



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julia H. Cooper

**SUBJECT: EXTENSION OF BANKING
SERVICE AGREEMENTS
WITH WELLS FARGO
BANK**

DATE: June 5, 2020

Approved

Date

6/5/2020

RECOMMENDATION

Adopt a resolution authorizing the City Manager to take the following actions:

- a. Negotiate and execute amendments to extend the terms of current agreements with Wells Fargo Bank for general banking and lockbox services, merchant card services, and securities custodial services from July 1, 2020 to June 30, 2022, subject to the appropriation of funds;
- b. Issue two new Requests for Proposals (“RFP”) for 1) general banking, lockbox and merchant card services, and 2) securities custodial services.

OUTCOME

Approval of two-year extensions of the agreements with Wells Fargo Bank will allow staff to solicit proposals and negotiate new agreements for banking services, without interrupting critical banking and financial services.

BACKGRUND

On June 1, 2009, the City executed agreements with Wells Fargo to provide financial services, including general banking and lockbox services, merchant card services, and securities custodial services for an initial term of July 1, 2009 to June 30, 2012 with three two-year options to extend the agreements at the City's sole discretion. The City has exhausted the extension options permitted under the original agreements and negotiated additional extensions with Wells Fargo to sustain banking services for the City.

In May 2018, the City issued a Request for Proposal for Financial Services (RFP 17-18-05), consisting of four packages: general banking and lockbox services, merchant card services, bill print services, and securities custodial services. Based on Council Policy 0-44, *Wage Theft Prevention*, the City Council rejected all proposals for RPF 17-18-05 and requested staff explore the feasibility of an alternative delivery model for banking services, including the exploration of feasibility of public banking as an alternative service delivery model and report back before issuance of an RFP based on the new model. To continue the City's normal financial operation, on March 19, 2019¹, the City Council authorized extensions of the existing agreements with Wells Fargo for the term from July 1, 2019 to June 30, 2020. An information memo will be released prior to the June 16 City Council meeting updating Council on the status of the review of analysis and studies prepared by other jurisdictions on the viability of public banking at the local government level.

ANALYSIS

Recent Experience of Other California Cities with Similar Objectives

Pursuant to the direction provided by Council at the March 19, 2019 Council meeting staff has explored the feasibility of an alternative delivery model for banking services by looking at alternatives researched and implemented by other jurisdictions. This information is presented in advance of the issuance of an RFP for banking services. The information below is a summary of this research and includes the City of Berkeley and the City of Los Angeles, which recently solicited banking service proposals with similar criteria to the City.

I. City of Berkeley

On May 1, 2018, the City of Berkeley ("Berkeley") extended the current banking service contract with Wells Fargo through May 31, 2020². During the extension, Berkeley tried to unbundle banking services and issue separate RFPs for armored courier services, merchant card services, and procurement card services and general banking services. From 2017 to 2018, Berkeley released RFPs for armored courier services and procurement card services but was not able to make an award due to low responses and failure to comply with the Berkeley's requirements on social responsibility.

A Responsible Banking Task Force ("Task Force") was formed by Berkeley in 2017 to achieve a socially responsible banking service procurement. Through its research, the Task Force learned that due to legislative, legal and technical requirements, the pool of qualified candidate banks that can provide government and municipal banking services was very limited. Additionally, the research also noted that providing general banking services to municipal customers was not a profitable business line for banks. Historically, cities have relied on mega-banks for these

¹ [Council Meeting, March 19, 2019, Item 3.7 19-078 Report on Request for Proposal for Financial Services \(Banking Services\) RFP 17-18-05](#)

² [City of Berkeley, Banking Services with Wells Fargo Bank, May 1, 2018.](#)

complex services that require sophisticated technology and adherence to rigorous federal and state regulations.

Berkeley continues to explore a disaggregated approach to banking services and warns that this approach can lead to increases in banking fees and additional city staffing. As of today, Berkeley has not successfully obtained new banking service proposals. Berkeley's Finance Director informed City staff that Berkeley staff are planning to request council authorization to extend the banking service agreements with Wells Fargo for another three years to May 31, 2023.

