

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
7	10/28/13	Open	Action	10/21/13

Subject: Banking, Credit Card, Investment Services and Line of Credit

ISSUE

Whether or not to delegate authority to the General Manager/CEO to enter into a 5-Year Contract to US Bank National Association for Banking, Credit Card Services, and Investment Services; and a Credit Agreement and one year Note for \$29 million Line of Credit.

RECOMMENDED ACTION

- A. Adopt Resolution No. 13-10-_____, Delegating Authority to the General Manager/CEO to Negotiate and Enter Into a 5 Year Contract with US Bank National Association for Banking, Credit Card Services, and Investment Services; and
- B. Adopt Resolution No. 13-10-_____, Delegating Authority to the General Manager/CEO to Authorize the Issuance of a Note with US Bank National Association for \$29 Million with an Effective Date of November 1, 2013 and a Final Maturity Date of October 31, 2014

FISCAL IMPACT

Banking and Merchant Service (credit card processing - sales to customers):

Budgeted:	Yes	Est This FY:	\$ 100,000
Budget Source:	Operating	Est. Next FY:	\$ 105,000
Funding Source:	Operating	Available as of 9/23/13:	\$ 76,441
Cost Cntr/GL Acct(s) or Capital Project #:	690071	Annualized:	\$ 99,000
Total Budgeted:	\$ 102,400 *		

* This figure includes costs associated with Wells Fargo Bank and US Bank

Line of Credit (LOC):

Since the LOC is renewed annually the fees will be adjusted on an annual basis. The yearly fees for the LOC are as follows: a one time upfront structuring fee of \$25,000, a one time charge for attorney fees estimated to not exceed \$25,000, a utilized borrowing rate of Libor plus 1.35%, and an unutilized borrowing rate of .57%. The total estimated LOC fees for FY2014 are anticipated to be \$204,000. This is in addition to banking and merchant services fees that will be incurred under the Banking Services Agreement.

Approved:

Presented:

Revised Reso - 10/28/13

General Manager/CEO

Chief Financial Officer

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DISCUSSION

This issue paper asks the Board to consider shifting RT's banking services from its current banking services providers, Wells Fargo Bank and Bank of America, to US Bank National Association (US Bank) before RT's current Line of Credit (LOC) with Wells Fargo Bank matures and becomes due and payable on December 28, 2013. As a condition of issuing a new LOC, US Bank is requiring that RT transfer all banking services from its current providers to US Bank at the earliest practical opportunity with the understanding that US Bank will and must insure competitive pricing for these services.

On June 27, 2011, the RT Board adopted Resolution No. 11-06-0089 authorizing the General Manager to award a contract to Wells Fargo Bank, N.A. for Banking, Line of Credit (LOC), and Investment services. This action followed a standard RFP process that began on April 13, 2011 and included direct solicitation to the eight largest financial institutions and advertisement in publications of general circulation. In spite of all efforts, only two financial institutions submitted responsive proposals: Bank of the West and Wells Fargo Bank. Following proposal reviews and interviews, staff's recommendation was to award the business to Wells Fargo Bank and continue the banking relationship that had been in place since 2003.

This action was amended on September 12, 2011, by Resolution 11-09-0127, to separate the banking services from the LOC as the duration of the banking services was for a five-year term and the LOC, by statute, may not be for a term greater than 15-months. Consequently, the LOC must be renewed annually as a new Revolving Line of Credit Note.

On June 25, 2012, the Board adopted Resolution 12-06-0097, delegating authority to the General Manager/CEO to authorize the issuance of a note with Wells Fargo Bank for \$25 million with an effective date of July 1, 2012 and a final maturity date of June 30, 2013.

However, the passage of the Public Employees' Pension Reform Act of 2013 ("PEPRA") adversely affected this arrangement. Effective January 1, 2013, PEPRA required most public agencies, including RT, to implement significant modifications to their pension structures. As a result, the ATU alleged that RT's implementation of PEPRA violated RT's obligations under Section 13(c) of the Federal Transit Act, which requires as a condition of federal funding that all federal grant applications be certified by the US Department of Labor ("USDOL") as satisfying Section 13(c). Upon receipt of a grant application, the Federal Transit Administration refers the application to USDOL for circulation to potentially affected unions; if an affected union believes the grant recipient is not complying with the labor protective provisions of Section 13(c), it may file its objection with the USDOL. Because ATU believes RT's implementation of PEPRA diminishes its ability to collectively bargain over pensions in violation of RT's Section 13(c) obligations, the ATU submitted objections to two of RT's grant applications. As a result, RT's federal grant funding was withheld by the FTA pending resolution of the dispute by USDOL.

While the USDOL directed both RT and the ATU to negotiate a resolution between the parties, the process stalled while RT sought a resolution. The delay in resolving the issue resulted in a prolonged withholding of RT's federal capital and operating grant funds and RT financial position

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began to deteriorate. Cash flow over the long term was seriously affected.

In early February, 2013, RT requested that the Wells Fargo LOC be increased at the next renewal date (July 1, 2013) from \$25 million to \$35 million for the duration of the Section 13(c)/DOL funding delay to assist RT in withstanding the delay in receipt of federal funds. Local Wells Fargo Bank officials managing the banking relationship with RT were receptive and did not foresee a problem with the request. However, upon seeking higher level approvals of RT's request, Wells Fargo determined that not only would the request be denied, but that RT's account would be transferred to a "high risk" segment of Wells Fargo's banking operations, removing it from the long-term relationship bankers RT staff had successfully worked with through the roughest of financial times during the economic downturn. Furthermore, it was made clear that on July 1, 2013, the LOC would only be extended for three months with the understanding and expectation that RT would make other arrangements for coverage of the note as soon as possible. RT is now required by Wells Fargo to provide regular, at times weekly, cash flow reports to the bank and request permission to withdraw funds with each draw on the LOC and provide an explanation of the need for each withdrawal. This is a fundamental change in the way RT's LOC with Wells Fargo has been historically managed.

RT staff, with the assistance of RT's Financial Advisor, Peter Ross, immediately began to directly solicit every known banking institution, large and regional, that could support a \$25 million LOC and offered to move all banking services to the bank that could provide the LOC to make the relationship more attractive. RT requires banking services capable of moving approximately \$167 million in transactions annually, or about \$18 million per month. Among the large banks that were directly approached but declined RT's request were Bank of America, Bank of the West, Union Bank, and JP Morgan/Chase.

RT also reached out to local area/regional banks to explore the possibility of working with RT to provide the LOC/banking services. Those banks included Five Star Bank, The Merchants Bank of Sacramento, and American River Bank. None of the local/regional banks had assets sufficient to offer a \$25 million LOC and only one had capacity to manage the transactional banking.

In addition to seeking a bundled LOC/banking services relationship, RT staff also approached the commercial market on the possibility of a direct placement note in the amount of \$25 million. Both Citibank Global Markets and Wells Fargo Investments were approached. Citibank's market assessment was that they could not sell the note to investors because of the unresolved 13(c) issue between the Federal government, labor (ATU) and the State of California. Wells Fargo Investments declined because the same credit approvers worked the investment desk that had previously denied the LOC at the banking services level.

US Bank National Association (US Bank), however continued discussions with RT throughout the process and determined that under certain conditions, a \$29 million LOC would be possible. Those conditions included resolution of the technical default in the Leveraged Lease (LILo) transactions that would cause a cross default in a new banking arrangement; some assurance that the PEPPRA/Section 13(c) issue was headed toward resolution; and the transference of all banking services.

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On August 12, 2013, the Board adopted Resolution 13-08-0115, delegating authority to the General Manager/CEO to execute documents necessary to modify RT’s LILOs to remove the technical default. RT staff has been working toward this effort with all concerned and the amendments are expected to be executed by the time of this Board meeting, satisfying the removal of the technical default condition.

The passage and Governor’s approval of AB 1222 on October 4, 2013, providing a limited exemption from PEPRRA, has been deemed by US Bank to be sufficient to meet the requirements of the condition of assurance that the PEPRRA/Section 13(c) issue is headed toward resolution.

The third condition, the transference of banking services, will be on its way to being fulfilled by adoption of the proposed resolution which will enable RT staff to provide notice to Wells Fargo Bank of our intent to cancel the existing contract in order to transfer banking services to US Bank. At a later date, P-Card services provided by Bank of America will also be transferred to US Bank. It is our hope and expectation that an orderly transition of banking services will take place.

Finance staff has consulted with RT’s Procurement Staff and Legal Counsel to determine if a single source justification is applicable to select US Bank under the circumstances. The following sole source justification appears applicable:

“In accordance with Sections 1.405.B and C of RT’s Procurement Ordinance, the Board may approve a non-competitive procurement when it determines that efforts to seek competition would be futile and/or it is in the best interest of RT.”

As previously described, RT has already solicited every competitive bank that could conceivably provide the LOC and necessary level of banking services. Further, by rejecting RT’s request for an increased LOC, moving RT to the “high risk” category, and parsing out three-month extensions of the LOC, Wells Fargo has effectively removed itself as a viable banking partner under the condition of providing both the increased LOC and transactional banking services.

Based on the tremendous amount of research and effort in seeking out a viable banking partner that would provide a \$29 million LOC and be capable of providing the array and volume of transactional banking services needed by RT within the time needed to avoid significant financial dislocation to RT, Staff recommends entering into a contract for 5 years with US Bank for banking, credit card, and investment services, and a one year renewable note for a \$29 million LOC on a non-competitive basis as permitted under Sections 1.405 B and C of RT’s Procurement Ordinance.

RESOLUTION NO. 13-10-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 28, 2013

**DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO NEGOTIATE
AND ENTER INTO A 5 YEAR CONTRACT WITH US BANK NATIONAL
ASSOCIATION FOR BANKING, CREDIT CARD SERVICES, AND INVESTMENT
SERVICES**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board has determined there is an urgent and compelling need to enter into a new banking, credit card, and investment services contract, for a term of 5 years in order to secure a \$29 million line of credit which is needed for cash flow purposes as the results of delays in the receipt of Federal Grant Funds.

