





# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Montgomery and Members of the City Council

**THROUGH:**  David N. Carmany, City Manager

**FROM:** Bruce Moe, Finance Director   
Henry Mitzner, Controller

**DATE:** May 17, 2011

**SUBJECT:** Consideration of Extensions of Existing Letters of Credit with Bank of America for The Marine Avenue Sports Fields and South Bay Regional Public Communications Authority Variable Rate Debt Instruments

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### RECOMMENDATION:

The Finance Subcommittee and City Staff recommend that the City Council approve the extension of the Marine Avenue Sports Fields and South Bay Regional Public Communications Authority (RCC) letters of credit with Bank of America. The extensions range from seven months to one year, and will result in coterminous dates for both letters of credit in July 2012, at which time new letters of credit will be secured, or alternate arrangements will be made.

### FISCAL IMPLICATION:

Bank of America has agreed to extend the Letters of Credit (LC) for these two issues under the existing terms. The annual cost of the direct pay letters of credit supporting the 2002 Marine Avenue Variable Rate debt and the South Bay Regional Public Communications Authority debt is based upon the outstanding principal (Marine Avenue is ~\$7.72 million, RCC is ~\$1.5 million). Based upon the existing fee of 100 basis points (1%), Marine Avenue LC fees total approximately \$77,200 annually, while the RCC LC fees total approximately \$15,000 annually. Legal fees of approximately \$5,000 will be incurred in the process of extending the term of the LC's, and the bank will also charge a fee of \$2,500 per LC (\$5,000 total). Both fees can be funded through existing debt service budgets for both issues.

### BACKGROUND:

Staff has been working with Bank of America on the renewal of the direct pay letters of credit supporting both 2002 Marine Avenue Certificates of Participation (COPS) as well as the 2001 South Bay Regional Public Communications Authority (RCC) Series C variable rate COP's (the Marine Avenue LOC expires July 1, 2011, the RCC LOC expires December 1, 2011). In both cases, the debt was issued in a variable interest rate mode with a direct pay letter of credit, now both with Bank of America. This component of the variable rate financing is necessary to have in place at all times as long as the COP's are outstanding.

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**DISCUSSION:**

The LC for Marine Avenue expires July 1, 2011, while the RCC LC expires December 1, 2011. Bank of America has indicated that they will extend both LC's to July 1, 2012 at the existing terms, but that future renewals will be predicated on a desire by the bank to broaden the business relationship the City has with Bank of America (such as utilizing their depository services, or other business banking amenities). Staff requested the extensions, and further requested that both LC's expire at the same time to enhance the possibilities of obtaining suitable credit facilities when they both expire in July 2012. During the extension period, staff will review the City's options, including expanded banking opportunities with Bank of America, obtaining new LC's from other banks including our current depository bank, Union Bank of California, and possibly refunding the issues through private placement arrangements (to reduce costs). We will also review our options for converting these to fixed interest rate debt (or, in the case of the RCC, paying off the debt).

The following is a brief overview of the components of the City's variable rate debt:

- Variable Interest Rate – this is the rate used to calculate the interest due on the COP's outstanding. This rate is variable and resets every week.
- Remarketing Fees – this fee is paid to the remarketing agent who remarkets the COP's every week. The City's remarketing agent on the 2002 Marine Avenue COP's is Bank of America and the remarketing fee paid is 0.09% or 9 basis points. The City's remarketing agent on the 2001 South Bay Regional Public Communications Authority Variable Rate COP's Series C is Morgan Stanley and the remarketing fee paid is 0.125% or 12.5 basis points.
- Direct Pay Letter of Credit – this is the credit facility that provides liquidity for the monthly interest expense payments and bi-annual principal payments. Draws are made to the LC each month and are reimbursed each month by the City.

The following is a breakdown of the total cost of each issue:

Marine Avenue COP's:

	<u>Current terms (expires 7/1/11)</u>
Average variable interest	30 basis points
Remarketing rate	9 basis points
Direct pay LOC	100 basis points
Total Overall Costs	139 basis points (1.39%)

The estimated annual costs based on the current outstanding principal amount of \$7.72 million is \$107,300.

South Bay Regional Public Communications Authority (RCC):

	<u>Current terms (expires 12/1/11)</u>
Average variable interest	30 basis points
Remarketing rate	12.5 basis points
Direct pay LOC	100 basis points
Total Overall Costs	142.5 basis points (1.425%)

The estimated annual cost based on the current outstanding principal amount of \$1.5 million is \$21,375.

At its May 3, 2011 meeting, the Finance Subcommittee approved the extensions of the LC's for Marine Avenue Sports Fields and South Bay Regional Public Communications Authority with Bank of America until July 1, 2012. The documents have been reviewed and approved by the City's Financial Advisor (Mark Young) as well as Bond Counsel and the Interim City Attorney. Staff recommends that the City Council approve the extensions.

- Attachments:
- A. Amended Reimbursement Agreement – Marine Avenue Sports Fields
  - B. Amended Reimbursement Agreement – South Bay Regional Public Communications Authority

A

**AMENDMENT TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT**

**(City of Manhattan Beach Variable Rate Demand Refunding Certificates of Participation  
(Marine Sports Field Capital Lease Refinancing) Series 2002)**

THIS AMENDMENT TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (this "Amendment") is entered into as of May 18, 2011, by and between BANK OF AMERICA, N.A., a national banking association (the "Bank"), and the CITY OF MANHATTAN BEACH, a municipal corporation and general law city organized under constitution and the laws of the State of California (the "City").

RECITALS

A. For the purpose of financing of real property and park improvements located in the City ( the "Project"), the City executed and delivered \$9,535,000.00 aggregate principal amount of its Variable Rate Demand Refunding Certificates of Participation (Marine Sports Field Capital Lease Refinancing) Series 2002 (the "Certificates") pursuant to the terms of a Trust Agreement, dated as of April 1, 2002 (the "Trust Agreement") among the Manhattan Beach Capital Improvements Corporation (the "Corporation"), the City and U.S. Bank National Association, as trustee (the "Trustee");

B. In order to provide a source for payment when due of the principal and interest with respect to and the purchase price of the Certificates, the Bank issued its direct pay letter of credit no. 3048485 (the "Letter of Credit") initially in the amount of \$9,688,605.00 pursuant to the terms of a Reimbursement Agreement dated as of April 1, 2002, which was amended and restated by an Amended and Restated Reimbursement Agreement dated as of May 1, 2009 (the "Original Reimbursement Agreement") between the City and the Bank. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Original Reimbursement Agreement.

C. City has requested, and Bank has agreed, to extend the term of the Letter of Credit for an additional one year period, subject to the terms and conditions of this Amendment.

AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, City and the Bank agree as follows:

1. Term of Letter of Credit. Upon the execution of this Agreement and satisfaction of the conditions to the Effective Date set forth below (the "Amendment"), the Bank will deliver to the Trustee an amendment to the Letter of Credit in the form attached hereto as Exhibit "A" extending the term of the Letter of Credit to July 1, 2012.

2. Amendments to Original Reimbursement Agreement. As of the Effective Date, the Original Reimbursement Agreement shall be amended as follows:

(a) Definitions. The following terms shall be amended in their entirety to read as follows:

**"Bank Rate"** means on any day, (a) if such day occurs prior to the ninety-first day following the date on which the Bank honored a Tender Draw, a rate per annum equal to the Base Rate; (b) if such day occurs after the ninetieth day following the date on which the Bank honored a Tender Draw, a rate per annum equal to the Base Rate plus 1.00%.

**"Base Rate"** means, for any day, the highest of (a) the Prime Rate if the Bank establishes a Prime Rate or otherwise the Bank's "base rate" for such date plus 1.50%, or (b) the Fed Funds Rate plus three percent (3.0%) per annum or (c) seven and one-half percent (7.50%); provided, that in no event shall the Base Rate be less than the rate on the Bonds that are not Bank Certificates.

**"Letter of Credit Commitment"** means, as of its date of issuance, U.S. . \$9,688,605.00, which was comprised of a principal component of \$9,535,000.00 and an interest component of \$153,605.00. The Letter of Credit Commitment as of the date of this Agreement is \$\_\_\_\_\_.00, comprised of a principal component of \$\_\_\_\_\_.00 and an interest component of \$\_\_\_\_\_.00.

(b) **Bank Certificate CUSIP/Rating.** The following Section 5.1(y) is hereby added to the Original Reimbursement Agreement:

(y) **Bank Certificate Ratings.** Upon the request of the Bank, the City will immediately cause a CUSIP number to be obtained from Standard & Poor's CUSIP Services for the Bank Certificates and use its best efforts to provide a rating applicable to the Bank Certificates of no less than Baa3, BBB- or BBB- from Moody's, S&P or Fitch, respectively.

3. **Miscellaneous.**

(a) **Effective Date.** This Amendment shall be effective and the Effective Date shall occur on the date on which all of the following conditions have been satisfied by Borrower or waived by Lender:

(i) **Execution of Documents.** This Amendment shall be fully executed and delivered to the Bank; and

(ii) **Costs and Expenses.** The City shall have paid an amendment fee equal to \$2,500 and all costs and expenses incurred by the Bank in connection with this transaction, including reasonable attorneys' fees.

(b) **Effect of Amendment.** Except as specifically provided herein, all terms and conditions of the Original Reimbursement Agreement remain in full force and effect, without waiver or modification. This Amendment and the Original Reimbursement Agreement shall be read together, as one document.

(c) **Representations and Warranties.** The City hereby remakes all representations and warranties contained in the Reimbursement Agreement and reaffirms all covenants set forth therein. The City further certifies that as of the date of this Amendment there exists no Event of Default as defined in the Reimbursement Agreement, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default.

(d) **Successors.** This Amendment shall inure to the benefit of the parties hereto and their respective successors and assigns.

(e) Amendments. No modification, waiver, amendment, discharge or change of this Amendment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or amendment, discharge or change is or may be sought.

(f) Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first set forth above.

"Bank"

"City"

BANK OF AMERICA, N.A.

CITY OF MANHATTAN BEACH

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By

  
City Attorney

**EXHIBIT "A"**

**BANK OF AMERICA – CONFIDENTIAL**

**Bank of America, N.A.  
1000 W. Temple Street, 7<sup>th</sup> Floor  
CA9-705-07-05  
Los Angeles, Ca 90012**

Date:

**AMENDMENT TO LETTER OF CREDIT NO. 3048485**

**Amendment No. 4**

**Beneficiary  
U.S. Bank N.A., as Trustee  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Fonda Hall**

**Applicant  
City of Manhattan Beach**

Dear Sirs:

We hereby give you notice that the Stated Expiration Date of our Letter of Credit No. 3048485 (the "Letter of Credit") has been extended to July 1, 2012.

All other terms and conditions of the Letter of Credit remain in full force and effect.

Very truly yours,

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

(B)

**AMENDMENT TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT**

**(South Bay Regional Public Communications Authority Variable Rate Demand Revenue Bonds, 2001 Series C (City of Manhattan Beach Project))**

THIS AMENDMENT TO AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (this "Amendment") is entered into as of May 18, 2011, by and between BANK OF AMERICA, N.A., a national banking association (the "Bank"), and the CITY OF MANHATTAN BEACH, a municipal corporation and general law city organized under constitution and the laws of the State of California (the "City").

**RECITALS**

A. For the purpose of financing of real property and park improvements located in the City ( the "Project"), the South Bay Regional Public Communications Authority, a California joint powers authority (the "Authority") issued its Variable Rate Demand Revenue Bonds, 2001 Series C (City of Manhattan Beach Project) (the "Bonds") pursuant to the terms of an Indenture dated as of January 1, 2001 (the " Indenture") between the Authority and BNY Western Trust Company (the "Trustee");

B. In order to provide a source for payment when due of the principal and interest with respect to and the purchase price of the Certificates, the Bank issued its direct pay letter of credit no. 3085874 (the "Letter of Credit") initially in the amount of \$1,859,481.00 pursuant to the terms of a Letter of Credit and Reimbursement Agreement dated as of December 1, 2006, which was amended and restated by an Amended and Restated Reimbursement Agreement dated as of November 1, 2009 (the "Original Reimbursement Agreement") between the City and the Bank. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Original Reimbursement Agreement.

C. City has requested, and Bank has agreed, to extend the term of the Letter of Credit for an additional one year period, subject to the terms and conditions of this Amendment.

**AGREEMENT**

For good and valuable consideration, receipt of which is hereby acknowledged, City and the Bank agree as follows:

1. Term of Letter of Credit. Upon the execution of this Agreement and satisfaction of the conditions to the Effective Date set forth below (the "Amendment"), the Bank will deliver to the Trustee an amendment to the Letter of Credit in the form attached hereto as Exhibit "A" extending the term of the Letter of Credit to July 1, 2012.

2. Amendments to Original Reimbursement Agreement. As of the Effective Date, the Original Reimbursement Agreement shall be amended as follows:

(a) Definitions. The following terms shall be amended in their entirety to read as follows:

"Bank Rate" means on any day, (a) if such day occurs prior to the ninety-first day following the date on which the Bank honored a Tender Draw, a rate per annum equal to



the Base Rate; (b) if such day occurs after the ninetieth day following the date on which the Bank honored a Tender Draw, a rate per annum equal to the Base Rate plus 1.00%.

"Base Rate" means, for any day, the highest of (a) the Prime Rate if the Bank establishes a Prime Rate or otherwise the Bank's "base rate" for such date plus 1.50%, or (b) the Fed Funds Rate plus three percent (3.0%) per annum or (c) seven and one-half percent (7.50%); provided, that in no event shall the Base Rate be less than the rate on the Bonds that are not Bank Bonds.

"Letter of Credit Commitment" means, as of its date of issuance, U.S. \$1,859,481.00, which was comprised of a principal component of \$1,830,000.00 and an interest component of \$29,481.00. The Letter of Credit Commitment as of the date of this Agreement is \$\_\_\_\_\_.00, comprised of a principal component of \$\_\_\_\_\_.00 and an interest component of \$\_\_\_\_\_.00.

(b) Bank Bond CUSIP/Rating. The following Section 5.1(x) is hereby added to the Original Reimbursement Agreement:

(y) Bank Bond Ratings. Upon the request of the Bank, the City will immediately cause a CUSIP number to be obtained from Standard & Poor's CUSIP Services for the Bank Bonds and use its best efforts to provide a rating applicable to the Bank Bonds of no less than Baa3, BBB- or BBB- from Moody's, S&P or Fitch, respectively.

3. Miscellaneous.

(a) Effective Date. This Amendment shall be effective and the Effective Date shall occur on the date on which all of the following conditions have been satisfied by Borrower or waived by Lender:

(i) Execution of Documents. This Amendment shall be fully executed and delivered to the Bank; and

(ii) Costs and Expenses. The City shall have paid an amendment fee equal to \$2,500 and all costs and expenses incurred by the Bank in connection with this transaction, including reasonable attorneys' fees.

(b) Effect of Amendment. Except as specifically provided herein, all terms and conditions of the Original Reimbursement Agreement remain in full force and effect, without waiver or modification. This Amendment and the Original Reimbursement Agreement shall be read together, as one document.

(c) Representations and Warranties. The City hereby remakes all representations and warranties contained in the Reimbursement Agreement and reaffirms all covenants set forth therein. The City further certifies that as of the date of this Amendment there exists no Event of Default as defined in the Reimbursement Agreement, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default.

(d) Successors. This Amendment shall inure to the benefit of the parties hereto and their respective successors and assigns.

(e) Amendments. No modification, waiver, amendment, discharge or change of this Amendment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or amendment, discharge or change is or may be sought.

(f) Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first set forth above.

"Bank"

"City"

BANK OF AMERICA, N.A.

CITY OF MANHATTAN BEACH

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By *[Signature]*  
City Attorney

**EXHIBIT "A"**

**BANK OF AMERICA – CONFIDENTIAL**

**Bank of America, N.A.  
1000 W. Temple Street, 7<sup>th</sup> Floor  
CA9-705-07-05  
Los Angeles, Ca 90012**

Date:

**AMENDMENT TO LETTER OF CREDIT NO. 3085874**

**Amendment No. 2**

**Beneficiary  
U.S. Bank N.A., as Trustee  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Fonda Hall**

**Applicant  
City of Manhattan Beach**

Dear Sirs:

We hereby give you notice that the Stated Expiration Date of our Letter of Credit No. 3085874 (the "Letter of Credit") has been extended to July 1, 2012.

All other terms and conditions of the Letter of Credit remain in full force and effect.

Very truly yours,

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_