



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Wilson and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director
Russell Morreale, Assistant Finance Director

DATE: January 4, 2005

SUBJECT: Approval of a Five-Year Extension of the City's Contract with Union Bank for Operating Banking Services (estimated value \$ 72,000/Year)

RECOMMENDATION:

The Finance subcommittee and staff recommend that the City Council authorize the City Manager to execute a five year contract extension for banking services currently being provided to the City of Manhattan Beach by Union Bank of California. This action was discussed and approved by the City's finance subcommittee in July 2004.

FISCAL IMPLICATION:

This action merely extends an existing contract for banking services resulting in no fiscal impact beyond what is currently being experienced. Banking charges are applied based upon a compensating balance methodology and fluctuate with the volume of dollars deposited and movements in interest rates. At the moment the City costs for such service ranges from three to six thousand dollars per month for all banking services including – general banking – safekeeping – cash transport – check clearing and imaging – recordkeeping – fraud protection services - on line and hard copy reporting – wire and bank to bank transfers – payroll services – internet banking services.

DISCUSSION:

In fiscal year 1998, City staff recommended a change in banking services which was effected through a formal request for proposal process. At that time, City staff was prompted to review alternatives given a high degree of dissatisfaction with the banking services rendered by our former bank. Through this process, involving several banks, the City selected Union Bank as its service provider and entered into a five year contract with an option to extend for an additional year. Now that we are at the end of this term, the attached document authorizes the extension of Union Bank's services for an additional five years through December 31, 2009.

Since making the change to Union Bank in 1998, we have been very pleased with the new and improved level of services provided. All condition and expectations of the original contract proposal have been met or exceeded and the relationship with Union Bank remains strong and vibrant. Union

Bank has indeed met our general banking service needs and has done much more in adding greater value to our banking service experience. In particular, they have greatly improved our services in the following ways:

- Providing advanced on-line bank reporting capabilities allowing for daily bank reporting and processing via the internet.
- Assisting and supporting the City in implementing “Positive Pay” banking which allows for much stronger cash controls
- Assisting us in entering the Internet Commerce arena with our Parks & Recreation class registration.
- Allowing for Water Bill auto payment processing.
- Allowing for data downloading which has greatly streamlined the reconciliation processes.
- Providing superior portfolio safekeeping services

The changing of banks is a major operational undertaking and not a service that is typically subjected to the competitive bidding process. Making a bank transition is labor intensive, time consuming and can disrupt service levels. Such a change also involves modifying underlying systems, procedures, and operating supplies. For all of these reasons making a change in banking services is only prompted by operational service needs.

In summary, staff is very satisfied with the banking services provided and recommends that the City continue its long term relationship with Union Bank for the services discussed. Once approved, the contract will be executed by the City Treasurer, City Manager and Finance Director.

- Attachments:
- A. Contract Extension for Banking Services
 - B. Original 1998 Contract

**UNION BANK OF CALIFORNIA, N.A.
GOVERNMENT & NOT-FOR-PROFIT DIVISION**

CONTRACT EXTENSION FOR BANKING SERVICES

This **CONTRACT EXTENSION FOR BANKING SERVICES** (HEREINAFTER "**CONTRACT**"), EFFECTIVE JANUARY 1, 2004, BY AND BETWEEN **UNION BANK OF CALIFORNIA, N.A.** (HEREINAFTER "**BANK**"), AND **THE CITY OF MANHATTAN BEACH** (HEREINAFTER "**THE CITY**"), IS IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE 53682.

WHEREAS, IN THE JUDGEMENT OF THE TREASURER THIS CONTRACT IS TO PUBLIC ADVANTAGE; AND THE CITY,

WHEREAS, BANK CONTINUES TO REPRESENT TO THE CITY THAT IT MEETS THE REQUISITE LEGAL AND OTHER QUALIFICATIONS AND POSSESSES SUFFICIENT FINANCIAL STRENGTH AND CAPACITY TO RENDER THE BANKING SERVICES SOUGHT BY THE CITY.

IT IS AGREED THAT THE BANK WILL CONTINUE TO SERVICE THE CITY'S BANKING NEEDS AND GUARANTEE FIXED UNIT PRICING AS PRESENTED [ON ATTACHED AAA STATEMENT DATED DECEMBER 01, 2003]. THE FIXED UNIT PRICING WILL BE FIXED THROUGH THE PERIOD ENDING DECEMBER 31, 2009. THE CITY WILL BE THE SOLE SELECTOR OF SERVICES TO BE UTILIZED.

THIS CONTRACT EXTENSION MAY BE TERMINATED ON THIRTY (30) DAYS WRITTEN NOTICE BY EITHER PARTY DISCLOSED IN THE CONTRACT FOR DEPOSIT OF MONIES AS REQUIRED BY THE CALIFORNIA GOVERNMENT CODE.

CITY OF MANHATTAN BEACH

UNION Bank of CALIFORNIA, N.A.

BRUCE A. MOE, FINANCE DIRECTOR
CITY OF MANHATTAN BEACH
1400 HIGHLAND AVE
MANHATTAN BEACH, CA. 90266
310-802-5552 OFFICE
310-802-5001 FAX

TED J. MILLER, VICE PRESIDENT
UNION BANK OF CALIFORNIA
445 S. FIGUEROA ST. 8TH FLOOR
LOS ANGELES, CA 90071
213-236-7589 OFFICE
213-236-7152 FAX

DATED: _____

DATED: _____

EARLE HUPP, CITY TREASURER

DATED: _____

APPROVED AS TO FORM:

By 
City Attorney

BANK SERVICES AGREEMENT

THIS AGREEMENT is made this 6th day of January, 1998, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and UNION BANK OF CALIFORNIA, a subsidiary of UnionBanCal Corporation, a California corporation, ("BANK").

RECITALS

The following recitals are a substantive part of this Agreement:

1. CITY is desirous of obtaining the services of a qualified commercial banking institution as a depository for City funds and to provide general banking services;
2. BANK is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall terminate on January 6, 2003, unless earlier terminated as provided below. CITY shall have the option, at its sole discretion, to extend this Agreement for additional twelve month terms by giving written notice to BANK prior to the expiration of the then current term of the Agreement.

1.1 **Termination.** CITY and BANK shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice. Upon receipt of a termination notice, BANK shall:

- (1) promptly discontinue all services affected (unless the notice directs otherwise); and
- (2) deliver routine reports, account statements and closing statements at the termination of the Agreement.

2. **Services to be Provided.** The services to be performed by BANK shall be those set forth in the "REQUEST FOR PROPOSAL FOR BANKING SERVICES" ("RFP") which is attached hereto and incorporated herein by this reference.

3. **Compensation.** BANK shall be compensated as follows:

3.1 **Amount.** Compensation under this Agreement shall be as per the UBOC fee schedule which is attached hereto.

3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required.

3.3 **Expenses.** BANK shall not be entitled to any additional compensation for expenses.

4. **Professional Standards.** BANK shall maintain or exceed the level of competency presently maintained by other similar institutions in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** BANK shall complete all services required hereunder as and when directed by CITY. However, CITY in its sole discretion, may extend the time for performance of any service.

6. **Employees and Subcontractors.** BANK may, at BANK'S sole cost and expense, employ such other person(s) as may, in the opinion of BANK, be needed to comply with the terms of this Agreement, if such person(s) possess(es) the necessary qualifications to perform such services. If such person(s) is/are employed to perform a portion of the scope of work, the engagement of such person(s) shall be subject to the prior approval of the CITY.

7. **Insurance Requirements.**

7.1 **Commencement of Work.** BANK shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, BANK must have and maintain in place, all of the _____ insurance coverages required in this Section 7. BANK'S insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and BANK shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

7.2 **Coverages, Limits and Policy Requirements.** BANK shall maintain the types of coverages and limits indicated below:

(1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by

endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit BANK'S liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify BANK in writing of changes in the insurance requirements. If BANK does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, BANK shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and

approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

- (1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by BANK) ; or
- (2) BANK shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

7.4 Verification of Compliance. BANK shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, BANK shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

8. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. Non-Discrimination. BANK covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. Independent Contractor. It is agreed that BANK shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

11. Compliance with Law. BANK and CITY shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. Ownership of Work Product. All documents or other information received, by BANK from CITY or developed by BANK at CITY'S request shall, for purposes of copyright law, be deemed works made for hire for CITY by BANK as CITY'S employee(s) for hire and shall be the sole property of CITY. BANK shall provide CITY with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement, if in BANK'S possession.

13. **Conflict of Interest and Reporting**. BANK shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.

14. **Notices**. All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of BANK is as follows:

Union Bank of California
Government Services Division
445 S. Figueroa Street, 13th Floor
Los Angeles, CA 90071-1602

b. Address of CITY is as follows:

Julia James, Director of Finance
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(with a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

15. **Bank's Proposal**. This Agreement shall include BANK'S proposal which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Familiarity with Work**. By executing this Agreement, BANK warrants that:

- (1) it has investigated the work to be performed;
- (2) it has investigated the site of the work and is aware of all conditions there; and
- (3) it understands the difficulties and restrictions of the work under this Agreement. Should BANK discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed,

7
except at BANK's risk, until written instructions are received from CITY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement, or any portion, shall be assigned by BANK without prior written consent of CITY.

20. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

21. **Indemnification.** BANK and CITY agree to indemnify, defend, and hold harmless each other and their respective elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees (court awarded fees shall be deemed reasonable) arising out of, or in any way connected with the indemnifying party's negligence or material breach of this Agreement. This indemnity shall apply regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by BANK.

22. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and BANK.

23. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

24. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

25. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

26. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

27. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover attorneys' fees and court costs from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

BANK

By *Don L. Cavallaro*
VICE PRESIDENT

CITY OF MANHATTAN BEACH

By *Jack Cunningham*

ATTEST:

Liz Tarnip
City Clerk

APPROVED AS TO FORM:

Albert F. Waddy
City Attorney