

**AGREEMENT FOR FUEL CARD SERVICES
BETWEEN
THE CITY OF FORT LAUDERDALE
AND WEX BANK**

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, is by and between the City of Fort Lauderdale, a Florida municipality ("City" or "Buyer"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and **WEX Bank**, a Utah corporation authorized to transact business in the State of Florida, ("Contractor" or "Seller"), whose address is **7090 South Union Park Center, Suite 350, Midvale, Utah 84047, Phone: 207-210-8873, Email: Nysia.Sanabria@Wexinc.com.**

WHEREAS, the City and the Contractor wish to enter into an agreement for **FUEL CARD SERVICES** based on an agreement between the Contractor and **The State of Florida Department of Management Services.**

For and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

1. The Contractor agrees to provide to the City with **FUEL CARD SERVICES** at the price and terms set forth in **The State of Florida Department of Management Services Contract No. 973-163-10-1.**

2. Except with regard to the bidding process, the term "**State of Florida Department of Management Services**" as set forth in **Contract No. 973-163-10-1**, where context permits, means City.

3. The term of this Agreement shall be coterminous with **The State of Florida Department of Management Services Contract No. 973-163-10-1**, which initially commenced on August 6, 2010 and has been renewed with an expiration date of August 5, 2020.

4. The City's General Conditions and Insurance Requirements, which are attached hereto, are incorporated herein.

5. In the event of a conflict between the City's General Conditions and the Sales Order, the City's General Conditions shall control.

INSURANCE REQUIREMENTS

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Cyber Liability

Coverage must be afforded in an amount not less than \$1,000,000 per loss for negligent retention of data as well as notification and related costs for actual or alleged breaches of data.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

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[GENERAL CONDITIONS FOLLOW]

GENERAL CONDITIONS

PURCHASE ORDER AND CONTRACT TERMS:

1. **INDEMNITY/HOLD HARMLESS AGREEMENT:** The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Fort Lauderdale and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney's fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.
2. **TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
3. **TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
4. **CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
5. **RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later.
6. **PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local

ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.

7. **LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.
8. **NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this contract. The following applies to contracts with values over \$100,000: The Contractor certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, ("Section 2-187"), by not discriminating against the Contractor's employees based on the employee's race, color, religion, gender (including identity or expression), marital status, sexual orientation, national origin, age, disability or any other protected classification as defined by applicable law, during the entire term of the contract that arises out of this ITB. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of the contract, entitling the City to pursue any of the following remedies or any remedy provided under applicable law: (a) The City may terminate the contract if the Contractor fails to comply with Section 2-187; and (b) The City may retain all monies due or to become due until the Contractor complies with Section 2-187; and (c) The Contractor may be subject to debarment or suspension proceedings consistent with the procedures in Section 2-183, Code of Ordinances of the City of Fort Lauderdale, Florida.
9. **UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:
 - a. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
 - b. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
 - c. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve them of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

10. **ELIGIBILITY:** If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.
11. **PATENTS AND ROYALTIES:** The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
12. **ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.
13. **LITIGATION VENUE:** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
14. **LOCATION OF UNDERGROUND FACILITIES:** If the Contractor, for the purpose of responding to this solicitation, requests the location of underground facilities through the Sunshine State One-Call of Florida, Inc. notification system or through any person or entity providing a facility locating service, and underground facilities are marked with paint, stakes or other markings within the City pursuant to such a request, then the Contractor, shall be deemed non-responsive to this solicitation in accordance with Section 2-184(5) of the City of Fort Lauderdale Code of Ordinances.
15. **Public Records**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.

Contractor shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.

4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form:

Rhonda Montoya Hasan
Assistant City Attorney

WITNESSES:

WEX Bank

Signature

By: _____
Tim Laukka, President

Print Name

Signature

Print Name

(Corporate Seal)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by **Tim Laukka as president for WEX Bank, a Utah corporation authorized to transact business in the State of Florida.**

(SEAL)

Notary Public, State of _____
(Signature of Notary

Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ____OR Produced Identification ____
Type of Identification Produced _____