



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 28 Ordinance/Resolution#16-17-012

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of October 3, 2016  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR BANKING SERVICES TO WELLS FARGO BANK, N.A. OF SAN FRANCISCO, CALIFORNIA, VIA CITY OF SANTA FE, NEW MEXICO, CONTRACT NO. 13-1066, FOR A PERIOD THROUGH DECEMBER 31, 2017, WITH THE OPTION TO EXTEND FOR AN ADDITIONAL FOUR (4) ONE (1) YEAR TERMS SUBJECT TO APPROVED BUDGET APPROPRIATIONS, ANNUAL RENEWALS, AND THE TERMINATION CLAUSE IN THE CONTRACT.

**PURPOSE(S) OF ACTION:**

Approve contract.

|   |   |                                  |
|---|---|----------------------------------|
| <b>COUNCIL DISTRICT:</b> N/A                        |   |                                  |
| <b><u>Drafter/Staff Contact:</u></b><br>Karin Byrum | <b><u>Department/Section:</u></b><br>Finance/Treasury | <b><u>Phone:</u></b><br>541-2084 |
| <b><u>City Manager Signature:</u></b>               |   |                                  |

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City of Las Cruces (City) had a contract for banking services with Wells Fargo Bank, N.A. (WFB) via a Doña Ana, New Mexico contract which expired June 30, 2016. Due to extenuating circumstances, the Financial Services Department (Finance) was unable to engage in the request for proposal process prior to June 30, 2016. The City is in the middle of re-implementing its Enterprise Resource Program City-wide which is highly resource intensive for Finance staff as well as staff throughout the organization. In addition, as a result of unforeseen circumstances, the Treasurer position, which is responsible for banking services, is currently held on an interim basis.

Due to the timing of procurement and the need for continuity in banking services, Finance entered into a contract with WFB of San Francisco, California via Contract No. 13-1066 of the City of Santa Fe, New Mexico effective July 1, 2016 with an expiration date of December 31, 2017. This contract allows the City to continue with current banking processes with no additional staffing changes or disruption in services. This contract provides all of the banking, investment safekeeping, and merchant card services required by the City with essentially no changes

(Continue on additional sheets as required)

except an increase in fees. The banking fees are offset by interest earnings on balances held at the bank.

In accordance with the Procurement Code, Chapter 24 of the Las Cruces Municipal Code, 1997, as amended, City Council approval is needed for purchases of non-construction, non-capital improvement related goods or services in excess of \$75,000.00. Finance requests that City Council approve an indefinite cost, indefinite quantity contract with WFB of San Francisco, California via Contract No. 13-1066 of the City of Santa Fe, New Mexico through December 31, 2017 with the option to extend for an addition four (4) one (1) year terms subject to approved budget appropriations, annual renewals, and the termination clause in the contract. Finance plans to start the request for proposal process in calendar year 2017 with the complete switch to the successful bank and contract effective January 1, 2018. The option to extend the current contract is to enable the City to maintain banking services in the event of other unforeseen circumstances.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract.
3. Attachment "A", Banking Services Contract.

**SOURCE OF FUNDING:**

|   |                                   |                                     |  |
|---|-----------------------------------|-------------------------------------|--|
| <b>Is this action already budgeted?</b>     | Yes                               | <input checked="" type="checkbox"/> | See fund summary below   |
|   | No                                | <input type="checkbox"/>            | If No, then check one below:   |
|   | <i>Budget Adjustment Attached</i> | <input type="checkbox"/>            | Expense reallocated from: _____  |
|   |                                   | <input type="checkbox"/>            | Proposed funding is from a new revenue source (i.e. grant; see details below)        |
|   |                                   | <input type="checkbox"/>            | Proposed funding is from fund balance in the _____ Fund.                             |
| <b>Does this action create any revenue?</b> | Yes                               | <input type="checkbox"/>            | Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____ |
|   | No                                | <input checked="" type="checkbox"/> | There is no new revenue generated by this action.                                    |
|   |                                   |                                     |  |

