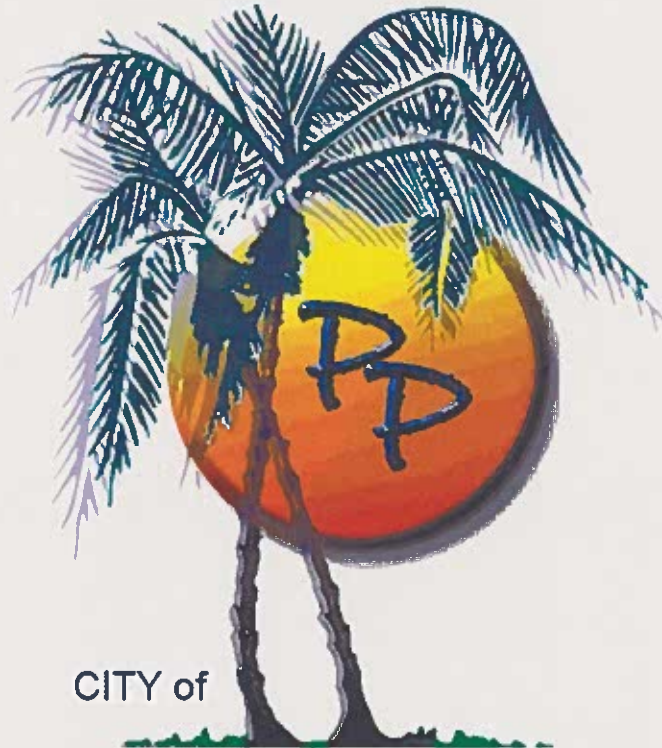


CITY OF PINELLAS PARK



CITY of

Pinellas Park, FL

The Heart of Pinellas

RFP 21/004

Banking Services Agreement

Finance Department

**MASTER BANKING SERVICES AGREEMENT BETWEEN
CITY OF PINELLAS PARK
AND
WELLS FARGO BANK, N.A.**

16th This Master Banking Services Agreement (this "Agreement") is entered into as of the day of September, 2021 by and between Wells Fargo Bank, N.A. ("Bank") and the City of Pinellas Park, Florida ("City").

Recitals

WHEREAS, City issued a Request for Proposal (RFP 21/004) for the provision of banking and treasury management services on May 9, 2021 (the "RFP") to which the Bank submitted its response dated June 8, 2021 (the "Bank's Response");

WHEREAS, on the basis of the Bank's Response, City has determined to engage the Bank to provide certain banking and treasury management services (each, a "Service" and collectively, the "Services") all as provided in the RFP and the Bank's Response;

WHEREAS, Bank has agreed to provide the Services to City, and City has agreed to accept the Services, upon the terms and conditions set forth in the Bank's Response and set out in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which, each of Bank and City expressly acknowledge, each of Bank and City hereby agree as follows:

1. Entire Agreement. Bank shall provide, and City shall accept, the Services pursuant to the terms and conditions of the "Service Documentation" which includes the following documents which are attached and incorporated herein in their entirety:
 - 1.1 This Agreement;
 - 1.2 Bank's Response (including all exhibits and addendum which are incorporated by reference herein, including the Service Description for each Service (each, a "Service Description"), the commercial account agreement for the deposit accounts that City maintains at Bank (the "Deposit Agreement"), and the Pricing attached to the Bank's Response as Tab A (the "Pricing Schedule") collectively attached as Exhibit A; and
 - 1.3 City's RFP (attached as Exhibit B)

If there is a conflict among the documents that make up this Agreement, the documents will govern in the order set forth above. The Service Descriptions and Deposit Agreement in effect as of the date of this Agreement are attached to the Bank's Response. This Agreement constitutes the entire agreement between Bank and City and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service and the transactions contemplated hereunder. No course of dealing or waiver of any right on one occasion will constitute a modification of the above referenced documents or be a waiver of that right on a subsequent occasion.

2. Services: Additional Services. If City requests and Bank agrees to provide additional services after the date of this Agreement, which are governed by additional service descriptions, pricing or other documents, the terms and conditions thereof shall be deemed to be incorporated herein by reference

without the need to either amend this Agreement or to add such service descriptions, pricing or other documents as attachments to this Agreement. Any Merchant or Card services would be subject to a separate negotiated agreement between the Parties.

3. Changes to Services or Service Documentation. Bank may change (or add to) the terms in the Service Descriptions and Account Agreement at any time. If a change to a Service requires a change to the Service Descriptions and Account Agreement, Bank will post the document(s) with the change on the CEO portal. When required by Applicable Law, Bank will notify City of the change. If City continues to use a Service after a change takes effect, City 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 effected under this Agreement, including, but not limited to, the funds transfer system and clearing and settlement house rules.