II. City of Los Angeles

The City of Los Angeles ("LA") released a request for proposal for banking services in January 2018. By April 2019, LA completed proposal reviews and awarded the banking services contracts to three national banks: Bank of America ("BofA"), JP Morgan Chase Bank ("JPM") and MUFG Union Bank ("Union Bank"). BofA will serve as LA's primary depository institution, JPM will provide services for all controlled disbursements including payroll and accounts payable, and Union Bank will continue providing banking services to LA's Neighborhood Council Funding Program. With this structure, LA seeks to avoid reliance on a single financial institution and offer a contingency for service continuity in the event service from any financial institution is disrupted.

Engaging multiple banks in general banking services at the same time causes operational complications. Because deposits and disbursements are managed by two different banks, LA expects to make at least one daily wire transfer from BofA to JPM. LA may engage both banks to discuss "auto debit" in the future to mitigate potential errors and overdrafts. Initially, higher cash balances may be necessary to prevent overdrafts and defaults. LA staff noted that it was too early to fully identify impacts of the banking service contracts on city operations and budgets. At a minimum, LA staff believes this banking service delivery structure will complicate bank reconciliations and further strain staffing resources in the treasury and investment groups.

LA completed contract negotiations with both banks in March and has started implementation kick-off meetings. LA expects to complete the banking service implementation between six to nine months from the date of this memorandum.

Potential Banking Service Delivery Model for San José

The City of San José employs approximately 7,700 (full and part-time) active employees and maintains an annual budget of \$4.7 billion. Comprehensive banking services are critical to the financial operations of the City and affect every City department. The City's banking services provider must be equipped with state-of-art technology to safeguard City assets while processing large volumes of financial transactions with high efficiency and accuracy.

During the previous RFP solicitation process, staff issued separate packages on general banking, merchant card processing, and securities custodial services. Through the process, staff learned

that banks use proprietary banking and merchant card processing systems. For example, online banking, which processes financial transactions through a web-based portal, automatically posts credit card payments processed by the merchant card processing system designed by the same bank. Selecting systems from different banks can cause multiple-day delays on deposits and potentially subject the City to greater risk of revenue loss. Therefore, separating merchant card processing services and general banking services is not conducive to maintaining the City's requirements of operational efficiency and accuracy. The following two packages are being proposed for the upcoming banking services RFP.

Package I. General Banking, Lock Box and Merchant Card Services

In the past, the City unbundled services when appropriate. For example, armored courier services, previously a part of general banking services, is currently in a separate contract; the current service provider is Brinks. Additionally, based on the results of the last RFP, staff removed bill print services from the package of banking services and will solicit for these services under a separate RFP process. Staff explored the idea of unbundling more services from the general banking services, such as lockbox services, disbursement services, and cash vault services. However, based on staff's earlier analysis, separating these services will create operational inefficiencies which will likely increase the City's banking service costs. Additionally, the multiple contracts and varied service delivery models will increase workload on City staff and may require additional staffing resources.

Staff is recommending issuance of a single RFP for general banking, lock box and merchant card services.

Package II. Investment Custodial Services

During the spring of 2019, Wells Fargo sold its Institutional Retirement and Trust business, the unit providing investment custodial services to the City, to Principal Financial Group ("Principal"). Wells Fargo informed the City that account migration to Principal will be completed in February 2021.

There are a limited number of banks that provide investment custodial and settlement services. Technology and infrastructure requirements for investment custodial services are unique and very different from platforms used for general banking services. The City investment portfolio is complex and well-diversified, and these services must be provided by a bank with a dedicated trust department with qualified staff. To ensure responses are received for this highly specialized service, an RFP for securities custodial services will be issued as a standalone package.

With the Council's approval, staff expects to issue both RFPs during FY 2020-21. Proposals will be reviewed and evaluated during the fiscal year. The release of the RFP, evaluation process and contract negotiation are dependent on the timing for modest amendments to the *City Wage Theft Prevention Policy* (as discussed below). It is important to note that once the process is complete

and the Council has approved an agreement with a bank, the transition to a new bank may take 12 months or longer to complete.

Waive Wage Theft Prevention

The City adopted the *Wage Theft Prevention Policy* (“Policy”) (1-44) in 2016, which requires that all potential proposers disclose whether they have been found by a court or final administrative action of an investigatory government agency, to have violated federal, state, or local wage and hour laws within the past five years. The Policy states that if a company has more than one violation in the past five years, the company is disqualified. Under the Policy, staff may exercise discretion to disqualify if the company has only one violation in the past five years.

In March 2019, Council rejected all proposals to RFP 17-18-05 on concerns of *Wage Theft Prevention Policy* violations. In the banking industry, wage theft is a challenging and can be a wide spread issue. The current Policy offers staff little flexibility and easily disqualifies banks capable of providing required services to the City. Members of Public Works staff continue to work on the Policy recommendations as discussed at the February 11, 2020 City Council meeting. Development of recommendations from the City Manager’s Office, Public Works, and Finance has been delayed due to COVID-19 efforts by the California Labor Commissioner and the Department of Labor; both agencies are addressing unprecedented unemployment and wage claims due to the economic impact of COVID-19. City staff requires information collected, analyzed, and maintained by each of these state agencies; without access to the information staff will be unable to make recommendations. Staff is recommending a two-year extension to the Wells Fargo Banking Services agreements to provide additional time for amendments to the Policy to be brought forward for Council consideration. Under the current Policy, without a waiver, it is highly unlikely that new RFPs will attract any successful proposal given the challenges large commercial banks experience when operating a diversity of services across thousands of branch locations.

CONCLUSION

The extension of banking service agreements with Wells Fargo is critical to the continuation of the City’s banking and financial services. It also allows staff time to issue new RFPs and negotiate for new banking service agreements.

EVALUATION AND FOLLOW-UP

This memorandum will not require any follow-up from staff.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

Staff explored two policy alternatives to the recommendation to extend the Wells Fargo Agreements by two years in order to allow time for modest amendments to the *Wage Theft Prevention Policy* to be approved by the Council prior to the release of the RFP.

Alternative #1: Extend Wells Fargo Agreements for One -Year

Pros: Allows for potential for sooner transition to new banking services provided, depending in the outcome of the RFP.

Cons: Requires Purchasing staff to develop RFP prior to amendments to the *Wage Theft Prevention Policy* are presented to the City Council. Could result in unnecessary work in a work unit currently severely impacted by increased procurement activities related to the COVID-19 emergency

Reason for not recommending: Due to the lack of response from the State of California, the City does not expect to bring forward *Wage Theft Prevention Policy* recommendations for Council review and approval until sometime in Calendar Year 2021. Consequently, there will not be enough time to conduct an RFP, select bank and negotiate agreements prior to June 30, 2021, thereby resulting in another extension to the agreements.

Alternative #2: Grant a Waiver to Existing Wage Theft Prevention Policy

Pros: Allows for potential for sooner transition to new banking services provided, depending in the outcome of the RFP.

Cons: Proceeds with RFP process prior to Council considering modest amendments to the *Wage Theft Prevention Policy*.

Reason for not recommending: Given the policy considerations and prior disclosure of two finalists to the last banking services RFP with wage theft violations, staff believes proceeding after modest amendments are considered by the Council is the preferred option.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the June 16, 2020 Council agenda.

COORDINATION

This report was coordinated with the Public Works Department, City Manager's Budget Office and City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item does not require any input from a board or commission.

COST SUMMARY/IMPLICATIONS

- 1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:** \$2,113,000.
- 2. COST ELEMENTS OF AGREEMENT/CONTRACT:** The fiscal year 2020-21 Proposed Operating Budget is \$2,113,000; inclusive of \$427,000 for general banking services, \$1,667,000 for merchant card processing services, and \$19,000 for securities custodial services.
- 3. SOURCE OF FUNDING:** Fund 001 – General Fund, Fund 423 – Integrated Waste Management Fund, Fund 515 – Water Utility Fund, and Fund 523 – Airport Maintenance and Operation Fund.
- 4. FISCAL IMPACT:** Banking services are an essential function of the City. Costs for the services and fees for merchant card transactions are continuous and approved annually through the budget process.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2020- 2021 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	2987	Banking Services	\$1,708,000	\$1,708,000	VIII-23	10/22/2019, 30325
423	207K	Banking Services	\$100,000	\$100,000	IX-53	6/18/2019, 30286
515	207K	Banking Services	\$180,000	\$180,000	IX-100	6/18/2019, 30286
523	207K	Banking Services	\$125,000	\$125,000	IX-3	6/18/2019, 30286

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Subject: Banking Service Agreements

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CEQA

Not a Project, File No. PP17-003, Agreement/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Qianyu Sun, Principal Investment Officer, at (408) 535-7015.