

RESOLUTION NO. 74892

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS WITH WELLS FARGO BANK, N.A., FOR BANKING AND FINANCIAL SERVICES, INCLUDING GENERAL BANKING SERVICES, MERCHANT CARD PROCESSING SERVICES, LOCKBOX SERVICES, SECURITIES CUSTODY SERVICES, AND RELATED AGREEMENTS FOR AN INITIAL TERM THROUGH JUNE 30, 2012 WITH THREE ADDITIONAL TWO YEAR OPTION PERIODS, IN AN AMOUNT NOT TO EXCEED \$864,000 FOR THE PERIOD THROUGH JUNE 30, 2010 AND, THEREAFTER, SUBJECT TO ANNUAL APPROPRIATION OF FUNDS FOR THE SECOND AND THIRD YEAR OF THE INITIAL TERM AND ANY OPTION PERIODS

WHEREAS, the Banking Services Request for Proposals (“RFP”) was issued on February 28, 2008, and included solicitations for four (4) separate service areas including general banking services, lockbox services, merchant card processing services and securities custody services; and

WHEREAS, the City of San José’s (“City”) goal was to choose one service provider to streamline processes, procedures and to gain operational efficiencies; and

WHEREAS, the proposals have been received and evaluated and City staff has recommended that the City Council approve Wells Fargo Bank, N.A. (“Bank”) as the service provider; and

WHEREAS, City desires to negotiate and execute separate agreements for services with Bank to include a General Banking Services Agreement, Merchant Card

Processing Services Agreement, Lockbox Services Agreement, Securities Custody Services Agreement, and other agreements related thereto, including agreements with third parties, and related account set up forms (collectively, the “Banking Agreements”); and

WHEREAS, the General Banking Services Agreement and Service Documentation for general banking services includes the General Banking Services Agreement itself, also referred to as the Master Agreement for Treasury Management Services, Contract for Deposit of Moneys, the Acceptance, Service Descriptions for each banking service, the Account Agreement for Commercial Deposit Accounts, User Guides (including software, software licenses, reset diskettes, price schedules, specifications, instructions and notices), and the set-up forms for each banking service; and

WHEREAS, the Merchant Card Processing Agreement for the acceptance of Visa, MasterCard and Discover cards includes the Wells Fargo Program Guide, together with the Merchant Processing Application and Schedules, and other agreements related thereto, including agreements with third parties, all of which govern the procedures for processing credit card transactions, including but not limited to completing sales and credit drafts, data security requirements, authorization procedures, submission and deposit of sales and credit card drafts, settlement, refunds/ exchanges of credit, retention of records, chargebacks and other debits, account maintenance and compliance with rules promulgated by Visa, MasterCard and Discover; and

WHEREAS, Bank’s services under the Lockbox Agreement shall include, but not be limited to, daily deposits of checks and cash; and

WHEREAS, Bank's services under the Securities Custody Agreement in connection with services for the City's Investment Portfolio shall include, but not be limited to, settlement of investment transactions, collection of interest and principal paid on the securities held on behalf of the City, delivery of cash or securities as directed by City, notifying City of call notices of securities held in City's account, and providing monthly statement setting forth inventory of assets in the account and market value of each asset; and

WHEREAS, the agreements for General Banking Services, Merchant Card Processing Services, and Lockbox Services shall commence upon execution of the agreements by the parties and continue through June 30, 2012 ("Initial Term"); and

WHEREAS, the agreement for Securities Custody Services shall commence July 1, 2009 and continue through the Initial Term set forth above; and

WHEREAS, each of the agreements with Bank for General Banking Services, Merchant Card Processing Services, Lockbox Services, and Securities Custody Services may be extended in two-year increments (each, an "Option Period") up to a maximum of six (6) additional years, through June 30, 2018, at the City's discretion; and

WHEREAS, the related banking and financial services agreements, including agreements with third parties, will continue in effect from the date of execution by the parties until terminated upon thirty (30) days written notice to the non-terminating party, unless otherwise agreed to by the parties; and

WHEREAS, the City Manager, Director of Finance, and Deputy Director of Finance – Treasury (“Deputy Director of Finance), each individually, may extend the Initial Term of one or more of the agreements with Bank for General Banking Services, Merchant Card Processing Services, Lockbox Services, and Securities Custody Services by giving written notice to Bank at least thirty (30) days prior to the expiration of the Initial Term or Option Period, as applicable; and

WHEREAS, the maximum annual compensation for all of the Banking Agreements for the period through June 30, 2010 is \$864,000; and

WHEREAS, the maximum annual compensation may vary each year thereafter depending upon the volume of various banking and financial services provided to City pursuant to the Banking Agreements; however, Bank’s fees for services provided to City pursuant to the Banking Services Agreement, Merchant Card Processing Services Agreement, Lockbox Services Agreement, and Securities Custody Services Agreement shall not increase during the Initial Term; and

WHEREAS, Bank’s fees for services provided to City pursuant to the Banking Services Agreement, Lockbox Services Agreement, and Securities Custody Services Agreement for each Option Period may increase by an amount no greater than the percentage increase in the Consumer Price Index for the urban consumers in the San Francisco-Oakland all items index, as reported by the Bureau of Labor Statistics of the United States Department of Labor for the calendar year immediately preceding the first year of each Option Period, or 3%, whichever is less; and

WHEREAS, fees payable to Bank for Merchant Card Processing Services which will not increase during the Initial Term and the first Option Period (through June 30, 2014), and thereafter may be increased to a comparable competitive fee based on what other governmental entities pay Bank in California at the time; and

WHEREAS, in order to best manage the City's overall banking costs, the Director of Finance and the Deputy Director of Finance, each individually, is authorized to reallocate monies payable to Bank and third parties under the Banking Agreements, provided that the total maximum annual compensation for all of the Banking Agreements does not exceed the amount annually appropriated by the City Council; and

WHEREAS, the Director of Finance and the Deputy Director of Finance, each individually, may enter into supplemental agreements for additional banking and financial services provided that (i) the cost of the new services do not cause the total compensation payable to Bank and third parties to exceed the maximum annual compensation appropriated for all of the Banking Agreements, and (ii) the terms and conditions of the new service agreements are consistent with the terms and conditions of the Banking Agreements, as applicable;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

1. The City Manager and the City Manager's authorized designees ("City Manager"), each individually, is hereby authorized to negotiate and execute agreements with Wells Fargo Bank, N.A. for General Banking Services, Merchant Card Processing Services, Lockbox Services, and related agreements, for an initial term commencing with the execution of the agreements by the parties through June 30, 2012; and Securities Custody Services for an initial term of July 1, 2009 to June 30, 2012, with a total maximum annual compensation not to exceed \$864,000 for the Banking Agreements for the period through June 30, 2010, and subject to annual appropriation of funds for the second and third year of the Initial Term and any Option Periods; and
2. The City Manager, the Director of Finance, and the Deputy Director of Finance, each individually, is hereby authorized to negotiate and execute up to three additional two-year Option Periods to extend the Initial Term of one or more of the Banking Agreements up to a maximum of six (6) additional years, through June 30, 2018, which the City shall exercise by providing Bank with written notice at least thirty (30) days prior to the expiration of the Initial Term or Option Period, as applicable, subject to annual appropriation of funds; and
3. The Director of Finance and Deputy Director of Finance, each individually, is authorized to negotiate and execute amendments to one or more of the Banking Agreements, subject to annual appropriation of funds by the City Council and the parameters specified in this resolution to:

- a. Add new banking and financial services or eliminate existing banking and financial services;
- b. Revise the descriptions of the banking and financial services; and
- c. Reallocate monies payable to Bank and third parties under the Banking Agreements provided that the total maximum annual compensation for all of the Banking Agreements does not exceed the amount annually appropriated by the City Council.

ADOPTED this 5th day of May, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk