



# Staff Report

## City of Manhattan Beach

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

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

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

**DATE:** April 17, 2012

**SUBJECT:** Refunding Plan for the Metlox Public Improvements (2003) and Water/Wastewater Improvements (1996); Selection of Financing Team (Financial Advisor, Underwriter and Bond & Disclosure Counsel); and Contract with Loop Capital Markets for Financial Advisory Services (Not to Exceed \$40,000 for fees and \$1,500 for expense)

### RECOMMENDATION:

The Finance Subcommittee and City staff recommend that the City Council: a) approve the debt refunding plan for the Metlox Public Improvements and Water/Wastewater Improvements; b) approve the financing team; and c) approve a contract with Loop Capital Markets for an amount not to exceed \$41,500 for financial advisory services.

### FISCAL IMPLICATION:

By taking advantage of the current interest rate environment, the City can achieve present value savings of approximately \$1.06 million through a refunding of existing Metlox Public Improvements and Water/Wastewater debt issues.

### BACKGROUND:

The City has a total of \$37.6 million in outstanding debt. These obligations are as follows:

Description	Type	Maturity	Original Amount	Amount Outstanding	Funding Source
Police/Fire Facility	Fixed Rate COP's	2036	\$ 12,980,000	\$ 11,450,000	General Fund
<b>Metlox</b>	<b>Fixed Rate COP's</b>	<b>2033</b>	<b>\$ 13,350,000</b>	<b>\$ 11,125,000</b>	<b>Parking Fund</b>
Marine Avenue Sports Fields	Variable Rate w/Letter of Credit	2032	\$ 9,535,000	\$ 7,480,000	General Fund
Public Safety Pension	Taxable Pension Obligation Bonds	2014	\$ 6,800,000	\$ 2,870,000	General Fund
<b>Water and Wastewater</b>	<b>Fixed Rate COP's w/Letter of Credit</b>	<b>2026</b>	<b>\$ 4,615,000</b>	<b>\$ 3,240,000</b>	<b>Water/Wastewater</b>
RCC Dispatch Center	Variable Rate COP's	2031	\$ 2,180,000	\$ 1,445,000	General Fund
			\$ 49,460,000	\$ 37,610,000	

The annual debt service for these issues totals \$3,678,145. If the refunding plan for Metlox and Water/Wastewater is approved, the overall annual debt service would be reduced by approximately \$81,000.

**DISCUSSION:**

In line with the City Council Strategic Plan goals, staff reviewed the City's outstanding debt for potential refunding (refinancing) opportunities. The historically low interest rate environment has created the opportunity to reduce overall borrowing costs. Each of the City's debt issues are discussed below.

Police/Fire Facility

The Police/Fire Facility was completed in 2006 at a cost of \$41 million. The facility was funded through a combination of accumulated cash of \$28 million and \$12.98 million in bonds (certificates of participation or COP's). The annual debt service is \$816,700 for fiscal year 2011-2012. The current net interest rate for this issue is 4.6%. These bonds cannot be called until January 2014. As a result, any refunding plan would include a defeasance of the existing bonds through the establishment of an escrow fund into which the equivalent of the future debt service payments would be placed until prepayment can be made in January 2014. While those funds earn interest, it will be less than the rate being paid, resulting in negative arbitrage. That negative arbitrage erodes savings from refunding. Because the escrow would need to remain in place until 2014, the negative arbitrage results in a net present value savings of just .62%. Therefore, staff does not recommend refunding these bonds at this time. However, this does not preclude refunding at a future date.

***Refund: No***

Metlox

Issued in 2003, the Metlox COP's (\$13.35 million) were issued for the purpose of constructing the Metlox public parking facility and town square. Revenue from the Parking Fund is used to pay the annual debt service of \$860,200. The bonds are callable beginning in January 2013 at 100% (e.g., no premium for the early call). Similar to the Police/Fire bonds, defeasance will require an escrow fund for the debt service due through that date. While there will also be negative arbitrage by refunding these bonds now, it will be less than that for the Police/Fire facility because the escrow will be necessary only until 2013. The present value savings through refunding these bonds is estimated at \$588,776 (5.45%) and will generate debt service savings of approximately \$41,000 annually while maintaining a similar amortization period. As a result, this bond issue is included in the proposed refunding plan.

***Refund: Yes***

Marine Avenue Sports Fields and South Bay Regional Public Communications Authority (RCC)

In 2002, the City borrowed \$9,535,000 to refinance existing debt on the newly built sports fields at Marine Avenue. In 2001, the City borrowed \$2.18 million to finance its portion of the RCC. The debt for both of these improvements is variable rate reset weekly by a remarketing agent and each series is backed a letter of credit (LC) issued by Bank of America (both LC's expire July 1, 2012). The recent average interest rate and associated fees for both issues are as follows:

<u>Cost Component</u>	<u>Current terms (expires 7/1/12)</u>
Average variable interest	30 basis points
Remarketing rate	9 basis points
Direct pay Letter of Credit	<u>100 basis points</u>
 Total Overall Costs	 139 basis points (1.39%)

While the opportunity to lock-in a fixed rate seems attractive, the City’s financial advisor and Finance staff believe that the current short term weekly rates are unlikely to rise significantly in the near term. Additionally, it is estimated that the Federal Funds rate would need to rise from the current .25% to 5% - 6% for the weekly variable rate to equate to the fixed rate attainable today (3.5% to 4%). Further, when RCC was issued in 2001 and Marine Avenue was refunded in 2002, variable rate debt was selected because the City’s reserve policies meant that the City would always have in the investment portfolio an amount equal to or greater than the outstanding variable rate debt. The reserves served as a “sentinel” fund in that the earnings on those reserves would be equal to or greater than the weekly borrowing costs with the variable rate debt. Until recently, the City’s portfolio yield exceeded that of the variable rate debt, making the variable rates attractive. While that positive spread is not currently present (the portfolio yield is approximately 1.10%), the marginal cost of that debt is still attractive. As rates eventually rise, as they are expected to, staff believes that the City’s portfolio will return to a positive stance compared to the weekly variable rates. For these reasons, staff recommends maintaining the variable rate debt for both the Marine Avenue Sports Fields and the RCC financings.

The LC’s for Marine Avenue and the RCC each expire July 1, 2012. As previously mentioned, the current LC provider (Bank of America) has advised the City that it will not renew the LC’s due to the lack of a broader-based banking relationship with the City (the City’s primary bank is Union Bank). Staff is in contact with Union Bank to discuss their substituting an LC for those issued by Bank of America. Based on preliminary discussions, the fees are expected to be slightly lower than the current rates (75 basis points versus 100 basis points with Bank of America). Staff will return to the Finance Subcommittee and City Council with further details and approval once the details have been determined.

***Refund: No***

Pension Obligation Bonds

These bonds were issued in 2007 to pay off the City’s CalPERS fixed “side fund” pension liabilities for the Police and Fire Departments. In doing so, the City saved approximately \$300,000 by reducing the interest rate associated with the unfunded liability from the CalPERS then assumed discount rate of 7.75%, to 5.01%. The original amortization period was retained, with the bonds maturing in 2014. The debt service is approximately \$1 million per year. These bonds cannot be re-funded because there was no call provision in the original issue. However, final maturity is approaching in July 2014, at which time these bonds will be paid off, freeing-up approximately \$1 million in General Fund debt service payments.

***Refund: No***

Water and Wastewater

In September 1996, the City issued \$4,615,000 of debt to finance 1996 and 1997 enterprise fund projects related specifically to the water and wastewater systems. The bonds bear annual coupon interest between 5.3% and 5.8%, mature annually through 2026, and are now callable with no premium. The remaining principal and interest payments of the outstanding Certificates equal \$4,947,393 (\$3,240,000 in principal and \$1,707,393 in interest). Annual debt service through September 2026 for the remaining certificates range from \$321,000 to \$338,000.

The present value savings through refunding these bonds at current market rates is estimated to generate savings of \$40,000 (14.53%) annually while maintaining a similar amortization period. As a result, this bond issue is included in the proposed refunding plan.

***Refund: Yes***

Refunding Plan

To refund the City's debt, a new series of Certificates of Participation (COP's) will be issued as a General Fund lease. The allocation of the debt service to the appropriate funding source (e.g., Water, Wastewater and Parking funds) will occur internally by the Finance staff. Combining both issues into one General Fund master lease reduces the number of series of bonds necessary, eliminates the need for separate disclosure preparation, saves legal fees and reduces the overall cost of issuance. Further, it reduces the overall burden of administration, and will also result in a lower interest rate for the Water/Wastewater bonds than would be the case with a separate issue since the bonds will be issued under the stronger credit of the City's General Fund, not the City's Water/Wastewater revenues.

In order to complete this refunding program, the financing team will include a number of professional services. These include:

<u>Role</u>	<u>Firm</u>	<u>Contact</u>
Financial Advisor	Loop Capital	Mark Young
Underwriter	Merrill Lynch	Frank Lauterbur/Jeff Bower
Bond & Disclosure Counsel	Stradling Yocca	Kevin Civale

These individuals were originally selected several years ago through competitive processes. Their excellent services with past bond issues leads staff to recommend that the City continue to utilize their services for this refunding.

The City's Financial Advisor, Mark Young, was previously with the firm of Gardner, Underwood and Bacon. He recently joined the firm of Loop Capital Markets. Mr. Young has been the City's Financial Advisor since 1999 and has provided excellent advice and service in that capacity. He has been involved with every City debt issuance since that time, and was instrumental in the City achieving its AAA/Aaa/Aaa general obligation credit rating from all three rating agencies (Moody's, S&P and Fitch). Further, he provides as-needed financial advisory services outside of

debt issuances without cost and is a trusted resource. For these reasons, staff is recommending that the City retain Mr. Young's services for the refunding process by approving a new contract with Loop Capital Markets.

The recommended underwriting team from Bank of America Merrill Lynch (BAML), Messrs. Lauterbur and Bower, have also changed firms since the last bond issue, from UBS to BAML. Mr. Lauterbur and Mr. Bower have participated in several City debt issues including the original Metlox bond issue, the Police/Fire Facility, the Pension Obligation Bond and all recent Underground Utility Assessment District bond issues. As the leaders on these negotiated sales, Mr. Lauterbur and Mr. Bower were instrumental in timing the markets on these issues to ensure the best possible interest rate, resulting in the lowest possible borrowing costs. Their personal knowledge and experience with past City debt issues, as well as BAML's retail and institutional marketing channels, ensures a successful sale of the proposed bonds. The contract for underwriter services (e.g., the Purchase Agreement) will be presented for City Council approval at a future meeting as part of the overall bond documentation. The estimated cost of the underwriter's services is \$67,600, which includes the underwriter discount (the fee paid to the underwriter for purchasing the bonds) and marketing expenses.

The City has an existing Bond & Disclosure Counsel agreement with the firm of Stradling Yocca, which was approved by the City Council in April 2007. Mr. Civale has served in this capacity since the Police/Fire Facility debt issuance in 2004, and has consistently provided reliable and sound legal advice. Additionally, he has provided as-needed bond and disclosure counsel services without additional cost outside of the bond issuance process. This counselor's fees remain unchanged from those originally established in 2007 (\$40,000 as Bond Counsel and \$20,000 as Disclosure Counsel).

These individuals – collectively, the financing team - have provided a high degree of professional service over the past several bond issues, all with excellent results. Their fees are comparable to those of other such firms. As a result, staff recommends that the financing team listed above be approved as part of the refunding plan. Further, and more specifically, staff recommends that a new contract for financial advisory services be approved with Loop Capital Markets, for an amount not to exceed \$41,500 including expenses.

In order to market the refunding bonds, the City will need to obtain a credit rating from one or more of the rating agencies. The Underwriter has recommended that the City obtain two ratings in order to enhance the marketability of our bonds (thus potentially reducing overall cost of borrowing). It is estimated that each rating agency will charge approximately \$12,500 for services rendered. Staff will work with the Financial Advisor and Underwriter to make the final determination on this issue. Fees for the Financial Advisor, Underwriter and Bond/Disclosure Counsel are contingent upon the successful completion of the refunding. There will be other fees associated with the issuance including Trustee and associated legal fees (\$6,000), local advertising, and publishing and posting of the Official Statement. A property appraisal may also be required. All of these fees will be paid with bond proceeds, and are expected to total approximately \$175,000, which has already been factored into the present value savings noted earlier.

This debt issuance will be a negotiated sale by the underwriter (BAML). The negotiated sale approach provides flexibility to change structure, terms and timing of sale during the offering process to adapt to market conditions. It also allows for active pre-sale marketing activity. As has

been the case for the past several debt issues, the underwriter will place a heavy emphasis on retail sales to the community, including advertising in The Beach Reporter, to provide our residents an opportunity to support their hometown.

**CONCLUSION:**

Refunding the Metlox and Water/Wastewater debt is expected to result in present value savings of approximately \$1.06 million, while maintaining similar amortization schedules. In order to perform the refunding, the City will require the services of a financial advisor (Loop Capital Markets), Underwriter (BAML); Bond and Disclosure Counsel (Stradling Yocca) and other ancillary services. Contracts either exist for these services (Stradling Yocca), will be ratified through future Council approval of bond documents (BAML and trustee services), or are required now (Loop Capital Markets) to initiate the refunding process. As a result, staff recommends that the City Council approve a contract with Loop Capital Markets for financial advisory services. Further, staff recommends that the refunding plan and financing team be approved.

If the refunding plan is approved by the City Council, staff will proceed with the preparation and planning of the financing, and will return to City Council with all related documents for final approval. Staff expects the refunding to be completed within 90 days.

Attachments:           A - Refunding Analyses  
                              B – Loop Capital Markets Contract



# City of Manhattan Beach

Refunding Opportunity Update

March 27, 2012

Privileged and Confidential

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## **Refunding Opportunity Update**



## Refunding Opportunities

Manhattan Beach Refunding Candidates						
Series	Refundable Par Outstanding	Refundable Coupon Range	Call Date	Call Price	*PV Saving (\$)	*PV Saving (%)
1996	\$3,240,000	5.625% - 5.800%	9/1/2007	100%	\$470,757	14.530%
2003	\$10,800,000	4.000% - 5.000%	1/1/2013	100%	\$588,776	5.452%

\*Based on Loop Capital Markets' assumptions and current market rates as of March 21, 2012



# Proposed 2012 Fixed Rate Refunding

Proposed 2012 Fixed Rate Refunding			
1996 Refunding (Water & Wastewater Project)		2003 Refunding (Metlox Project)	Total
Par Amount	\$2,965,000	\$10,250,000	\$13,215,000
Premium	303,191	953,077	1,256,268
Debt Service Fund Release	62,126	259,579	321,705
DSRF Release	338,560	871,500	1,210,060
<b>Total</b>	<b>\$3,668,877</b>	<b>\$12,334,156</b>	<b>\$16,003,033</b>

Proposed 2012 Fixed Rate Refunding			
Fiscal Year	Prior Net Debt Service	Net Debt Service	Gross Savings
2013	\$425,642	\$390,425	\$35,217
2014	1,177,943	1,098,600	79,343
2015	1,181,386	1,097,150	84,236
2016	1,183,668	1,097,750	85,918
2017	1,183,874	1,102,550	81,324
2018	1,187,186	1,101,350	85,836
2019	1,183,549	1,103,850	79,699
2020	1,188,246	1,109,850	78,396
2021	1,186,053	1,105,250	80,803
2022	1,191,790	1,108,500	83,290
2023	1,190,360	1,110,000	80,360
2024	1,197,110	1,114,750	82,360
2025	1,200,240	1,117,500	82,740
2026	1,200,960	1,118,250	82,710
2027	865,750	819,500	46,250
2028	865,000	823,750	41,250
2029	867,750	823,000	44,750
2030	863,750	820,750	43,000
2031	868,250	827,000	41,250
2032	865,750	821,250	44,500
2033		(8,000)	8,000
<b>Total</b>	<b>\$21,074,256</b>	<b>\$19,703,025</b>	<b>\$1,371,231</b>

NPV Savings (\$)	\$1,059,533
NPV Savings/Refunded Bonds (%)	7.547%
Bond Arbitrage Yield	3.505%

# 1996 Water and Wastewater Project Refunding

1996 Water and Wastewater Refunding	
Sources	1996 Refunding (Water & Wastewater Project)
Par Amount	\$2,965,000
Premium	303,191
Debt Service Fund Release	62,126
DSRF Release	338,560
<b>Total</b>	<b>\$3,668,877</b>

1996 Water and Wastewater Refunding	
Uses	
Refunding Escrow	\$3,317,657
Debt Service Reserve Fund	297,500
Cost of Issuance	39,264
Underwriter's Discount	11,860
Expenses	4,487
Additional Proceeds	(1,892)
<b>Total</b>	<b>\$3,668,877</b>

1996 Water and Wastewater Refunding			
Fiscal Year	Prior Net Debt Service	Net Debt Service	Gross Savings
2013	\$166,063	\$143,825	\$22,238
2014	323,784	285,400	38,384
2015	325,628	285,150	40,478
2016	326,909	283,950	42,959
2017	327,628	287,550	40,078
2018	327,565	285,750	41,815
2019	326,928	287,000	39,928
2020	330,715	292,750	37,965
2021	328,640	289,750	38,890
2022	330,990	289,500	41,490
2023	332,360	293,750	38,610
2024	332,860	292,250	40,610
2025	337,490	295,250	42,240
2026	335,960	297,500	38,460
2027		(3,500)	3,500
<b>Total</b>	<b>\$4,453,518</b>	<b>\$3,905,875</b>	<b>\$547,643</b>

<b>NPV Savings (\$)</b>	<b>\$470,757</b>
<b>NPV Savings/Refunded Bonds (%)</b>	<b>14.530%</b>
<b>Bond Arbitrage Yield</b>	<b>3.505%</b>

# 2003 Metlox Project Refunding

2003 Metlox Refunding	
Sources	2003 Refunding (Metlox Project)
Par Amount	\$10,250,000
Premium	953,077
Debt Service Fund Release	259,579
DSRF Release	871,500
<b>Total</b>	<b>\$12,334,156</b>

2003 Metlox Refunding	
Uses	2003 Refunding (Metlox Project)
Refunding Escrow	\$11,311,359
Debt Service Reserve Fund	827,000
Cost of Issuance	135,736
Underwriter's Discount	41,000
Expenses	15,513
Additional Proceeds	3,549
<b>Total</b>	<b>\$12,334,156</b>

Fiscal Year	2003 Metlox Refunding		Gross Savings
	Prior Net Debt Service	Net Debt Service	
2013	\$259,579	\$246,600	\$12,979
2014	854,159	813,200	40,959
2015	855,759	812,000	43,759
2016	856,759	813,800	42,959
2017	856,246	815,000	41,246
2018	859,621	815,600	44,021
2019	856,621	816,850	39,771
2020	857,531	817,100	40,431
2021	857,413	815,500	41,913
2022	860,800	819,000	41,800
2023	858,000	816,250	41,750
2024	864,250	822,500	41,750
2025	862,750	822,250	40,500
2026	865,000	820,750	44,250
2027	865,750	823,000	42,750
2028	865,000	823,750	41,250
2029	867,750	823,000	44,750
2030	863,750	820,750	43,000
2031	868,250	827,000	41,250
2032	865,750	821,250	44,500
2033		(8,000)	8,000
<b>Total</b>	<b>\$16,620,738</b>	<b>\$15,797,150</b>	<b>\$823,588</b>

NPV Savings (\$)	\$588,776
NPV Savings/Refunded Bonds (%)	5.452%
Bond Arbitrage Yield	3.505%

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## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 17<sup>th</sup> day of April, 2012, by and between the CITY OF MANHATTAN BEACH, a municipal corporation ("CITY"), and LOOP CAPITAL MARKETS, LLC, a California limited liability corporation ("CONTRACTOR").

### **RECITALS**

1. City desires to obtain financial advisory services for the purpose of refinancing the Metlox Public Improvement Certificates of Participation (2003) and the Water/Wastewater Certificates of Participation (1996); and

2. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish the services required by this Agreement.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall terminate on December 31, 2012 unless earlier terminated as provided below.

A. **Termination.** CITY and CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving ten (10) days written notice. Upon receipt of a termination notice, CONTRACTOR shall: (1) promptly discontinue all services affected (unless the notice directs otherwise); and (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to CITY, whether completed or in progress.

2. **Services to be Provided.** CONTRACTOR shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

A. **Amount.** CITY agrees to compensate CONTRACTOR, and CONTRACTOR agrees to accept in full satisfaction of the services required by this Agreement an amount not to exceed forty thousand dollars (\$40,000). Compensation is based solely upon the successful sale and issuance of bonds. Bond proceeds shall be used for remuneration.

B. **Expenses.** In addition, CONTRACTOR shall be reimbursed for costs advanced by CONTRACTOR on behalf of CITY, including delivery and messenger services, printing,

copying and binding costs in an amount not to exceed one thousand five hundred dollars (\$1,500). CONTRACTOR shall keep accurate records of all expenses. Records must be submitted to CITY along with any invoice which requests payment for the foregoing expenses. CONTRACTOR shall not be entitled to reimbursement for any other expenses.

4. **Professional Standards.** CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** CONTRACTOR shall complete all services required hereunder as and when directed by CITY. However, in its sole discretion CITY may extend the time for performance of any service.

6. **Insurance Requirements.**

A. CONTRACTOR shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place all of the insurance coverages required in this Section 6. CONTRACTOR's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 6 and CONTRACTOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

B. All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

C. Coverages, Limits and Policy Requirements. CONTRACTOR shall maintain the types of coverages and limits indicated below:

1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any

claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the City. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

3) **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars per claim. The policy shall contain or be endorsed to include a waiver of subrogation in favor of CITY.

4) **PROFESSIONAL ERRORS & OMISSIONS** - a policy with minimum limits of five million dollars (\$5,000,000) per claim and in the aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to CITY.

D. Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice CONTRACTOR shall be deemed in default hereunder.

E. Any deductibles or self-insured retentions must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to



be paid by CONTRACTOR) ; or CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.

F. **Verification of Compliance.** CONTRACTOR shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

7. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement

8. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

9. **Independent Contractor.** The Parties intend and agree that at all times during the performance of services under this Agreement, CONTRACTOR shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, CONTRACTOR shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or subcontractors. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **Compliance with Laws.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

11. **Ownership of Work Product.** All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for CITY by CONTRACTOR as CITY'S employee(s) for hire and shall be the sole property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

12. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflicts of interest or appearance of conflicts of interest in performance of this Agreement.

13. **Notices.** Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

To CONTRACTOR:

Mr. Mark Young  
Loop Capital  
12100 Wilshire Blvd. – Suite 430  
Los Angeles, CA 90025

To CITY:

Mr. Bruce Moe  
City of Manhattan Beach  
1400 Highland Ave  
Manhattan Beach, CA 90266

(with a copy to):

City Attorney  
City of Manhattan Beach  
1400 Highland Ave  
Manhattan Beach, CA 90266

14. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from CITY.

15. **Time of Essence.** Time is of the essence in the performance of this Agreement.

16. **Limitations Upon Subcontracting and Assignment.** This Agreement shall not be assigned in whole or in part, by CONTRACTOR without the prior written approval of CITY. Any attempt by CONTRACTOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

17. **Key Person.** CONTRACTOR's responsible principal, Mark Young, shall be principally responsible for CONTRACTOR's obligations under this Agreement and shall serve as principal liaison between CITY and CONTRACTOR. Mr. Young shall provide the services required by this Agreement. Designation of another Responsible Principal by CONTRACTOR shall not be made without prior written consent of CITY. The City reserves the right to change personnel as desired, and to have final approval of any changes.

18. **Personnel.** CONTRACTOR represents that it has, or shall secure at its own expense, all personnel required to perform CONTRACTOR's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

20. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises other than those included in this Agreement shall be valid. This Agreement may be modified only by a written agreement executed by CITY and CONTRACTOR.

22. **Permits and Licenses.** CONTRACTOR shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

23. **Interests of CONTRACTOR.** CONTRACTOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

24. **California Law.** The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

25. **City Not Obligated to Third Parties.** CITY shall not be obligated or liable under this Agreement to any party other than CONTRACTOR.

26. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

27. **Severability.** Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

28. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

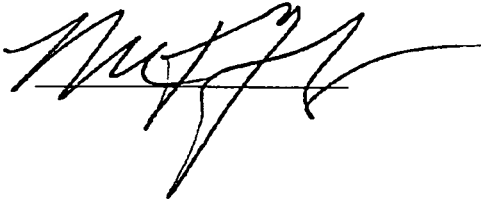
29. **Attorneys' Fees.** In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

CITY OF MANHATTAN BEACH

CONTRACTOR

\_\_\_\_\_  
DAVID N. CARMANY  
City Manager



ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
LIZA TAMURA  
City Clerk

  
\_\_\_\_\_  
ROXANNE M. DIAZ  
City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

CONTRACTOR shall perform the following:

1. Provide financial advice regarding market conditions, trends, credit analysis, and third party alternative financing;
2. Assist with investments, including reserve fund investments;
3. Establish financing objectives;
4. Coordinate procurement of additional vendors (e.g., printing, consulting);
5. Develop financing schedule – manage finance team effort;
6. Advise on sale method – for negotiated sales, advise on syndicate structure;
7. Coordinate rating process;
8. Review documentation – legal and disclosure;
9. Provide independent pricing evaluation;
10. Benchmark results;
11. Review orders;
12. Monitor secondary market transactions;
13. Provide continuing disclosure services; and
14. Provide specialized quantitative analyses.