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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Katano Kasaine

SUBJECT: Status of Negotiations with Goldman
Sachs

DATE: November 14, 2012

City Administrator
Approval

Date

11/15/12

RECOMMENDATION

Staff recommends that the City Council accept this report updating the status of the City's negotiations with Goldman Sachs to terminate the City's interest rate Swap and provide direction to staff on negotiating an amendment to the interest rate Swap agreement ("Swap") by accelerating the termination of the Swap through promissory note payments in lieu of current Swap Payments.

EXECUTIVE SUMMARY

At the July 3, 2012 City Council meeting, Council directed staff to continue negotiations with Goldman Sachs, towards the goal of reaching an agreement on a termination of the City's prior interest rate Swap Agreement, and further directed staff to report back in September with the status of the negotiations.

At the September 25, 2012 Finance and Management Committee meeting Staff reported on the progress of the negotiations. The Finance Committee provided staff an additional 45-60 days to negotiate the termination of the interest rate Swap and directed staff to return to the November 27, 2012 Finance and Management Committee meeting with results of the negotiations.

Since the September 2012 committee meeting, the City has been engaged in numerous discussions with Goldman Sachs regarding the interest rate Swap and City Council's directive to terminate the Swap at a zero cost (i.e., \$0 termination amount). Given the contractual nature of the Swap, Goldman Sachs is not agreeable to terminate the Swap at \$0, a decision the City has been assured was made by Goldman Sachs upper management. In addition, Goldman Sachs is of the position that any structured termination of the Swap reflects a market value transaction.

Item: _____
Finance and Management Committee
November 27, 2012

ANALYSIS

As a result, for the past several weeks, staff has worked with its independent advisors, the City attorney, external counsel, and Goldman Sachs to develop a structure that would allow the City to fully terminate the Swap by June 2014 (rather than continuing until 2021). Staff anticipated bringing a proposed termination structure to Council for approval at this meeting, however, Goldman Sachs has indicated that it is not ready at this time to commit to such a structure and requires additional time. Although Goldman Sachs' current position prevents the City from terminating the Swap at below market, Goldman Sachs has indicated it is willing to continue to explore options that would be more economical to the City. Therefore staff believes that a termination can be structured in a way that is more economical to the City than the current agreement and expects to return to Council in December with a full report and ordinance for Council consideration.

One option the City and Goldman Sachs has pursued is a structure in which the Swap can be terminated and replaced with promissory notes in lieu of current Swap payments. Based on outside legal counsel opinion, if the City were agreeable to this structure, the City cannot due to legal constraints, make a binding commitment for payment of promissory notes with duration longer than one fiscal year. Therefore, this proposed structure would require issuance of two notes over the proposed duration of the payment plan. Staff is seeking direction from the Council to directing staff to continue discussions with Goldman Sachs to pursue this option to terminate the Swap through an accelerated payment process secured by promissory notes through July 2014. The current Swap structure extends to 2021. Under this proposed promissory note structure the Swap would be paid off seven years early with the current (non-general fund) annuity revenues. A fixed dollar amount for each promissory note would be set at the time of entering into each promissory note. The first note would be executed in January 2013 and cover payments from January through June 2013. The second promissory note would be executed in July 2013 and cover payments from July 2013 through June 2014, at which time the Swap agreement would be terminated. Staff will continue to negotiate with Goldman Sachs on the termination value of the Swap. In addition, it should be noted that through our discussions with Goldman Sachs, if the City chose to terminate the Swap through the promissory notes, no additional interest would accrue to the City. Transaction expenses for consultants and external counsel will be considered as part of the termination agreement.

It should also be noted that there may be other benefits to the City, separate from the Swap transaction, in maintaining good relationships with Goldman Sachs. For example, Goldman Sachs has participated in urban investments and other charitable contributions in communities throughout the United States. Staff has briefly discussed these opportunities with Goldman Sachs. Although Goldman Sachs has made no commitments to pursue such investments in Oakland, they did indicate they are willing to discuss such potential opportunities with the City in the future. However, there is a desire by Goldman Sachs to separate such discussions from the Swap transaction.

For questions regarding this report, please contact Katano Kasaine, Treasurer, at (510) 238-2989.

Respectfully submitted,



KATANO KASAINÉ
Treasurer