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY:**

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|--------------|-------------------|----------------------|--|-----------------|-----------------------------|
| General      | 14205000-790000   | \$138,000.00         | \$138,000.00                           | \$0.00          | N/A                         |

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the resolution to award an indefinite cost, indefinite quantity contract for banking services to WFB of San Francisco, California via Contract No. 13-1066 of the City of Santa Fe, New Mexico, for a period through December 31, 2017 with the option to extend for an additional four (4) one (1) year terms subject to approved budget appropriations, annual renewals, and the termination clause in the contract.
2. Vote "No"; this will not authorize the contract and will discontinue banking services with WFB. This will require the City to obtain banking services from another source, potentially disrupting City financial activities.
3. Vote to "Amend"; staff will proceed as directed by City Council.
4. Vote to "Table"; this will discontinue banking services with WFB. This will require the City to obtain banking services from another source, potentially disrupting the City financial activities.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of October 3, 2016  
 (Adoption Date)

TITLE:

A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR BANKING SERVICES TO WELLS FARGO BANK, N.A. OF SAN FRANCISCO, CALIFORNIA, VIA CITY OF SANTA FE, NEW MEXICO, CONTRACT NO. 13-1066, FOR A PERIOD THROUGH DECEMBER 31, 2017, WITH THE OPTION TO EXTEND FOR AN ADDITIONAL FOUR (4) ONE (1) YEAR TERMS SUBJECT TO APPROVED BUDGET APPROPRIATIONS, ANNUAL RENEWALS, AND THE TERMINATION CLAUSE IN THE CONTRACT.

Purchasing Manager's Request to Contract (PMRC) {Required?}    Yes     No

| DEPARTMENT   | SIGNATURE                              | PHONE NO. | DATE        |
|--|--|-----------|-------------|
| Drafter/Staff Contact                                      | <i>Karin Byrum</i>                     | 541-2084  | 8/18/16     |
| Department Director  | <i>Deb Smith for Victoria Fredrick</i> | 541-2527  | 8/19/16     |
| Other  |  |           |             |
| Assistant City Manager /CAO<br>Management & Budget Manager | <i>[Signature]</i>                     | 541-2078  | 8/19/2016   |
|  | <i>[Signature]</i>                     | 541-2022  | 8/19/16     |
| Assistant City Manager/COO                                 | <i>[Signature]</i>                     | 541-2271  | 8/26/16     |
| City Attorney  | <i>[Signature]</i>                     | EXT 2128  | 29 Aug 2016 |
| City Clerk   | <i>[Signature]</i>                     | X2115     | 9-23-16     |

**RESOLUTION NO. 16-17-012**

**A RESOLUTION APPROVING AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR BANKING SERVICES TO WELLS FARGO BANK, N.A. OF SAN FRANCISCO, CALIFORNIA, VIA CITY OF SANTA FE, NEW MEXICO, CONTRACT NO. 13-1066, FOR A PERIOD THROUGH DECEMBER 31, 2017, WITH THE OPTION TO EXTEND FOR AN ADDITIONAL FOUR (4) ONE (1) YEAR TERMS SUBJECT TO APPROVED BUDGET APPROPRIATIONS, ANNUAL RENEWALS, AND THE TERMINATION CLAUSE IN THE CONTRACT.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces (City) had a contract for banking services with Wells Fargo Bank, N.A. (WFB) via a Doña Ana, New Mexico contract which expired June 30, 2016; and

**WHEREAS**, due to extenuating circumstances, the Financial Services Department (Finance) was unable to engage in the request for proposal process prior to June 30, 2016; the City is in the middle of re-implementing its Enterprise Resource Program City-wide which is highly resource intensive for Finance staff as well as staff throughout the organization; also, as a result of unforeseen circumstances, the Treasurer position, which is responsible for banking services, is currently held on an interim basis; and

**WHEREAS**, in order to avoid disruption in services, Finance entered into a contract with WFB of San Francisco, California via Contract No. 13-1066 of the City of Santa Fe, New Mexico effective July 1, 2016 with an expiration date of December 31, 2017 to provide banking services, investment safekeeping services, and merchant card services; and