4. Term, Termination, Liability.

4.1 This Agreement shall have an initial term of five (5) years beginning on October 1, 2021 and ending on September 30, 2026, with the parties having the option to renew for one (1) additional five (5) year term. Bank and City must mutually agree to any renewal, which shall be on terms and conditions mutually agreed upon by Bank and City in writing.

4.2 Unless terminated sooner in accordance with the Service Documentation or as set forth herein, this Agreement and all Services will continue in effect for the term of the Agreement until terminated by either City or Bank upon one hundred twenty (120) days prior written notice to the other party. Both the City and the Bank shall have the right to terminate this Agreement for cause upon sixty (60) days written notice if the other party fails to reasonably comply with any of the term and conditions of the contract, fails to comply with applicable law, rules or regulation or otherwise materially breaches the Agreement. The City may also immediately terminate the Agreement if Bank loses its status as a "Qualified Public Depository". The termination of a Service or this Agreement will not affect City's or Bank's rights with respect to transactions occurring before termination. Neither party will be liable to the other party for any losses or damages such other party may incur as a result of any termination of any Service or this Agreement in accordance with the terms of the Service Documentation.

5. Service Fees.

City shall pay Bank the fees for the Services as set forth in Tab A of Exhibit A. Except to the extent related to additional services referenced in Section 2 above, fees for the Services will remain fixed for the initial term of the Agreement. Except as otherwise agreed to between City and Bank, Bank may debit City's account(s) for any fees not covered by earnings credits and any taxes that are due, or it may send an invoice to City for such amounts, which City will promptly pay.

6. Representations and Warranties.

Mutual Representations and Warranties. Each of the parties hereto represents and warrants to the other party that: (i) such party is duly organized and in good standing in all appropriate jurisdictions; (ii) each party is fully authorized to execute and perform under this Agreement and the execution of and performance under this Agreement does not violate any law, regulation, contract or organizational document by which such party is bound; and (iii) the

individual(s) executing this Agreement on behalf of such party has full corporate and/or organizational authority to do so.

7. Bank Liability/Indemnification

7.1 Bank will perform each Service in accordance with reasonable commercial standards applicable to Bank's business; laws, regulations and operating circulars governing the activities of Bank; funds transfer system(s) and clearinghouse rules applicable to activities of Bank; and the Service Documentation.

7.2 Bank will only be liable to City for City's direct monetary losses due to Bank's negligence or intentional misconduct resulting from or relating to this Agreement, except to the extent caused by the negligent acts, omissions, or willful misconduct of the City, its officers, employees, agents, or employees and subject to any limitations set forth in the Service Documentation. Except as expressly provided otherwise in the Service Documentation, neither party to this Agreement will be liable to the other party for any special, consequential, incidental (including without limitation court costs and attorneys' fees), indirect, or punitive losses or damages, whether any claim is based on contract or tort, or whether the likelihood of such losses or damages was known to the other party and regardless of the form of the claim or action. Under no circumstances shall any of the provisions of this Agreement be deemed to waive the requirements and limitations of Florida Statute §768.28, as such applies to the City of Pinellas Park, Florida, a Florida municipal corporation.

7.3 During the term of this Agreement, Bank will indemnify, defend and hold harmless City and its officers, directors, employees, agents and assigns (the "Indemnified Parties") from and against all claims, losses, demands, liability, judgments, awards, interest, attorney's fees and costs (collectively, "Losses") arising out of, or resulting from the performance of the services provided hereunder which are, in each case, directly caused in whole or in part by the negligent or intentional acts or omissions of Bank or any of its officers, directors, employees, agents, or subcontractors, except to the extent such Losses are caused by the negligence or intentional misconduct of any Indemnified Party. Bank's liability under this Agreement will be limited to an amount not to exceed 10 times Bank fees incurred during the calendar month immediately preceding the calendar month in which such loss or damages were incurred (or, if no Bank fees were incurred in such month, Bank fees incurred in the month in which the losses or damages were incurred).

