Item# 21-0673
Munis Contract# _____

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the **City of Santa Fe, New Mexico**, hereinafter referred to as the "City," **Wells Fargo Bank, N.A.** ("Bank") and **Wells Fargo Merchant Services, LLC** ("Processor") (collectively Bank and Processor hereinafter referred to as the "Contractor") and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

The scope of this six-month contract shall be identical to the scope of Contract #13-1066 17-0948 as amended on September 29, 2017, by Item # 17-0948. For the avoidance of doubt, the Bank's service documentation shall be part of this Contract ("Treasury Management Agreement"), attached as Group Exhibit A and the Merchant Agreement, which includes the Merchant Processing Application, Wells Fargo Merchant Services Terms and Condition Form WFB0920c, the TransArmor Services Addendum, and the Addendum to Agreement for Special Provisions Regarding Clover Services Schedule (collectively referred to as the "Merchant Agreement"), attached as Group Exhibit B (Treasury Management Agreement and Merchant Agreement collectively "Service Documentation").

2. Compensation.

A. The total amount payable to the Contractor under this Agreement, , plus any applicable gross receipt taxes, shall not exceed ($74,867.00) for the term of this Agreement. The total amount payable to Contractor shall not include, and specifically excludes all amounts payable under the Merchant Agreement, including any pass-through cost (e.g., chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement).

B. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. Notwithstanding anything to the contrary in this section, nothing in this section is intended, nor shall it limit the City's obligation to pay or reimburse Contractor for any pass-through cost (e.g., chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement)

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2022,** unless terminated pursuant to

paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. If this Agreement is otherwise terminated by the City or the Contractor prior to June 30, 2022, except as otherwise allowed or provided under this Agreement or the applicable Service Documentation, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement, including the City obligation for obligation to pay or reimburse Contractor for any pass-through cost (e.g. chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement). The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein, or as described in the applicable Service Documentation. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE A PARTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE A PARTY'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment. Notwithstanding anything to the contrary in this section, nothing in this section is intended, nor shall it limit the City's obligation to pay or reimburse Contractor for any pass-through cost (e.g., chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement).

6. Status of Contractor.

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. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

Except as allowed in Section 13 of the Wells Fargo Merchant Services Terms and Condition Form WFB0920c, the Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Intentionally Omitted

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and, except as required by applicable law, the Card Organization Rules, or to provide the services under this Agreement, shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Intentionally Omitted.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. Except as required to comply with applicable law or the Card Organizations Rules, or as allowed in Section 6 of the Wells Fargo Merchant Services Terms and Condition Form WFB0920c, this Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding. Notwithstanding anything to the contrary in this section, nothing in this section is intended, nor shall it limit the City's obligation to pay or reimburse Contractor for any pass-through cost (e.g., chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement).

14. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance.

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.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Commercial General Liability insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than $2,000,000 per occurrence and $2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than $1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the minimum coverage and limits specified in this Agreement. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term ("Records") and effect and retain them in accordance with Contractor's record retention policies and procedures. Upon

prior written notice, the Records shall be subject to inspection by the City. Upon prior written notice, the City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments. Notwithstanding the foregoing, nothing in the Agreement authorizes City to have any on-site access to any of Contractor's secure data, computer systems, networks architecture, information security systems and procedures or secure facilities.

22. Indemnification.

Subject to the limitation of liability in the applicable Service Documentation, the Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, notify the legal counsel of the City.

23. 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. Notwithstanding anything to the contrary in this section, nothing in this section is intended, nor shall it limit the City's obligation to pay or reimburse Contractor for any pass-through cost (e.g., chargebacks, refunds, Card Organization Fines, as defined in the Merchant Agreement).

24. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Bradley Fluetsch, CFA
200 Lincoln Ave.
Santa Fe, NM 87504
bjfluetsch@santafenm.gov

To the Contractor:
Elena M. Garcia
200 Lomas Blvd NW
Albuquerque, NM 87102
elena.m.garcia@wellsfargo.com

27. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

See Attached

CITY MANAGER

DATE: 12/20/21

WELLS FARGO BANK, N.A. and
WELLS FARGO MERCHANT SERVICES, LLC:

Elena Garcia

ELENA M. GARCIA

Elena Garcia

SENIOR RELATIONSHIP MANAGER

DATE: 12/17/2021

CRS# 01504201004

Registration # 13-00094264

ATTEST:

Kristine Mihelcic

KRISTINE BUSTOS MIHELCIC, CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

See Attached

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

See Attached

MARY MCCOY, FINANCE DIRECTOR
Finance Treasury/1000151.561750

Signature: Andrea Salazar for MDM
Andrea Salazar for MDM (Dec 20, 2021 13:39 MST)

Email: asalazar@santafenm.gov

Signature: Mary McCoy

Email: mtmccoy@ci.santa-fe.nm.us

Signature: Jarel LaPan Hill
Jarel LaPan Hill (Dec 20, 2021 14:03 MST)

Email: jlapanhill@santafenm.gov

Signature:

Email: kmmihelcic@santafenm.gov