THAT, pursuant to Section 1.405.B and C of RT's Procurement Ordinance, a non competitive procurement is authorized upon a determination by the Board that competitively bidding the services through full and open competition as required by Article III of RT's Procurement Ordinance would be futile and/or not in the best interest of RT.

THAT, RT staff reached out to numerous large financial institutions and local/regional banks seeking a line of credit and accompanying banking services and only US Bank National Association agreed to offer a proposal for providing such services to RT.

THAT, because only US Bank National Association is willing to extend a line of credit to RT and accompanying banking services, following RT's full and open competition solicitation procedures as set forth in Article III of RT's Procurement Ordinance would be futile.

THAT, the Board hereby delegates the authority to the General Manager/CEO to negotiate and enter into a Banking Services Agreement with US Bank National Association for a term not to exceed 5 years for banking, credit cards and investment services.

PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 13-10-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 28, 2013

DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO AUTHORIZE THE ISSUANCE OF A NOTE WITH US BANK NATIONAL ASSOCIATION FOR \$29 MILLION WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2013 AND A FINAL MATURITY DATE OF OCTOBER 31, 2014

WHEREAS, in accordance with Article 7.6 (Temporary Borrowing) of Title 5, Division 2, Part 1, Chapter 4 of the California Government Code (Section 53850 and following), and Article 5 of Division 10, Part 14, Chapter 7 of the California Public Utilities Code (Section 102500 and following), Sacramento Regional Transit District ("RT") may borrow money for any purpose for which the local agency is authorized to use and expend moneys, including but not limited to current expenses, capital expenditures, investment and reinvestment, and the discharge of obligation or indebtedness of the local agency; and

WHEREAS, RT staff reached out to numerous major financial institutions and local/regional banks to request the issuance of a Line of Credit necessary to manage RT's cash flow resulting from delays in the receipt of operating grant revenues; and

WHEREAS, because of the delay in the receipt of federal grant funds due to the enactment of the California Public Employees Pension Reform Act ("PEPRA"), US Bank National Association ("US Bank") was the only bank that expressed an interest in extending a Line of Credit to RT, conditioned upon certain requirements; and

WHEREAS, because only US Bank expressed a willingness to extend a Line of Credit to RT, following RT's competitive solicitation procedures as set forth in Article III of RT's Procurement Ordinance would be futile; and

WHEREAS, pursuant to Section 1.405 B and C of RT's Procurement Ordinances, a non-competitive procurement is authorized upon a determination by the Board that competitively bidding the services sought would be futile or not in the best interest of RT; and

WHEREAS, RT staff and US Bank entered into and completed negotiations over the terms and conditions of a Credit Agreement and Note for a \$29,000,000 line of credit with an issuance date of November 1, 2013 and a maturity date of October 31, 2013~~4~~; and

WHEREAS, pursuant to California Government Code Section 53856, RT may pledge any taxes, income, revenues, cash receipts, or other moneys to the payment of the Line of Credit Note provided a resolution of the Board authorizing the issuance of a note shall specify what taxes, income, revenues, cash receipts or other moneys are pledged for repayment of such note; and

WHEREAS, pursuant to the terms of the Credit Agreement, RT agreed to pledge to US Bank a first lien and charge against any taxes, income, revenue, cash receipts, or other moneys of RT, including moneys deposited in inactive or term deposits, received or accrued during the fiscal year in which the Note is issued, exclusive of Farebox Revenues and Capital Grant Revenues; and a subordinate lien on any and all Farebox revenues, subject only to the lien thereon securing the Senior Farebox Obligations, as defined in the Note.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board hereby finds that pursuing a Line of Credit agreement through a fully competitive solicitation, as required by Article III of RT's Procurement Ordinance would be futile.

THAT, the Credit Agreement and Credit Facility Note between Sacramento Regional Transit District and US Bank National Association, wherein US Bank agrees to issue a line of credit note in the principal amount of \$29,000,000, **subject to redemption as set forth in the form of Credit Agreement and Note reviewed by the Board**, dated November 1, 2013 with a final maturity date of October 31, 2014, are hereby approved as permitted under Section 1.405 B and C of RT's Procurement Ordinance which permits RT to award a contract without a competitive solicitation if competitively bidding the work would be futile and/or would not be in RT's best interest.

THAT, the Board hereby agrees that the principal amount of the Line of Credit Note and any interest thereon shall be payable from and secured by a pledge of a lien on and security interest in (a) a first lien and charge against any taxes, income, revenues, cash receipts or other moneys of RT, including moneys deposited in inactive or term deposits, received or accrued, excluding farebox revenues and capital grant revenues, during the fiscal year in which the Line of Credit Facility Note is issued and; (b) a subordinate lien on any and all farebox revenues, subject only to the lien thereon securing the senior farebox obligations as defined in the Note.

THAT, the Board hereby authorizes and directs the General Manager/CEO to execute the Credit Agreement, the Line of Credit Facility Note, and any other agreements, documents, or forms necessary to effectuate the transaction or secure advances under the Note.

PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary