

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: January 17, 2024

PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Margarita M. Marin, Comptroller (915) 212-1174

K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: ALL

STRATEGIC GOAL: 6 – Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: 6.6 – Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

Discussion and action that the City Manager be authorized to sign Contract 2024-0028R Depository Services by and between the City of El Paso and Wells Fargo Bank, N.A. to provide depository, investment, and banking services for a term of five (5) years from the effective date of the Agreement. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$1,400,000.00 which will be offset by revenue.

BACKGROUND / DISCUSSION:

The Depository Services agreement provides for banking, investment, and depository services for the City of El Paso in accordance with Section 105.034 of the Local Government Code.

SELECTION SUMMARY:

Solicitation was advertised on September 12, 2023 and September 19, 2023. The solicitation was posted on City website on September 12, 2023. There were a total fourteen (14) viewers online; Two (2) proposals were received; none from local suppliers. An inadequate competition survey was completed for this item.

CONTRACT VARIANCE:

N/A.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$1,400,000.00

Funding Source: Earnings credit on available demand deposit balances and investment earnings on excess cash balances

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Office of the Comptroller

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

2024-0028R Depository Services

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Margarita Marin, City Comptroller

Project Form
Request for Proposals

*****Posting Language Below*****

Please place the following item on the **REGULAR** Agenda for the City Council of **January 14, 2024.**

Strategic Goal 6 - Set the Standard for Sound Governance and Fiscal Management

The linkage to the Strategic Plan is subsection: 6.6 Ensure continued financial stability and accountability through sound financial management, budgeting, and reporting

Award Summary:

The award of solicitation 2024-0028R Depository Services to Wells Fargo Bank, N.A., for a five (5) year term for an estimated amount of \$1,400,000.00. The contract will allow for the processing of depository, investment, and banking services for the City of El Paso.

Contract Variance:

No contract variance, replacement contract

Department:	Office of the Comptroller
Award to:	Wells Fargo Bank, N.A.
City & State:	Houston, TX
Item(s):	
Initial Term:	5 Years
Option Term:	N/A
Total Contract Time:	5 Years
Annual Estimated Award:	N/A
Initial Term Estimated Award:	\$1,400,000.00
Option Term Estimated Award:	N/A
Total Estimated Award	\$1,400,000.00
Funding Source(s):	Earnings credit on available demand deposit balances and investment earnings on excess cash balances
District(s):	All

Contract Variance:

No contract variance, new contract

This was a Request for Proposals Procurement – service contract

The Purchasing & Strategic Sourcing Department and the Office of the Comptroller departments recommend award as indicated to Wells Fargo Bank, N.A. the sole offeror based on the evaluation factors established in the evaluation criteria for this procurement. Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.

Committee Score Sheet		
CITY OF EL PASO RFP SCORESHEET		
PROJECT: 2024-0028R Depository Services		
<i>Evaluation of Submittal</i>		
	MAX POINTS	Wells Fargo Bank, N.A.
Factor A - Ability of the Bank to Provide Required Services		
The City outlines the required services in Part 3 of the Request for Application for the Performance of Depository Services. This evaluation factor will focus on the Bank's ability to provide those required services within any period, criteria, or scope presented in Part 3.	35	34
Factor B - Bank and Account Executive References		
The Bank will provide three references that have a current relationship with the Bank. The City will seek responses from the Bank's references to questions regarding the Bank and the designated Account Executive (hereafter "Bank"). The questions will relate to the degree of support provided by the Bank, the timeliness of the Bank's response to questions and issues, the degree of change experienced in assigned Bank personnel, and the ability of the Bank to respond to unusual events (if any).	20	19
Factor C - Quantity and Location of Bank Branches		
The quantity and location of Bank branches will be evaluated as it relates to the City's ability to efficiently make deposits and to receive any locally provided services, as well as a taxpayer's ability to conveniently pay property taxes.	20	19
Factor D – Account Analysis Fees		
Attachment A will outline the principal types of services that the City anticipates utilizing. The Bank will provide its cost schedule related to those services. The link to this attachment is Labeled Factor D	20	19
Factor E - Community Involvement		
The Bank will provide a description of its current local community involvement. If possible, include the degree of participation by local bank personnel and any relevant financial contributions by the Bank to local community organizations.	5	4
TOTAL SCORE to be completed by P&SS	100	95.00
Rank To be completed by P&SS		



CITY OF EL PASO
REQUEST FOR PROPOSALS TABULATION FORM



Bid Opening Date: October 11, 2023

Solicitation #: 2024-0028R

Project Name: Depository Services

Department: Office of the Comptroller

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Wells Fargo Corporate & Investment Banking	Houston, TX	YES

RFPs SOLICITED: 877 LOCAL RFPs SOLICITED: 300 RFPs RECEIVED: 1 LOCAL RFPs RECEIVED: 0 NO BIDS: 4

NOTE: The information contained in this RFP tabulation is for information only and does not constitute actual award/execution of contract.

Approved: /s/

Date: 10/12/2023

2024-0028R Depository Services

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2024-0028R Depository Services- As of 11/23/2023

<u>Participant</u>	<u>Participant Name</u>	<u>Response Date</u>	<u>Response Status</u>	<u>City</u>	<u>State</u>	<u>Classifications</u>
1	Wells Fargo Corporate & Inves	10/10/2023	Submitted	Houston	TX	
2	Citigroup	09/12/2023	No Bid	New York	NY	
3	Bank of America (BofA Securit	09/12/2023	No Bid	Dallas	TX	
4	BofA Securities, Inc.	09/12/2023	No Bid	Dallas	TX	
5	GECU	09/12/2023	No Bid	El Paso	TX	
6	HSBC		Viewed	New York	NY	
7	J.P. Morgan Chase		Submitted-Late	Fort Worth	TX	
8	PNC Financial Services		Viewed	Pittsburgh	PA	
9	Memphis Capital		Viewed	Memphis	TN	
10	Fifth Third Bank		Viewed	Cincinnati	OH	
11	Synchrony Bank		Viewed	Stamford	CT	
12	Sunflower Bank		Viewed	El Paso	TX	
13	Teas Capital Bank		Viewed	Dallas	TX	
14	Truist Financial		Viewed	Charlotte	NC	

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a contract between the City of El Paso ("City") and Wells Fargo Bank, N.A. to provide depository services to the City, for a five (5) year term from the effective date, for a total estimated award of \$1,400,000.00 which will be offset by revenue. Additionally, it is requested that the City Attorney's Office review and that the City Manager, Comptroller, or authorized designee to execute any related contract documents and agreements, including amendments which do not affect the material terms of this agreement and are necessary to effectuate the intent of this award.

APPROVED this _____ day of _____, 2024.

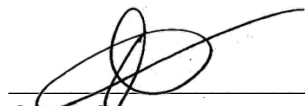
THE CITY OF EL PASO:

ATTEST:

Oscar Leaser
Mayor

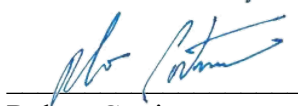
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

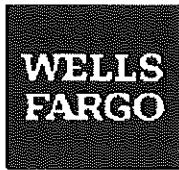


Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:



Robert Cortinas
Chief Financial Officer



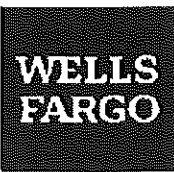
Master Agreement for Treasury Management Services

The service Documentation contains the terms under which Wells Fargo Bank, N.A. and the banks, branches or subsidiaries listed in Appendix X (collectively, "Bank") provide you treasury management services (each a "Service").

"You," "your" or "yours" refer to the City of El Paso, Texas ("City", "Customer" or "Company") as identified on the Acceptance of Services that is signed when you enroll in a Service ("Acceptance"). The terms "we," "us," or "our" refer to the Bank. Other capitalized terms used in this Master Agreement for Treasury Management Services ("Agreement") are defined in this document. The City of El Paso enters into this agreement subject to the limitations prescribed by Texas State law, applicable to the provision of Treasury Management Services.

You and we agree:

1. **Service documentation.** The Service Documentation contains the terms governing each Service and includes:
 - a. The Service Description (which contains terms and conditions applicable to the specific Service),
 - b. The Acceptance (which indicates your acceptance of the Service Documentation),
 - c. This Agreement (which contains terms and conditions applicable to all Services),
 - d. The account agreement governing the account(s) (each, an "Account") you use in connection with the Service,
 - e. The Product Enrollment Form (which contains set-up information for each Service in which you are enrolling), and
 - f. User Guides (which include our vendors' and our documentation related to the installation, set-up function, features, operation, use, pricing or other aspects of the Services, including Terms of Use, software, software licenses, price schedules, specifications, instructions, and notices).
2. **Services.** You and we will agree upon the Services to be provided and the start date for each Service. Each Service is subject to the approval by our applicable branch or subsidiary. We will notify you when you have completed all requirements for enrolling in the Service and the Service is ready for you to use.
3. **Changes to services.** We may change (or add to) the terms and fees in the Service Documentation at any time. If a change to a Service requires a change to the Service Documentation, we will post the document(s) with the change on Vantage. When required by Applicable Law, we will notify you of the change. If you continue to use a Service after a change takes effect, you will be bound by the change. As used in this Agreement, the term "Applicable



Law" means all applicable laws (including common or customary laws), statutes, constitutions, policies, decrees, judgments, treaties, regulations, directives, by-laws, rulings, orders or operating circulars governing our activities and/or any Transaction (see section 6-a) governed by this Agreement, including, but not limited to, the funds transfer system and clearing and settlement house rules.

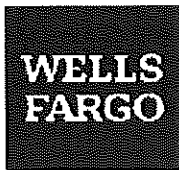
4. **Term and termination.** Unless a Service is terminated in accordance with the Service Documentation, this Agreement and each Service will continue in effect until terminated by either party upon 30 days' prior written notice to the other party. When a Service is terminated for any reason, the Service Documentation governing the terminated Service is also terminated.

We may suspend or terminate any Service:

- a. After we notify you of a breach of any provision of the Service Documentation or any other agreement with us, and you fail to cure the breach (if it can be cured) within 15 days of the date of the notice; or
- b. Without prior notice to you if:
 - i. We reasonably suspect that an Account associated with a Service has been compromised or otherwise subject to irregular, unauthorized, fraudulent, or illegal activity,
 - ii. You become subject to any insolvency or bankruptcy proceeding, or any receivership, liquidation, reorganization, or other similar proceeding, or you enter into any agreement or proceeding for voluntary liquidation, dissolution, composition with or assignment for the benefit of creditors or other winding up,
 - iii. We determine in our sole discretion that continuing to provide a Service may place us at risk of financial loss or result in an unacceptable credit exposure,
 - iv. Any guaranty of your obligations to us ("Guaranty") is terminated, revoked, or its validity contested by the guarantor ("Guarantor"),
 - v. We determine in our sole discretion that a material adverse change has occurred in your ability to perform your obligations under the Service Documentation, or in the ability of a Guarantor to perform its obligations under a Guaranty, or
 - vi. The Account necessary to provide a Service is closed.

The termination of a Service will not affect your or our respective rights and obligations with respect to the Service(s) provided before the termination including without limitation Transactions. We will not be liable to you for any losses or damages you may incur as a result of any termination of any Service or termination or restriction of any Vantage access rights under section 9(d) below.

5. **Service fees.** You will pay us the fees described in the Service Documentation and any taxes applicable to each Service, however designated, but excluding taxes based on our net income. We may



debit your Account for any fees not covered by earnings credits and any taxes that are due, or we may send you an invoice for these amounts, which you will promptly pay. Our charges and fees are in the applicable fee schedule for Services used in connection with your Account.

6. **Security procedures.**

a. Unless otherwise agreed, you agree that "Security Procedure" is the applicable security procedure described in the Service Documentation for your Initiation Method for the Service, which we will use to verify the authenticity of a Transaction. The term "Initiation Method" refers to the method we offer in the product enrollment form ("Set-up Form") or other Service Documentation for delivering your Transaction instructions to us with respect to the applicable Service and includes any applicable transmission protocols. The term "Transaction" means (i) any funds transfer, payment order, or payment instruction (including any communication cancelling or amending an instruction), and (ii) any instruction, data or other information which we receive in your name with respect to a funds transfer. The purpose of the Security Procedure is to verify the authenticity of the Transaction. We will not use the Security Procedure to detect an erroneous or duplicate Transaction. You will be responsible for any erroneous or duplicate transaction we receive in your name. You agree to be bound by each Transaction, whether or not authorized by you, issued in your name and accepted by us in compliance with the Security Procedure for the Service.

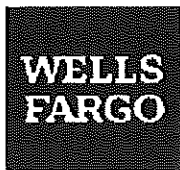
b. You agree that each Security Procedure for the Initiation Method in the Set-up Form or other Service Documentation for each of the Services (a) best meets your requirements with regard to the size, type and frequency of your Transactions, and (b) is commercially reasonable.

7. **Confidential information.** Unless otherwise stated in the Service Documentation, "Confidential Information" means all (a) User Guides, (b) Security Procedures, passwords, codes, security devices and related instructions and technical and non-technical information and intellectual property rights relating to our vendors' or our technology, IT infrastructure or data security, including trade secrets, systems information security program or processes, SSAE or SOC reports, and testing procedures or results. You will not acquire any ownership interest in or rights to Confidential Information as a result of your use of any Service.

You will:

- a. Maintain the confidentiality of the Confidential Information,
- b. Not disclose (or permit your employees or agents to disclose), copy, transfer, sublicense, or otherwise make any of it available to any person or entity, other than your employees who have a need to use the Confidential Information in connection with the applicable Service, and
- c. Not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information.

You will notify us immediately if you know of or suspect any unauthorized disclosure, possession, use, or knowledge (each, an "Unauthorized Use") of any Confidential Information. If you (or your employees or agents) are responsible for the Unauthorized Use, you will, at your expense, promptly take all actions,



including initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information. You will also compensate us for any injury caused to us as a result of the Unauthorized Use.

City is a political subdivision of the State of Texas and is governed by the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties acknowledge and agree that City shall be obligated to comply with the Public Information Act. To the extent to which some duties hereunder are not in conformity with the requirements of the Public Information Act or not otherwise excepted from disclosure under the Texas Public Information Act, City shall be relieved of said duties without penalty or further liability. In the event that City receives a request, pertaining to this Agreement or information resulting from this Agreement, under the Public Information Act for Confidential Information it shall immediately notify Wells Fargo and confer on whether disclosure should be opposed. It is expressly agreed that City may request a determination from the Attorney General of the State of Texas in regard to the application of the Public Information Act to the requested information and whether the information is to be made available to the public. Wells Fargo may be asked to support such requests for determination by the Attorney General. It is further agreed that City, its officers and employees shall have the right to rely on the determinations of the Texas Attorney General, and that City, its officers and employees shall have no liability to Wells Fargo for disclosure to the public in reliance on a decision by the Attorney General. Nothing in this agreement shall require City or Wells Fargo to violate the terms of the Public Information Act.

8. **Currency conversion.** When your instructions require us to convert the amount of a Transaction from the currency in which the Account is denominated ("Account Currency") to another currency ("Foreign Currency"), we will do so using the Applicable Exchange Rate in effect at the time we execute your Transaction. "Applicable Exchange Rate" means the exchange rate we set and use for you when we convert one currency to another currency and includes a markup. The markup factors include costs incurred, market risks and our desired return. The exchange rate we provide to you may be different from the exchange rates you see elsewhere. Foreign exchange rates are dynamic, and rates fluctuate over time based on market conditions, liquidity, and risks.

If a financial institution designated to receive the funds does not pay the beneficiary specified in the Transaction, and the funds are returned to us, we will not be liable to you for a sum greater than the amount of the Transaction after we have converted it from the Foreign Currency to the Account Currency using the Applicable Exchange Rate in effect at the time the funds are returned to us. You accept the risks of any change in the Applicable Exchange Rate between the time you request a Transaction and the time the Transaction is either completed or is unwound due to a cancellation, an amendment, a rejection, or a return.

9. **Vantage.**

a. **Description of Vantage.** Vantage is our electronic banking platform that is accessed through the Internet. Your Authorized Agents (defined below) may use Vantage to access (i) Services in which you have separately enrolled and (ii) third-party sites we may make available through Vantage. We offer different channels through which you may access Vantage, including personal computers and mobile devices. We may add or eliminate channels at any time. A



Service or third-party site accessible through one channel may not be accessible through another channel.

b. Access to Vantage. When you enroll in Vantage, and as we may determine is necessary after enrollment, we will provide log-On Credentials (defined below) to the persons who are authorized to access Vantage on your behalf (each, an "Authorized Agent"). log-On Credentials mean one or more secure methods we provide to access the Services and may include user IDs, passwords, token IDs, and other methods that we adopt from time to time. We have no obligation to separately verify or authenticate any communication we receive in your name through Vantage, whether or not it was actually from an Authorized Agent. You assume the entire risk of (i) unauthorized use of your log-On Credentials and (ii) unencrypted electronic transmissions.

c. Administration of Vantage. We offer two options for administering Vantage: (i) Administration and (ii) Bank administration.

i. Administration. If you enroll in the Administration option, there are three categories of Authorized Agents: Company Administrator, Administrator, or User. Unless you and we separately agree, we will provide Log-On Credentials only to your initial Company Administrator(s) who will (a) assign Log-On Credentials to other individuals and (b) designate those individuals as one of the following:

- (1) A Company Administrator, who may perform all functions of your initial Company Administrator,
- (2) An Administrator, who may perform all functions of an Administrator including designating other Administrator(s) and User(s), or
- (3) A User, who may access the Services designated by a Company Administrator or an Administrator, as well as those Services in which we permit a User to self-enroll.

Each Company Administrator and Administrator has the authority to enroll you in additional Services. In addition to your use of Administration as described in this subsection, you may request that we assign Log-On Credentials to Users that you designate in writing to us. Your designation to us will specify the Services which the User is authorized to access in addition to those Services in which we permit a User to self-enroll.

ii. Bank administration. For the Bank administration option, there is one category of Authorized Agent:

Users. We will assign Log-On Credentials to each User you designate.



You will promptly revoke the Log-On Credentials of any Authorized Agent or User when that individual is no longer authorized to access Vantage. If you notify us in writing to revoke the Log-On Credentials of an Authorized Agent or User, we will have a reasonable time after receiving your written notification to revoke the individual's access.

- d. Terminating access. We may terminate or restrict any Authorized Agent's access to any Service through Vantage if we determine such use:
 - i. Does not comply with any term applicable to Vantage,
 - ii. Is not permitted by Applicable Law,
 - iii. Is not authorized by you or any third party whose authorization we believe is necessary, or
 - iii. Should be denied for your or our protection (without us agreeing to or being required to make this determination in any circumstance).
 - e. Financial information. Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to us ("Financial Information") may be available to you at Vantage. The posting of any Financial Information or any other information or data at Vantage is not a recommendation by us of any particular Service or action. We do not guarantee the accuracy or completeness of any Financial Information, nor are we responsible for (i) the actions or omissions of the third parties developing or transmitting Financial Information or (ii) any decision you make or action you take by relying on any Financial Information.
 - f. Miscellaneous. For purposes of this section 9 only, "Service" includes each service and product we or any of our affiliates offer that you access through Vantage. This section 9 will survive the termination of any Service or this Agreement.
10. **Alerts.**
- a. Non-subscribed alerts. When you enroll in Vantage or other channels or Services, you consent to receiving by email or other delivery channels, servicing messages that we determine are important or urgent. You do not need to subscribe to receive such alerts and you do not pay additional service fees.
 - b. Subscribed alerts. You may also enroll in fee-based alerts for applicable Services so that you can receive messages you subscribe to at the intervals and through delivery channels that you choose.
11. **Liability and indemnification.**
- a. We are not obligated to honor, in whole or in part, any Transaction or other instruction that:
 - i. Exceeds the available balance in the Account, unless otherwise provided in the Service Documentation,



- ii. Does not comply with the Service Documentation or our applicable policies, procedures, or practices made available to you,
- iii. We have reason to believe may not have been duly authorized, should not be honored for our or your protection, or involves funds subject to a hold, dispute, restriction, or legal process, or
- iv. Would possibly result in us not complying with Applicable Law.

- b. Neither we nor our software vendors make any express or implied representations or warranties with respect to the Services or any software used in connection with the Services, including any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

12. **Edits to Drafts.** You may request edits of the serial number and/or amount of any Draft described on the Activity Report(s) for any current Business Day. You will notify us of each edit request by means acceptable to us. We may deny your edit request based on our evaluation.

13. **Drafts to be dishonored.**

a. **General.** We are subject to requirements regarding the return of Drafts under Applicable Law, including the requirement to provide notice of a dishonored Draft. We may be liable for the amount of the Draft and other damages if we do not meet these requirements. You are solely responsible for dishonoring any Draft including any Unauthorized Draft. If you decide to dishonor any Draft we present to you, you will notify us prior to the Decision Deadline in accordance with the Reverse Positive Pay Service Description.

b. **Reimbursement obligation; revocation instructions.** You will promptly reimburse us for any Losses we suffer or incur as a result of our dishonor of a Draft in accordance with your notice to us. Any payment or other settlement of a Draft will be provisional and can be revoked by:

- i. You, if you direct us to dishonor a Draft before the Decision Deadline, and
- ii. Us at any time before midnight of the first Business Day after the day we presented the Draft to you.

To be effective, we must receive your revocation instruction in a time and manner that gives us a reasonable opportunity to act on it before the payee deposits, cashes or otherwise negotiates the Draft.

c. **Fraud.** If your reason for dishonoring a Draft is fraud, your return instruction alone will not constitute a claim for a fraudulent transaction. You must file a separate claim with us relating to the fraudulent transaction.

14. **Draft cashing.** We, or an affiliate, will not cash any Draft presented for encashment at our teller line, except at our own discretion.

15. **Liability and indemnification.**

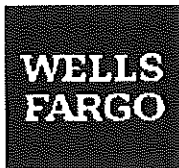


a. **Indemnification.** To the extent not expressly prohibited by Texas law; You will indemnify, defend, and hold us, and our Representatives harmless from and against all Losses arising out of or relating to:

- i. (1) our failure to identify an Unauthorized Draft, (2) our refusal to cash a Draft, (3) our failure to meet any requirement to which section 9 (Drafts to be dishonored) of this Service Description refers, (4) our payment of an Unauthorized Draft, or (5) our exercise of our rights, or our performance of our obligations, in accordance with this Service Description,
- ii. A breach of either the Image Quality Warranty or the No Double Debit Warranty (as defined below),
- iii. Our obligation to indemnify and reimburse a depository bank that accepts the original paper check from which an electronic check is created, if the loss is due to the check having already been paid, and
- v. If we transfer or present an "electronically-created item" and receive settlement or other consideration for it, our obligation to indemnify and reimburse each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against Losses that result from the fact that:
 1. The electronic image or electronic information of the electronically-created item is not derived from a paper check,
 2. The person on whose account the electronically-created item is drawn did not authorize the issuance of the electronically-created item or to the payee stated on the item, and
 3. A person receives a transfer, presentment, or return of, or otherwise is charged for an "electronically-created item" in such a way that the person is asked to make payment based on an item or check it has paid.

"Electronically-created item" means an electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not derived from a paper check. "Image Quality Warranty" means our guarantee that the electronic image of the check accurately represents all of the information on the front of the check as of the time the original check is truncated, and the electronic information includes an accurate record of all MICR line information required for a substitute check and the amount of the check. "No Double Debit Warranty" means our guarantee that the warrantee will not receive a presentment of or otherwise be charged for an electronic check, an electronic returned check, the original check, a substitute check, or a paper or electronic representation of a paper substitute check, in a way that the warrantee will be asked to make payment on a check that it has already paid.

When we transfer an electronic check for collection or payment, we make the Image Quality Warranty and the No Double Debit Warranty to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer. When we transfer an



electronic returned check for return. we make the Image Quality Warranty and the No Double Debit Warranty to the transferee returning bank, the depository bank, and the owner. For purposes of this section 11.a, the term "check" and "electronically created item" includes a Draft.

- b. **Unauthorized Draft.** With respect to each Draft, we:
 - i. Will be deemed to be a collecting bank and not a drawee bank, and
 - ii. Disclaim all liability applicable to a payor bank under the Transfer and Presentment Warranties in Articles 3 and 4 of the UCC.

In the event any Draft paid by you is subsequently determined to be an Unauthorized Draft, we will take any action reasonably requested by you to enforce against prior parties (including prior collecting banks, endorsers and other holders) whatever rights you may have against those prior parties, but we will not be liable to you with respect to the Unauthorized Draft and will not be obligated to take any action with respect to the Unauthorized Draft unless you first indemnify us for all costs, expenses and liabilities, including reasonable attorneys' fees and legal expenses, which we may incur as a result of such action.

- c. **Delayed return.** You are responsible to any party that incurs a loss in connection with a Draft, if:
 - i. The loss is due to a delay in the return of the Draft, and
 - ii. The delay is caused, in whole or in part, by any presentment-related problem resulting from:
 - 1. The failure of any Draft to meet our draft specifications (section 2), or
 - 2. Material appearing on the back of the Draft when it was issued by you including without limitation carbon banks, blacked-out areas and printed or written text or numbers.

16. **Anti-money laundering and sanctions controls.** While this Service Description is in effect. you will:

- a. Be solely responsible for monitoring, interpreting and complying with all laws, regulations, judicial and administrative decisions, and executive orders that apply to you as a provider of accounts to your customers on which Drafts are issued, including the U.S. anti-money laundering and anti-terrorist financing ("AML") and sanctions laws and regulations;
- b. Maintain policies and procedures to reasonably ensure compliance with applicable provisions of the U.S. AML laws and regulations, including but not limited to the USA PATRIOT Act ("PATRIOT Act"), and regulations promulgated by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury;
- c. Where you qualify under section 314(b) of the PATRIOT Act, maintain an effective notice with FinCEN evidencing your intent to engage in information sharing pursuant to section 314(b) of the PATRIOT Act;



d. If subject to the PATRIOT Act, maintain policies and procedures that include a risk assessment of its products and services, designate a Board-approved AML Compliance Officer responsible for overseeing the components of the AML Program, and include processes for training, monitoring of Drafts, recordkeeping and reporting;

e. Provide copies of your policies, procedures and practices designed to comply with this section 12, as we may request from time to time; and (b) upon our request and sole expense, allow us, or our designee, to make such on-site visits to you as we deem necessary or appropriate to review your policies, procedures and practices designed to comply with this section 12; and

f. Work with us in good faith to minimize the number of on-site visits and to limit the impact of the on-site visits on your business.

17. **Survival.** Sections 3, 4, 6, 9, 10, and 11 of this Service Description will survive termination of the Service.

Glossary

Account Agreement means the applicable account agreement governing your Account.

Applicable Law is defined in section 3 of the Master Agreement.

Business Day means every day except Saturday, Sunday and federal holidays. When used in connection with funds transfer Services, "Business Day" means each day on we are open for business related to that Service.

Check Issue Data means for any Check or Draft, the complete serial number and numeric amount. If you have elected the Payee Validation service option under the Positive Pay Service, Check Issue Data also includes the payee's name.

Cutoff Time means our cutoff time each Business Day that we separately disclose to you for the Service.

Decision Deadline means on any Business Day, (i) for the Positive Pay Service, the time we establish by which you must choose to pay or return each Exception Check, and (ii) for the Reverse Positive Pay Service, the time we establish by which you must choose to edit or return each Check on the Paid Items Report.

Draft means each payable-through draft or third party draft we present to you in accordance with this Service Description and includes an Unauthorized Draft.



Item has the meaning given in the Account Agreement.

Losses means all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees, disbursements of legal counsel and court fees).

Master Agreement means the Master Agreement for Treasury Management Services.

Matching Check is a Check presented to us that matches the Check Issue Data you have provided to us. **Obligations** means any and all advances, debts, loans, obligations and liabilities that you owe us and our affiliates pursuant to the terms of this Service Description, including any advances we make to the Funding Account pursuant to Section 3 of the Controlled Disbursements Service Description and any advances we make to the Disbursement Account pursuant to Section 4 of the Controlled Disbursements Service Description.

Representatives is defined in section 11(f) of the Master Agreement.

Unauthorized Draft means a counterfeit or altered Draft, a reproduction of a duly authorized Draft, a Draft with a forged or other unauthorized signature, or a forged, unauthorized, incorrect or illegible endorsement.



IN WITNESS WHEREOF, the parties have executed this Agreement on the day of _____,
2023.

CITY OF EL PASO

Cary Westin
Interim City Manager



ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:

Margarita Marin
City Comptroller

Wells Fargo, N.A.

Nicholas London
Senior Relationships Manager