**WHEREAS**, this contract provides the City with a comprehensive source of banking services with essentially no changes to the City; and

**WHEREAS**, Finance requests that City Council approve an indefinite cost, indefinite quantity contract with WFB of San Francisco, California via Contract No. 13-

1066 of the City of Santa Fe, New Mexico through December 31, 2017, with the option to extend for an addition four (4) one (1) year terms subject to approved budget appropriations, annual renewals, and the termination clause in the contract; and

**WHEREAS**, Finance plans to complete the request for proposal process for banking services in calendar year 2017 with a new contract in place on January 1, 2018.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the indefinite cost, indefinite quantity contract for banking services is hereby awarded to WFB of San Francisco, California via Contract No. 13-1066 of the City of Santa Fe, New Mexico, through December 31, 2017, with the option to extend for an addition four (4) one (1) year terms subject to approved budget appropriations, annual renewals, and the termination clause in the contract.

**(II)**

**THAT** the Purchasing Manager is authorized to contract with WFB of San Francisco, California as outlined in Exhibit "A", attached hereto and made part of this resolution.

**(III)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Gandara: \_\_\_\_\_

Councillor Smith: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Eakman: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Levatino: \_\_\_\_\_

<sup>495</sup>  
**CITY OF LAS CRUCES**

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**PURCHASING MANAGER'S REQUEST TO CONTRACT**

For Meeting of: October 3, 2016

Resolution No.: 16-17-012

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**Existing Contract Purchase For  
Banking Services**

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The Las Cruces City Council is provided the following information concerning this request:

**RFP/BID SOLICITATION INFORMATION:**

- 1. Existing Contract Issuer **City of Santa Fe**
  - 2. Contract Number: **13-1066**
  - 3. Contract Expiration Date: **December 31, 2017**
  - 4. Description: **Banking Services**
  - 5. Using Department: **Financial Services**
  - 6. Current Award Recommendation To: **Wells Fargo Bank, N.A.  
of San Francisco, CA**
  - 7. Award Amount (includes any tax and contingency): **Indefinite Cost / Indefinite Quantity**
  - 8. Projected Completion Date: **N/A**
- 

**PROCUREMENT CODE COMPLIANCE:**

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-316**.

Deb Smith      1-8-19-16  
Purchasing Manager      Date

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**CONFIRMATION OF FUND ENCUMBRANCE:**

|                                       |     |
|---------------------------------------|-----|
| REQUISITION OR PURCHASE ORDER NUMBER: | TBD |
|---------------------------------------|-----|

**EXISTING CONTRACT PURCHASE AGREEMENT****CITY OF SANTA FE  
CONTRACT NO. 13-1066****FISCAL AGENT SERVICES**

Pursuant to terms and conditions of CITY OF SANTA FE Contract No. 13-1066 dated November 4, 2013, between CITY OF SANTA FE and WELLS FARGO BANK, N.A. (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this 21<sup>st</sup> day of June, 2016, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall provide services pursuant to City of Santa Fe Contract No. 13-1066 and CONTRACTOR'S proposal attached hereto and made a part of this agreement.
2. The effective period of this agreement shall coexist with City of Santa Fe Contract No. 13-1066.
3. In consideration for the satisfactory delivery of product/services, the CONTRACTOR shall be compensated pursuant to the cost terms of City of Santa Fe Contract No. 13-1066. Cost of delivered products/services shall be paid by CITY.
4. Section 1. SCOPE OF SERVICES D. is modified to read "The City delegates to the City Purchasing Manager the authority to sign the Acceptance of Services, Master Repurchase Agreement, Merchant Pricing Terms, and Program Guide, within the scope of services of this agreement and the request for proposal."
5. Section 3. COMPENSATION E. is modified to read "The City of Las Cruces will maintain a minimum balance (peg amount) with an earnings allowance at 0.50%, sufficient to pay the Current Month Analyzed Charges."
6. Section 7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS C. is modified to read "The Contractor shall comply with City of Las Cruces Minimum Wage Ordinance, Las Cruces Municipal Code Section 14-60, as well as any subsequent changes to such article throughout the term of this Agreement."
7. Section 14. NEW MEXICO TORT CLAIMS ACT is modified to read "Any liability incurred by the City of Las Cruces..."
8. Section 17. APPLICABLE LAW; CHOICE OF LAW; VENUE is modified to read "Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Las Cruces. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the Third Judicial District Court."

