9. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.10. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
 - a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall

give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Victor R. Vaughn, Assistant Director
Department of General Services
Motor Vehicle Management

2200 Charlotte Avenue
Nashville, Tennessee 37243-0552
victor.vaughn@tn.gov
(615) 327-1449
FAX # (615) 327-1559

The Contractor:

Ryan Calloway, Vice President Sales, Public Sector
U.S. Bank Corporate Payment Systems
~~904 Fontaine Ct.~~ 200 South 6th Street
~~Washaw, NC 28173~~ Minneapolis, MN 55402
ryan.calloway@usbank.com
Cell # 704-905-2445
FAX # 704-243-3279



All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.



- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

NOTE: "Umbrella" or "excess" insurance is not an acceptable substitute for the specified minimum amounts of required liability and workers compensation insurance. The Contractor shall provide, no later than the contract start date, a valid certificate of insurance naming the State of Tennessee as an additional insured.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and

to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

- (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
- b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;

- d. any technical specifications provided to proposers during the procurement process to award this Contract;
- e. the Contractor's proposal seeking this Contract.

E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.10 Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current principals, its current subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide prompt written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.11. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-32106-00210 (RFP Attachment 6.2, item B.15.) and the Contractor's Letter of Diversity Commitment (for which a sample is provided at Attachment Two of this Contract).

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.13. It is expressly understood and agreed the obligation set forth in section C.3.b. shall survive the termination of this Contract as specifically indicated therein.

IN WITNESS WHEREOF,

U.S. BANK NATIONAL ASSOCIATION ND: ^{VFA} SM By Voyager Fleet Systems Inc., Agent

3/10/11

CONTRACTOR SIGNATURE

DATE

Robert T. Abele, Executive Vice President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES

3/11/11

Steven G. Cates, Commissioner

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	Edison # 24800
CONTRACTOR LEGAL ENTITY NAME:	U.S. Bank National Association ND By VOYAGER FLEET SYSTEMS Inc., Agent
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	41-1881896

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Robert T. Abele, Executive Vice President

PRINTED NAME AND TITLE OF SIGNATORY

3/10/11

DATE OF ATTESTATION



Government Banking

February 23, 2011

Paul Hauser
State of Tennessee
Department of General Services
24th Floor, Wm R Snodgrass Tower
Nashville, TN 37243

Dear Mr. Hauser,

The Bank has been asked to provide a letter defining a percentage we expect to spend on Minority and Women Owned businesses as it relates to the contract recently awarded to us. While we understand the State's Diversity initiative and the desire to apply it to various contracts awarded by the State, we have some comments related to defining a specific percentage we can commit to spending for the following reasons listed below.

- 1) There is no defined contract price – The Bank is providing credit cards for the State to utilize when fueling their vehicles. U.S. Bank is not charging the State directly for the use of these cards. The revenue earned by the bank, and subsequently rebated back to the State, is dependent upon the State's usage and the price of gasoline.
- 2) U.S. Bank Voyager Fuel Systems is headquartered in Houston and all of our cards are created and distributed from North Dakota directly to the designated State contact for security purposes. As all products and services are developed, maintained and supported in-house we do not typically contract with third parties for any aspect of this program. As such, there is no "footprint" in the State of Tennessee with which to utilize a diversity vendor.

Overall in 2010, U.S. Bank spent \$419,391 with Small, Women and Minority owned business across the State and we look to increase that number in 2011 as we move to achieve our bankwide goal of 14% diversity spend. The attached spreadsheet provides a breakdown by category and location of where those dollars were spent. Additionally, we have included two additional pages of activities the Bank has engaged in, with various diversity related entities, in Nashville and provided either financial contributions or education and training which we feel the State should include as well.

We would also be willing to commit to working with the State to identify potential new service providers from your list of minority vendors and to exchange our vendor list to make sure all of our vendors are accurately captured by the State's Office of Diversity.

If you have any questions on this matter, please feel free to contact myself at 615-251-0783 or via email at steven.chapel@usbank.com.

Regards,


2010

Tennessee

Participation of Small, Women Owned and Minority Owned Business

Classification	Spend Category	Address	City	State	Remit To Zip	Total Spend
WBE	CONTRACT LABOR	P O BOX 10684	KNOXVILLE	TN	37939-0684	\$246,597
SDV	PRINTING,STATIONERY, & SUPPLIES	P O BOX 23209	KNOXVILLE	TN	37933-1209	\$28,626
WBE	PROFESSIONAL SERVICES	920 VOLUNTEER LANDING LN	KNOXVILLE	TN	37915	\$26,025
MBE	FURNITURE & EQUIPMENT	3207 POWELL AVE	NASHVILLE	TN	37204	\$15,469
SBE	REPAIRS & MAINTENANCE EXP.-EQUIP	356 SANDERSON ST	ALCOA	TN	37701	\$14,414
SBE	FURNITURE & EQUIPMENT	2131 UTOPIA AVE	NASHVILLE	TN	37211	\$13,210
SBE	OTHER LOAN EXPENSE	5556 FRANKLIN RD STE 100	NASHVILLE	TN	37220	\$12,450
SBE	BUILDING SVCS & MAINTENANCE EXPENSE	P O BOX 14802	KNOXVILLE	TN	37914	\$12,432
MBE	OTHER FURN. & EQUIP.EXPENSES	3207 POWELL AVE	NASHVILLE	TN	37204	\$8,693
SBE	CLEANING SERVICES EXP	P O BOX 174091	NASHVILLE	TN	37217	\$6,664
SBE	OTHER FURN. & EQUIP.EXPENSES	316 MADISON ST	CLARKSVILLE	TN	37040	\$5,333
SBE	OTHER LOAN EXPENSE	2802 N HIGHLAND AVE STE A	JACKSON	TN	38305	\$4,050
SBE	BUILDING SVCS & MAINTENANCE EXPENSE	3003 INDUSTRIAL PKWY	KNOXVILLE	TN	37921	\$3,391
SDV	ADVERTISING	PO BOX 71029	KNOXVILLE	TN	37938	\$3,306
SBE	BUILDING SVCS & MAINTENANCE EXPENSE	2131 UTOPIA AVE	NASHVILLE	TN	37211	\$2,907
MBE	BUILDING SVCS & MAINTENANCE EXPENSE	PO BOX 20021	KNOXVILLE	TN	37940	\$2,677
SBE	SECURITY EXPENSE	10446 COGDILL RD	KNOXVILLE	TN	37932	\$2,443
SDV	MISC OTHER EXPENSE	P O BOX 23209	KNOXVILLE	TN	37933-1209	\$2,308
SBE	OTHER FURN. & EQUIP.EXPENSES	283 SWANSON DR	DRESDEN	TN	38225	\$1,249
SBE	PRINTING,STATIONERY, & SUPPLIES	283 SWANSON DR	DRESDEN	TN	38225	\$1,249
SBE	MECHANICAL SYSTEMS EXPENSE	2131 UTOPIA AVE	NASHVILLE	TN	37211	\$1,233
MBE	OTHER EXP-MERCH CARD	10334 COGDILL RD	KNOXVILLE	TN	37932	\$963
MBE	MISC OTHER EXPENSE	P O BOX 17070	NASHVILLE	TN	37217	\$962
MBE	REPAIRS & MAINTENANCE EXP.-EQUIP	3207 POWELL AVE	NASHVILLE	TN	37204	\$910
WBE	BUILDING SVCS & MAINTENANCE EXPENSE	622 CENTRAL AVE	KNOXVILLE	TN	37927	\$433
SDV	ADVERTISING	P O BOX 23209	KNOXVILLE	TN	37933-1209	\$351
SBE	ADVERTISING	PO BOX 400	TULLAHOVA	TN	37388	\$265
WBE	PRINTING,STATIONERY, & SUPPLIES	622 CENTRAL AVE	KNOXVILLE	TN	37927	\$163
SBE	ADVERTISING	P O BOX 1526	MURFREESBORO	TN	37133-1526	\$123
SBE	ADVERTISING	2200 CLIFTON AVE	NASHVILLE	TN	37202-3089	\$119
WBE	BUILDING SVCS & MAINTENANCE EXPENSE	511 FAIRGROUND CT	NASHVILLE	TN	37211	\$113
WBE	REPAIRS & MAINTENANCE EXP.-EQUIP	P O BOX 1000	MEMPHIS	TN	38148-0006	\$109
MBE	BUILDING SVCS & MAINTENANCE EXPENSE	P O BOX 17070	NASHVILLE	TN	37217	\$95
MBE	OTHER SERVICES EXPENSE	P O BOX 17070	NASHVILLE	TN	37217	\$35
SBE	PUBLIC RELATIONS	222 COUNCIL PL	KNOXVILLE	TN	37927	\$25
Grand Total						\$419,391



Capacity Building

U.S. Bank is actively engaged at the community level in providing capacity building programs to small businesses and nonprofit organizations. The principal objective of our program is to improve the quality of decision-making, program efficiency, and managerial performance in the planning and implementation of an organization's mission. When this objective is successfully accomplished, the result is more effective organizations, services, and programs.

Small Business Capacity Building

St. Louis, MO

More than 50 Hispanic businesses in the St. Louis area attended the June 2009 Hispanic Chamber of Commerce St. Louis (HCCSTL) Business After Hours event sponsored by U.S. Bank. Bank employees proudly showcased products and offered details about different parts of the company with a focus on small business services. HCCSTL, a nonprofit corporation, was founded 26 years ago by a group of Hispanic business people interested in increasing business opportunities for Hispanic business owners. Their mission is to promote the economic development of Hispanic firms and increase business opportunities for all in the St. Louis region. U.S. Bank maintains a long-standing, strong relationship with HCCSTL. The event was held in the historic Fashion Square Building in downtown St. Louis, which is where U.S. Bancorp Community Development Corporation is headquartered.

Nashville, TN

U.S. Bank partnered with the Nashville Area Hispanic Chamber of Commerce to conduct three small business educational seminars for members and Spanish-speaking business owners and entrepreneurs.

Entitled "What You Need to Know about Banking Now," the sessions featured presenters from three lines of business and a representative from the Small Business Administration. Speakers provided information on topics such as *What You Must Know before Meeting with the Lender, Understanding the Eight C Rule, How to Reduce Processing Expenses, and the Community Express Loan Program*. Participants were presented with Spanish versions of two small business publications, "El Plan: Un Libro de Trabajo Para Planear Su Negocio Paso a Paso" and "Boletín de Calificaciones Para La Pequeña Empresa".

Topeka, KS

In Topeka, U.S. Bank led the effort to build a significant entrepreneurial training opportunity for minority suppliers. The seminar was called "Brass Tacks: Virtual Marketing Report, A Knowledge Menu for Success." Forty-one women- and minority-owned businesses and Business Development Entities (BDE) attended the event. The bank helped elevate the visibility of the minority business owners and BDE program as the training was featured on eight radio and television shows. Practical guidance on SBA financing was provided, while the guest speaker provided guidance on how to use technology for business marketing.

TENNESSEE

Tax Refunds Benefit Clarksville Community

Clarksville, TN – U.S. Bank participated in the local United Way's Earned Income Tax Credit (EITC) program. The EITC program provides free tax preparation to low- to moderate-income individuals. Bank employees assisted individuals who wanted their tax refunds electronically deposited to a checking or savings account as well as the new pilot debit card - Accel-a-pay. Jeffery.mills@usbank.com

U.S. Bank Foundation Helps Support Nonprofit Organizations

Nashville, TN – The U.S. Bank Foundation provided \$14,000 in grant funding to nonprofit organizations in the Nashville market. The recipients of the economic opportunity grants included the Boys and Girls Clubs of Middle Tennessee, Habitat for Humanity and Urban Housing Solutions. All three organizations have programs dedicated to the economic improvement of low- and moderate-income communities. Turner.pettway@usbank.com

U.S. Bank Extends Financial Education Efforts

Nashville, TN – U.S. Bank employees Janetha Holley, Devan Weakly, Amber Simpson, Emily Keaton, Gabriel Wilburn and Gwendolyn Sisney provided financial education to over 420 individuals in the Nashville market. The topics included credit management, basic banking and small business development. Organizations participating with the bank were Woodbine, a transitional housing organization, Tennessee Small Business Development Center, Cumberland Heights Elementary School and Project Return. Turner.pettway@usbank.com