

**December 19, 2006****SUBJECT:** Award of Request for Proposals No. F0608-16 for Banking Services**REPORT IN BRIEF**

Request is made that Council award a five-year contract, with an option to extend the contract for an additional two-year period, to Union Bank of California to serve as the City's depository and to provide a variety of banking services at an anticipated cost of \$160,000 per year.

BACKGROUND

The City requires the services of a banking institution in order to have accounts into which revenues can be deposited and from which employees and the general bills of the City can be paid.

The City has maintained a banking relationship with Union Bank for many years. In 1993, the City established its first seven-year contract with Union Bank as the result of a competitive proposal process. In 2000, the City again selected Union Bank as its banking institution following a second competitive proposal process for which there were four respondents. That contract will expire on December 31, 2006.

In its Recommended Practice on the "Procurement of Banking Services," the Government Finance Officers Association (GFOA) advises:

Prudent procurement practices necessitate the re-evaluation of banking services on a periodic basis. In addition, recent changes in technology, cash management practices, and banking-industry structure offer public investors opportunities to reevaluate banking services and costs.

DISCUSSION

In line with GFOA's Recommended Practice and in compliance with the City's standard procurement procedures, Department of Finance Treasury and Purchasing staff prepared specifications for a new proposal solicitation. As in the past, staff determined that the best method for selection of the City's bank was a Request for Proposals (RFP). Unlike an Invitation for Bids which requires selection of the low bidder, an RFP makes it possible to evaluate proposals, based upon criteria in addition to price.

Request for Proposals No. F0608-16 was, therefore, prepared and issued on September 25, 2006. The RFP listed numerous required, desired, and optional banking services and requested that interested banks provide information about their capabilities, experience, customer base, costs, etc. Basic required services included processing: deposits, City-issued checks, payroll direct deposit, direct debit and electronic bill payment services for utility accounts, petty cash accounts, and credit card payments.

The RFP was directly distributed to five banking institutions known to provide the required services in this area. Proposals were received from U.S. Bank, Bank of America, and Union Bank of California. The proposals were evaluated, based upon a variety of criteria, including, but not limited to, financial stability, available products and services, service levels, quality of references and overall costs.

All three banks met the financial stability criteria, and all could provide most of the required services with two exceptions. First, Bank of America does not provide courier service for the delivery of checks to the bank's processing center. Second, U. S. Bank does not have a branch conveniently located to the City Hall Campus. Both Bank of America and Union Bank have a convenient branch location.

While Bank of America offered to obtain quotes from couriers on behalf of the City, this is not optimal. Staff prefers that the actual contract be between the bank and the courier. In the event the checks are lost or destroyed while in transit to the bank's processing center, the Bank would have an obligation to work with the City to re-create the deposit or provide the City with provisional credit for deposits made. If the contract is between the City and the courier, the Bank would not be a party to the contract and would have no obligation to work with the City to re-create the deposit or provide the City with provisional credit for deposits made. Both U.S. Bank and Union Bank provide courier service.

The primary difference between the three proposals was cost. Union Bank of California offered the lowest overall cost and guaranteed no increase in its fees throughout the five-year contract term and the two-year optional extension period.

Staff compared the costs associated with each of the three proposals by applying each proposer's fee structure to the type and number of transactions currently required by the City during a typical month:

	<u>Bank of America</u>	<u>U.S. Bank</u>	<u>Union Bank</u>
Banking Services	\$ 4,975	\$ 4,267	\$ 3,069*
Credit Card Processing Services	<u>\$ 9,781</u>	<u>\$10,646</u>	<u>\$10,187</u>
Total Monthly Fees	\$14,756	\$14,913	\$13,256

*This amount is 36% less than the City pays under the existing contract with Union Bank.

Staff has been very satisfied with the services provided by Union Bank and recommends that Council award a new five-year contract to Union Bank of California.

FISCAL IMPACT

Staff estimates that the cost of banking services, including credit card processing, will not exceed \$160,000 per year. Based on the City's current banking activity, it is anticipated that the City will realize a savings of approximately \$25,000 per year through more favorable pricing in the recommended new contract.

Continuing with Union Bank will also avoid the costs associated with changing banks, such as:

- Notifying all vendors that pay the City electronically of the new bank and account number.
- Converting all ACH files, including direct deposit of payroll, to the new provider.
- Ordering all new checks and deposit tickets for the City's fifteen bank accounts.
- Reconciling all bank accounts of both the previous provider and the new provider while checks clear.
- Training staff on the deposit procedures, reporting capabilities, products and services of the new bank.

CONCLUSION

After re-evaluating the City's banking needs as well as the services available from three leading banking institutions and the potential costs, staff recommends that Council authorize continuation of the City's long-standing relationship with Union Bank of California.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web

page, and the availability of the report in the Library and the City Clerk's Office.

ALTERNATIVES

1. Award a five-year contract for banking services to Union Bank of California in substantially the same format as the attached draft, and delegate authority to the City Manager to exercise an option to extend the contract for an additional two-year period if it is in the City's best interest to do so.
2. Award a contract to one of the other banks who responded to the City's Request for Proposals.

RECOMMENDATION

Staff recommends Alternative No. 1.

Prepared by:

Therese B. Balbo, Finance Manager

Reviewed by:

Mary J. Bradley
Director, Finance

Approved by:

Amy Chan
City Manager

Attachment

Draft Agreement for Banking Services

DRAFT
AGREEMENT BETWEEN CITY OF SUNNYVALE
AND UNION BANK
FOR BANKING SERVICES

THIS AGREEMENT ("Agreement"), is entered into this ____ day of _____, 2006, by and between CITY OF SUNNYVALE, a California municipal corporation ("CITY"), and UNION BANK OF CALIFORNIA ("BANK"),

RECITALS

WHEREAS, CITY is in need of the services of a professional financial institution to serve as CITY's depository and provider of banking services; and

WHEREAS, on September 25, 2006, CITY issued Request for Proposals No. F0608-16, hereby incorporated by reference, to banks with local branches for both basic and optional banking services for a period of at least five (5) years; and

WHEREAS, on or before October 18, 2006, CITY received responses for banking services from three banking institutions; and proposals were evaluated by CITY staff; and

WHEREAS, CITY staff has determined that BANK's proposal, hereby incorporated by reference, offers the best value to CITY;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, agreements, and conditions contained herein, the parties do hereby agree as follows:

1. TERM OF AGREEMENT. BANK shall serve as CITY's depository and provider of banking services for a period of five (5) years, commencing January 1, 2007, and ending December 31, 2011. CITY shall have the option of extending the term of this Agreement for an additional two (2) year period.

2. CANCELLATION OF AGREEMENT. CITY or BANK has the right to terminate this Agreement at any time upon one hundred twenty (120) days written notice of intent to terminate. A decision to terminate may not be made as a result of profitability or non-profitability by either party. Notwithstanding any such notice of termination, the provisions of this Agreement shall remain in full force and effect as to all transactions, which shall have occurred prior to the effective date of termination.

3. DEPOSITORY SERVICE. BANK shall furnish CITY with a checking account into which deposits shall normally be made on a daily basis. BANK agrees to provide supporting documentation on all deposit adjustments, regardless of dollar amount. If BANK is unwilling or unable to provide supporting documentation, CITY reserves the right to require that BANK reverse the deposit adjustment.

4. WIRE TRANSFERS. BANK shall provide or accept wire transfers as necessary or requested.

5. MONTHLY ACCOUNT ANALYSIS. BANK shall provide monthly account analysis services. CITY agrees to review account analysis statements within thirty (30) days of receipt and must notify BANK within the same thirty (30) days of any billing disputes via fax to the attention of the Government Services unit leader. BANK will provide written notification of any adjustments within seven (7) days after receipt of notification from CITY of any billing errors on the Account Analysis statement.

The Net Earnings Allowance reflected on the Account Analysis statement may be used by CITY to offset the fees for the services BANK provides. In the event that a monthly Net Earnings Deficit occurs, the deficit will be charged to CITY's deposit account or other account at BANK, unless other mutually-agreed-upon arrangements have been confirmed in writing between BANK and CITY.

6. PRIORITY TELLER SERVICES. Should a need arise, upon CITY's request, BANK shall provide for service of CITY's deposits upon the same terms and, to the extent possible given CITY's banking requirements, at the same work stations made available to BANK's customers.

7. SUPPLIES AND PRINTING CHARGES. CITY may order cash vault supplies with a 20% markup applied. No additional markup will be applied to printer charges for deposit tickets, endorsement stamps, check orders, etc.

BANK's Customer Service team assigned to the CITY will provide CITY with a copy of CITY's bank supply orders which will include, but not be limited to, order number, item description, and number, quantity ordered, and total dollar amount of each order number. This information will be provided to CITY on a monthly basis. BANK will notify CITY of provisional credit to Account Analysis for bank supplies ordered when BANK is unable to provide CITY with this information, until resolution is determined. The credit will appear on the Account Analysis statement for the month to which it was posted.

Should CITY need an occasional copy of a bank supply order placed up to 90 days previously, BANK's Customer Service team will research and provide a copy when available. The copy would include the address that the bank supplies were shipped to.

BANK's Customer Service team will also provide a monthly report when vendor supplies (deposit tickets, endorsement stamps, and checks) are ordered through Customer Service. This vendor report would include bank account number, location name, quantity and item ordered, date charged, job number, and total cost of each order.

BANK recommends that CITY provide BANK with a list of individuals who are authorized to order vendor supplies.

CITY shall be charged for shipping and applicable California sales tax at actual cost with no additional markup by BANK.

8. COMPENSATION. All fees stated in this Agreement and its Exhibit(s) shall remain firm and fixed throughout the five (5) year Agreement term plus an additional two (2) years should CITY exercise its option to extend the Agreement.

(a) Rate on Merchant Card Transactions. BANK shall charge CITY Interchange Cost Pricing plus .20% of the transaction amount with the following exception: pin-based debit card transactions shall be charged at the rate of \$.75 per transaction.

During the five (5) year term of this Agreement, BANK guarantees that fees will only be adjusted as a result of changes in the following:

- Changes in interchange rates, categories and/or other fees from the card companies
- Changes in communications costs and/or other cost changes from networks
- Changes in processing methods used by the CITY locations

If there is a net increase in the combined components, and BANK wishes to pass this increase on to CITY, CITY may require BANK to provide a letter certifying that any increase in the fees will only be as a result of the items stipulated above. BANK agrees to decrease the fees charged to the CITY if there is a net decrease in the combined components.

BANK agrees to work with CITY to minimize credit card processing fees charged to CITY by researching and providing information regarding individual CITY merchant locations as requested by CITY for up to one (1) hour total per month at no charge.

b) New Services. Fees for new services shall be those negotiated

between CITY and BANK and shall take effect at the time of implementation of the new service. Fees for new services shall be firm and not subject to escalation throughout the remainder of the Agreement term plus term extension, if any.

9. CASHIERING TRAINING CLASSES. Approximately twice each year at times mutually agreeable to CITY and BANK, CITY may hold cashiering training classes focusing on cash handling and deposit preparation. BANK shall, upon reasonable notice, assist CITY at no additional cost to CITY. CITY shall use its best efforts to schedule cashiering training classes at such times and places as are convenient to BANK.

10. EMERGENCY/DISASTER PLANNING. BANK shall work with CITY in developing an agreed upon plan for providing banking services in the event of a major emergency or disaster.

11. CONFIDENTIAL INFORMATION. BANK shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY which BANK may become aware of in the performance of its service.

12. COMPLIANCE WITH LAWS. (a). BANK shall adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis or race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b). BANK shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

13. CITY REPRESENTATIVE. The Director of Finance or his/her designee shall

represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through CITY's representative.