WELLS FARGO BANK, N.A.

By: Sharen L. Ramirez  
Signature

6/22/16  
Date

SHAREN L. RAMIREZ  
Print Name

SENIOR VICE PRESIDENT  
Title

CITY OF LAS CRUCES

By: Deb Smith  
Deb Smith  
Purchasing Manager

6-27-16  
Date

APPROVED AS TO FORM:

[Signature]  
City Attorney



Wells Fargo & Company  
 Risk & Insurance Management  
 550 S 4th Street MAC N9310-061  
 Minneapolis, MN 55415

DIRECT QUESTIONS/COMMENTS REGARDING THIS EVIDENCE OF  
 INSURANCE TO YOUR WELLS FARGO CONTACT.

Date: 06/16/2016

## EVIDENCE OF PROFESSIONAL (Errors & Omissions) LIABILITY COVERAGE

**Insured:**

Wells Fargo & Company and Its Subsidiaries including  
 Wells Fargo Bank, N.A

**Insurance Company:**

National Union Fire Ins. Co. of Pittsburgh, PA

This form certifies that the insurance policy described below has been issued to Wells Fargo & Company and its Subsidiaries.

| Coverage               | Coverage Details  | Limits of Liability                        | Policy Period       | Policy Number |
|------------------------|---|--|---------------------|---------------|
| Professional Liability | Provides Wells Fargo & Company and its Subsidiaries with coverage for claims arising out of an Employee's error or omission that occurs in performing professional services for others. | \$100,000,000 Per Occurrence and Aggregate | 11/15/14 - 11/15/16 | 01-840-56-07  |

**Evidence of Insurance Issued To:**

City of Las Cruces

P.O.Box 2000

Las Cruces, NM 88004

Wells Fargo & Company  
 Risk & Insurance Management

Jill M. Combs  
 Risk & Insurance Manager

The information provided in the Evidence of Insurance document is basic in nature and should not be viewed as a definitive position to any coverage issue, claim or loss scenario. In the event of a claim or loss, the actual policy terms shall apply.



Wells Fargo & Company  
 Risk & Insurance Management  
 550 S 4th Street MAC N9310-061  
 Minneapolis, MN 55415

499

DIRECT QUESTIONS/COMMENTS REGARDING THIS EVIDENCE OF INSURANCE TO  
 YOUR WELLS FARGO CONTACT.

Date: 06/16/2016

**EVIDENCE OF FIDELITY (EMPLOYEE DISHONESTY) COVERAGE**

**Insured:**

Wells Fargo & Company and Its Subsidiaries including  
 Wells Fargo Bank, N.A

**Insurance Company**

National Union Fire Ins. Co. of Pittsburgh, PA

**This form certifies that the insurance policy described below has been issued to Wells Fargo & Company and its Subsidiaries.**

| Coverage                   | Coverage Details   | Limits of Liability                        | Policy Period       | Policy Number |
|----------------------------|--|--|---------------------|---------------|
| Financial Institution Bond | Provides Employee Dishonesty (Fidelity) coverage for Wells Fargo & Company and its Subsidiaries. | \$100,000,000 Per Occurrence and Aggregate | 11/15/14 - 11/15/16 | 01-840-56-07  |

**Evidence of Insurance Issued To:**

City of Las Cruces  
 P.O.Box 2000  
 Las Cruces, NM 88004

Wells Fargo & Company  
 Risk & Insurance Management

Jill M. Combs  
 Risk & Insurance Manager

The information provided in the Evidence of Insurance document is basic in nature and should not be viewed as a definitive position to any coverage issue, claim or loss scenario. In the event of a claim or loss, the actual policy terms shall apply.



Wells Fargo & Company  
 Risk & Insurance Management  
 550 S 4th Street MAC N9310-061  
 Minneapolis, MN 55415

**DIRECT QUESTIONS/COMMENTS REGARDING THIS EVIDENCE OF  
 INSURANCE TO YOUR WELLS FARGO CONTACT.**

Date: 06/16/2016

## EVIDENCE OF CASUALTY INSURANCE COVERAGE

**Insured:**

Wells Fargo & Company and Its Subsidiaries including  
 Wells Fargo Bank, N.A

**Insurance Company:**

Old Republic Insurance Company

**This form certifies that the insurance policy described below has been issued to Wells Fargo & Company and its Subsidiaries.**

| Coverage  | Covered Location(s)   | Limits of Liability   | Policy Period     | Policy Number |
|---|---|---|-------------------|---------------|
| Commercial General Liability<br>Including premises operations,<br>occurrence form; blanket contractual<br>liability; host liquor liability coverage | Omnibus Additional Insured<br>endorsement extends coverage<br>to any person or organization<br>for whom Wells Fargo &<br>Company or its Subsidiaries<br>have agreed under contract<br>or agreement to provide<br>insurance. In no event shall the<br>insurance provided hereunder<br>exceed the scope of coverage<br>required by contract or<br>agreement | \$10,000,000 Each<br>Occurrence<br>\$10,000,000 Aggregate<br>\$10,000,000 Personal &<br>Adv. Injury<br>\$10,000,000 Products and<br>Completed<br>Operations | 4/01/15 - 4/01/20 | MWZY304056    |
| Automobile Liability  | Covers all owned, non-owned<br>and hired automobiles  | \$10,000,000 Each<br>Occurrence<br>Combined<br>Single Limit   | 4/01/15 - 4/01/20 | MWTB304054    |
| Workers' Compensation and<br>Employers' Liability   | Provides workers'<br>compensation coverage for<br>employees in all states -<br>except statutory workers'<br>compensation provided either<br>through a Monopolistic State<br>Fund or Self-Insurance in the<br>following states: Ohio, North<br>Dakota, Washington and<br>Wyoming or by the Wells<br>Fargo Injury Benefit Plan in<br>Texas.                 | Statutory - WC<br>\$1,000,000 - EL Each<br>Accident<br>\$1,000,000 - EL Disease<br>Each<br>Employee   | 4/01/15 - 4/01/20 | MWC302638 00  |

**Evidence of Insurance Issued To:**

City of Las Cruces

P.O.Box 2000

Las Cruces, NM 88004

Wells Fargo & Company  
 Risk & Insurance Management

Jill M. Combs  
 Risk & Insurance Manager

The information provided in the Evidence of Insurance document is basic in nature and should not be viewed as a definitive position to any coverage issue, claim or loss scenario. In the event of a claim or loss, the actual policy terms shall apply.

ITEM # 13-1066

CITY OF SANTA FE  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
FISCAL AGENT SERVICES

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Wells Fargo Bank, N.A. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

A. The Contractor shall provide the services, as described in Exhibit A, Request for Proposal and Additional Information for the Request for Proposal, Exhibit B, Wells Fargo Bank Response to the Proposal, and Exhibit C, Fee Schedule, in satisfactory and proper manner as determined by the City. Additionally, the supplemental service agreements, policies and procedures itemized in the Exhibits A through T and attached hereto, have been incorporated and by this reference made a part of this agreement.

B. In the event of inconsistencies between the supplemental service agreements and this basic agreement, the terms of this basic Agreement shall prevail.

C. The City reserves the right to add or delete accounts and services as may be required in the City's best interest. Additions of services not contained in the Scope of Services( as defined in the attached Request for Proposal and Response to the Proposal), including any increase in the amount of the Contractor compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated by written amendments to this agreement.

D. The City delegates to the City Finance Director the authority to sign the Acceptance of Services, Master Repurchase Agreement, Merchant Pricing Terms, and Program Guide, within the scope of services of this agreement and the request for proposal.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

C. The Contractor agrees to provide:

(1) Annually: An audited annual financial statement for the most recent fiscal period;

(2) Annually: The bank's CRA rating (noting the rating agency);

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered a total sum not to exceed four hundred thousand forty eight thousand nine hundred sixty three dollars and nine cents, plus applicable gross receipts taxes (\$448,963.09), broken out as follows:

|         |              |
|---------|--------------|
| Year 1: | \$108,929.11 |
| Year 2: | \$111,107.69 |
| Year 3: | \$113,329.85 |
| Year 4: | \$115,596.44 |

B. The Contractor has agreed that these annual amounts are maximum annual fees for services currently provided by the Contractor, or as proposed in the attached Request for Proposal Scope of Work and in the Wells Fargo response to the Request for Proposal.

C. These annual amounts are for services provided directly by the Contractor and exclude pass-through merchant credit card fees and FDIC recoupment fees. Both merchant credit card fees and FDIC recoupment fees will be included on the monthly detailed account analysis statements and passed through to the FDIC and the appropriate credit card company. Merchant credit cards fees are projected to average approximately \$180,000 annually. FDIC recoupment fees pertain to collateral on the City's accounts, vary with the average monthly balance in the City's accounts, and are projected to average approximately \$5,000 annually.

D. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

E. Payment shall be made upon receipt, approval and acceptance by the City of monthly detailed account analysis statements containing a report of services completed based on rates not to exceed those contained in Exhibit C, Fee Schedule. Compensation shall be paid only for services actually performed and accepted by the City. The monthly period shall run from the first day through the last day of each month.

#### 4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate

upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and shall not result in any claim for payment or damages by Contractor.

Appropriations are made to the business units and line items listed below. The City may amend this list of business units and line items as needed.

5. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, shall commence on January 1, 2014, and shall terminate on December 31, 2017, unless sooner pursuant to Article 6 below. This Agreement shall extend for a period of four (4) years. No commitment of public funds will be made prior to this Agreement's approval.

B. Fees and service charges as stated in Exhibit D shall remain in effect for the four-year period of this Agreement. Should new services be required during the contract period not set forth in this Agreement, such services may be provided, if chosen by the City, at fees not more than the bank's then current published rate.

6. TERMINATION

A. This Agreement may be terminated by either party upon written notice delivered to the other party at least sixty (60) days prior to the date of termination. The Contractor agrees to continue to provide services existing as of the date of termination on a month-to-month basis for the time it takes the City to rebid for fiscal agent services and to implement and convert to a new banking service provider.

(1) The Contractor shall render a final account analysis report of the services performed up to the date of termination.

(2) The City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date of such termination.

(3) By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

A. The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City.

B. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written amendment to this agreement and shall be subject to each provision of this agreement.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on

account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of seven (7) years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement.

This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed,

color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. . SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

**City of Santa Fe:**

**Marcos A. Tapia  
Finance Director  
City of Santa Fe  
P. O. Box 909  
Santa Fe, NM 87504-0909**

**Contractor:**

**Elena M. Garcia  
Vice President  
Wells Fargo Bank Specialty Markets  
MAC Q2129-102  
200 Lomas Boulevard, NW  
Albuquerque, NM 87102**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

David Cozz  
DAVID COSS, MAYOR

DATE: 11-4-13

ATTEST:

Yolanda Y. Migil  
YOLANDA Y. MIGIL  
CITY CLERK *city 10-30-13*

APPROVED AS TO FORM:

Justitiner for  
GENO ZAMORA, CITY ATTORNEY *9/27/13*

CONTRACTOR:  
Wells Fargo Bank, N.A.

By: Elena Garcia  
Elena M. Garcia  
Vice President

Date: 9/23/13

CRS #01504201004

City of Santa Fe Business  
Registration #13-00094264

APPROVED:

Marcos A. Tapia  
MARCOS A. TAPIA, FINANCE DIRECTOR