8. Miscellaneous.

8.1 The Service Documentation will be governed by substantive federal laws, regulations and rules and, to the extent such laws, regulations and rules are not applicable, those of the State of Florida, without regard to conflicts of laws principles. Any portion of the Service Documentation which is inconsistent with applicable laws, regulations or rules will be deemed modified and applied in a manner consistent therewith, and Bank will incur no liability to City as a result of the inconsistency or modification and application. If any portion of the Service Documentation is deemed unenforceable, it will not affect the enforceability of the remaining Service Documentation. Venue for any action arising out of or relating to this Agreement shall lie in state or federal courts in or for Pinellas County, Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

8.2 Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank will use the most recent address for City in Bank's records, and any notice from Bank will be effective when sent. City will use the address where City's relationship manager or other manager is located and address any notice to the attention of such manager. Any notice from City will be effective when actually received by Bank. Bank will be entitled to rely on any notice from City that it believes in good faith was authorized by an authorized representative of City and, except as expressly stated in the

Service Documentation, will have no obligation to verify the signature (including an electronic signature). Each party will have a reasonable time after receipt of any notice to act on it.

8.3 The Services rely upon a robust network of Bank assets, employees and third-party resources located in the United States and around the world to provide service to City. Bank reserves the right to perform services using this model and to subcontract freely and to add and delete service providers at Bank's discretion. Bank will remain fully responsible for performance of all obligations under this Agreement, including those performed by a subcontractor or other service provider engaged by Bank. An arrangement with a third party under which the third party assists Bank in providing services or products which are not specific to City shall not be considered to be a subcontract for purposes of this Agreement.

8.4 To the extent that Bank meets the definition of "contractor" under section 119.0701, Florida Statutes, Bank must comply with public records laws, including the following provisions of section 119.0701, requiring Bank to:

- A. Keep and maintain public records required by City to perform the service.
- B. Upon request from City's custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that confidential information or records that are exempt from public records disclosure are not disclosed except as authorized by law for the duration of this Agreement, renewals, and following completion of the contract if Bank does not transfer the records to City.
- D. Upon completion of this Agreement, transfer, at no cost, to City all public records in possession of Bank or keep and maintain public records required by City to perform the service.
 - 1) If Bank transfers all public records to City upon completion of the contract, Bank must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If Bank keeps and maintains public records upon completion of this Agreement, Bank must meet all applicable requirements for retaining public records.
 - 3) All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City.

8.5 City and Bank agree that this Agreement and the Service Documentation set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein and therein.

8.6 This Agreement may be executed in any number of counterparts, which when taken together shall constitute one complete original of this Agreement.

8.7 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

8.8 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

8.9 Severability. In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

Each of the parties hereto agrees to be bound by the terms and conditions of this Agreement, as of the above written date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CITY OF PINELLAS PARK

WELLS FARGO BANK, N.A.

By: *Sandra L. Bradbury*

By: *V. Mattio*

Name: *Sandra L. Bradbury*

Name: *Vincent Mattio*

Title: *Mayor*

Title: *Senior Relationship Manager*

Date: *09-16-2021*

Date: *9/8/2021*

Attest:

Diane M. Corna

Diane M. Corna, MMC

Approved as to form and correctness:

Lauren C. Rulenz
for City Attorney, James W. Denhardt
City of Pinellas Park



EXHIBIT A

Bank's Response to City's Request for Proposal dated June 8, 2021

EXHIBIT B

City's Request for Proposal dated May 9, 2021

AMENDMENT TO WELLSONE® COMMERCIAL CARD AGREEMENT

This Amendment to WellsOne® Commercial Card Agreement (this "Amendment") is made and entered into effective as of August 5, 2021 (the "Effective Date"), by and between Wells Fargo Bank, N.A. ("Wells Fargo") and City of Pinellas Park ("Customer"). Wells Fargo and Customer have entered into that certain WellsOne® Commercial Card Agreement dated on or about April 24, 2018, (as the same may have been amended, supplemented or restated from time to time the "Agreement"); and desire to amend the Agreement as more particularly set forth herein. In exchange for the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, and intending to be legally bound hereby, Customer and Wells Fargo hereby agree as follows:

1. Incorporation and Effect. This Amendment and all Attachments are hereby made a part of and incorporated into the Agreement as though fully set forth therein. As supplemented by the terms and conditions set forth in this Amendment, the provisions of the Agreement shall remain in full force and effect, provided that, in the event of a conflict between any provision of this Amendment and any provision of the Agreement, the provision of this Amendment shall control.

2. Definitions. Capitalized terms herein that are not otherwise specifically defined herein shall have the same meanings as set forth in the Agreement.

3. Revenue Share Calculation. The Agreement is hereby amended by deleting the existing Attachment C-2 ("Revenue Share Calculation") in its entirety and replacing it with the following new Attachment C-2 ("Revenue Share Calculation") attached hereto.

4. Miscellaneous. This Amendment, together with the provisions of the Agreement not expressly inconsistent herewith, constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to constitute one and the same agreement. A facsimile and other copy of this Amendment with facsimile or copied signatures shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

WELLS FARGO BANK, NATIONAL ASSOCIATION

Authorized Officer: Vincent Mattio

Signature: [Signature]

Title: Senior Relationship Manager

Date: 9/8/2021

Attest: [Signature]
Diane M. Corna, MMC

City of Pinellas Park

Authorized Officer: [Signature]

Signature: Sandra L. Bradbury

Title: Mayor

Date: 09-16-2021

Approved as to form and correctness:

[Signature]
for City Attorney, James W. Denhardt
City of Pinellas Park

WELLSONE® COMMERCIAL CARD AGREEMENT
ATTACHMENT C-2
REVENUE SHARE CALCULATION
CUSTOMER NAME: City of Pinellas Park
August 5, 2021

Revenue Share will be paid within forty-five (45) days following the end of each Program Year on Net Purchase Volume for such Program Year. For purposes of this Attachment C-2, "Program Year" shall mean the twelve month period beginning January 1 and ending December 31.

<u>Net Purchase Volume*</u>	<u>Standard Revenue Share Schedule</u>	<u>Revenue Share</u>
\$ 0	to \$ 999,999	0 Basis points (bps)
\$ 1,000,000	to \$ 1,999,999	107 bps
\$ 2,000,000	to \$ 3,999,999	134 bps
\$ 4,000,000	to \$ 6,999,999	145 bps
\$ 7,000,000	to \$ 9,999,999	160 bps
\$ 10,000,000	to \$ And Above	170 bps

Custom Interchange Revenue Share Schedule

<u>Net Purchase Volume* of Custom Interchange Transactions</u>	<u>Revenue Share</u>
\$ 1.00 and above	75 - basis points (bps)

Commencing with the Program Year ending December 31, 2021 and annually thereafter ("Anniversary Date"), the Revenue Share amount to be paid to Customer (if any) shall be calculated and applied retroactively by multiplying the applicable Revenue Share bps times the Net Purchase Volume for the previous Program Year. No Revenue Share shall be owed for the previous Program Year if: (i) Customer terminates this Agreement prior to the Anniversary Date, or (ii) Wells Fargo terminates this Agreement for an Event of Default prior to the Anniversary Date. No Revenue Share shall be owed for the previous Program Year if the Customer's average transaction size for such Program Year is less than \$160.

* "Net Purchase Volume" shall mean total volume minus credits and cash advances (if applicable). Wells Fargo will segregate or exclude Custom Interchange Transactions as defined and described below and as qualified by Visa® or MasterCard®, as applicable. The term "Custom Interchange Transaction" as used herein shall mean (i) certain transactions subject to select large ticket transaction requirements, qualified and determined by Visa or MasterCard®, as applicable, in its sole and absolute discretion and (ii) transactions with merchants participating in promotional interchange programs offered by Visa® or MasterCard® (including the Visa Partner Program or the MasterCard Partner Program) that qualify for non-standard promotional interchange rates. Such Visa® or MasterCard®, as applicable, large ticket transaction qualification requirements for large ticket interchange shall include, but not be limited to, custom payment service qualification with Level II and Level III data included with the transaction. Notwithstanding anything to the contrary contained herein, Wells Fargo may, in its reasonable discretion, exclude any Custom Interchange Transaction for which the interchange rate is below a minimum threshold established by Wells Fargo for purposes of Revenue Share calculation.

The following terms and conditions shall apply under this Attachment: i) Customer must obtain an annual minimum Net Purchase Volume of \$1,000,000 per Program Year, which may include Custom Interchange Transactions, to receive a Revenue Share payment under this Attachment, and ii) if such Custom Interchange Transactions are segregated, the Custom Interchange Revenue Share Schedule will apply to the Net Purchase Volume for such segregated transactions.

If Customer utilizes the MasterCard® Payment Gateway™: (i) any transaction in an amount greater than or equal to \$100,000.00 made using the MasterCard® Payment Gateway™ will not be included in Customer's Net Purchase Volume, as a Custom Interchange Transaction or otherwise, for purposes of calculating Revenue Share payable to Customer hereunder and no Revenue Share will be payable to Customer in respect of any such transaction; and (ii) any transaction in an amount below \$100,000.00 made using the MasterCard® Payment Gateway™ will be included in Customer's Net Purchase Volume for purposes of calculating Revenue Share payable to Customer hereunder and, subject to the conditions herein with respect to Customer's eligibility to receive a Revenue Share payment, will be separately segregated and paid at a rate separately agreed in writing by the parties, or in the absence of such written agreement, at the rate set out in the MasterCard® Payment Gateway™ Service Description.