14. BANK REPRESENTATIVE. A representative of BANK familiar with Public Agencies supported by a Government Customer Services Unit shall represent BANK in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of BANK pertaining to the services or materials to be rendered under this Agreement shall be coordinated through BANK's representative.

15. NOTICES. All notices required by the Agreement hereunder shall be given in writing and shall be personally delivered or sent by first class, registered, or certified mail, postage paid or by commercial courier addressed as follows:

To CITY: City of Sunnyvale
 Director of Finance
 P.O. Box 3707
 Sunnyvale, CA 94088-3707

To BANK: Union Bank of California
 Government Services Division
 200 Pringle Ave, Suite 250
 Walnut Creek, CA 94596

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone e-mail, or facsimile transmission, to accomplish timely communication. In the event of contract termination, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered to constitute effective notice.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event

communication is deemed to occur on the next mail service day.

16. EFFECT OF WAIVER OF BREACH OR VIOLATION. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or any other term, covenant, condition, ordinance or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder, shall not be deemed a waiver of any preceding breach or violation by the other party of any term, ordinance or condition of this Agreement or of any applicable law or ordinance.

17. INDEMNIFICATION. BANK and CITY shall each indemnify and hold harmless the other and its officers, directors, officials, employees, volunteers, and agents from and against all claims, damages, losses and expenses, including attorney's fees, arising out of the performance of the services described herein, caused in whole or in part by any negligent act or omission of BANK or CITY, respectively, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of BANK or CITY, respectively. This provision shall survive the termination of this Agreement and shall be binding upon each party's successors, assigns, heirs and personal representatives.

18. GOVERNING LAW: VENUE. This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of California. Any action pertaining to this Agreement shall be commenced in the Superior Court of the State of California, County of Santa Clara.

19. RIGHTS AND REMEDIES ARE CUMULATIVE. Except with respect to

rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

20. ATTORNEYS FEES. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

21. DOCUMENT REPRESENTS ENTIRE AGREEMENT. This document represents the entire and integrated agreement between CITY and BANK and supersedes all prior negotiations, representations or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and BANK. All provisions of this Agreement are expressly made conditions.

With respect to any discrepancies between this Agreement and any exhibit(s) referenced herein, or any other agreements with respect to the services referenced herein, or any of BANK's schedule of fees and charges, this Agreement shall prevail.

22. CORPORATE AND MUNICIPAL AUTHORITY. Each person signing on behalf of a party to this Agreement warrants that such party has performed all corporate or municipal actions necessary to make this a binding obligation of such party, enforceable in accordance with its terms.

23. ASSIGNMENT. Each party agrees that it will not assign and that it shall have no right to assign all or any part of this Agreement without the prior written consent of the other party. Any assignment by either party without the prior written consent of the other shall be void and of no effect for any purpose whatsoever. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the

respective successors and assigns of the parties.

24. FORCE MAJEURE. BANK shall not be liable for non-performance or delays not caused by BANK's fault or neglect, nor for non-performance or delays caused by or resulting from: (a) hostile or warlike action in time of peace or war, (b) riot, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence or confiscation by order of any government or public authority; (c) strikes, lockouts or other labor disturbances; (d) authority of any present or future law or regulation to which BANK is subject; (e) acts of God; or (f) any other event or circumstance beyond BANK's reasonable control.

BANK shall regularly monitor the performance level of the cash management services in accordance with the Bank Administration Institute's (BAI) standards. CITY and BANK recognize that there may be operating, programming, or equipment error resulting from telecommunication failures, a breakdown in an electronic data interchange, or computer breakdown. To the extent that these problems are not caused by BANK's fault or neglect, BANK shall not be liable for non-performance resulting from such occurrences.

25. CAPTIONS. The captions of sections of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

26. TIME OF ESSENCE. Time is of the essence of this Agreement.

27. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an Original and all of which shall constitute but one and the same instrument.

(IN WITNESS WHEREOF, CITY and BANK have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

City Clerk

Mary J. Bradley
Director of Finance

APPROVED AS TO FORM:

City Attorney

UNION BANK ("BANK")

Signature

Name and Title

Signature

Name and Title