

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: November 10, 2015

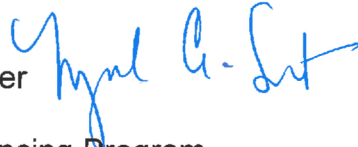
CAO File No. 0220-02221-8628

Council File No.

Council District: --

To: The Mayor  
The Council

From: Miguel A. Santana, City Administrative Officer



Reference: Los Angeles Wastewater System Debt Financing Program

Subject: **EXTENSIONS AND REPLACEMENT OF WASTEWATER SYSTEM DEBT PROGRAM CREDIT FACILITIES**

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### SUMMARY

The City Administrative Officer (CAO) requests authority to extend and replace agreements with banks providing credit facilities for the Wastewater System Commercial Paper (CP Program) and extend the direct purchase agreement for the Wastewater System Subordinate Revenue Bonds Variable Rate Refunding Series 2012-D (Series 2012D). The credit facilities for the CP Program expire in December of 2015. The direct purchase agreement for Series 2012D expires December 18, 2015.

The CP Program totals \$200 million and is currently supported by Letters of Credit (LOCs) of \$100 million each by Sumitomo Mitsui Banking Corp. (Sumitomo) and Bank of New York Mellon (BNY). The Sumitomo LOC expires on December 15, 2015. The BNY LOC expires on December 18, 2015. The Series 2012-D direct purchase agreement with Banc of America Preferred Funding Corporation (BofA) is for \$280.9 million and expires on December 18, 2015.

For the CP Program, this Office recommends extending the Sumitomo LOC for an additional three years and replacing the LOC provided by BNY with Barclays Bank PLC (Barclays) for three years, each for \$100 million plus interest. For Series 2012-D, this Office recommends extending the direct purchase agreement with BofA for an additional three years. These recommendations are based on a Request for Proposals (RFP) process completed in September of 2015.

### Commercial Paper Program

In 1991, the City Council approved the establishment of a tax-exempt CP Program for the City's Wastewater System (C.F. 89-2662-S2). The Mayor and Council adopted the General Subordinate Resolution and individual Supplemental Subordinate Resolutions, authorizing a CP Program through the issuance of Subordinate Bonds in the form of tax-exempt commercial paper notes in a maximum authorized principal amount of \$400 million. Although the legal limit is \$400 million, the current credit facilities provide for coverage of \$200 million outstanding at any one time. At this time, no CP notes are outstanding. In 2012, taxable commercial paper notes were added to the CP Program to provide maximum flexibility for the Bureau and future capital programming needs.

To maintain a CP Program, the City retains the services of CP dealers to trade the CP notes in the financial markets; the current dealers are Wells Fargo and Ramirez and Co. The Eighteenth Supplemental Resolution includes provisions authorizing the replacement of CP dealers with dealers on the pre-approved underwriter list if in the best interest of the City. This Office recommends replacing the current dealers with Barclays and Citigroup Global Markets Inc. (Citi).

The bank short term ratings by Moody's Investor Services (Moody's), Standard and Poor's Ratings (S&P) and Fitch Ratings (Fitch) respectively are as follows:

- Barclays: P-1/A-2/F1
- Sumitomo: P-1/A-1/F1

The annual fee for the credit facility to be provided by Barclays will be 26 basis points; the annual fee for the credit facility to be provided by Sumitomo will be 32.5 basis points. This represents significant savings over the current fee of 45 basis points for BNY and 53 basis points for the existing LOC by Sumitomo. This decrease represents savings of approximately \$436,000 annually and \$1.3 million over the three-year term of the LOCs. The decrease is reflective of improving credit market conditions following the financial crisis of 2008.

### **Series 2012D**

The Series 2012D bonds are the only variable rate bonds outstanding in the Wastewater System Debt Program and are the refunded bonds of Series 2001, 2006 and 2008. Several banks offered a direct purchase option of Series 2012D in response to the RFP. BofA proposed to extend their direct purchase for an additional three years and reduce the fee from 45 basis points to 35 basis points. This was the least costly and most efficient option. The fee decrease represents savings of approximately \$284,000 annually and \$855,000 over the three-year term.

### **Terms and Conditions**

Negotiations were conducted with the three banks to arrive at terms satisfactory to all parties. The final proposed documents do not materially deviate from the original agreements currently in place.

The agreements include a provision that in the event that the banks incur increased costs as a result of new legislation or regulations implemented during the life of the Agreements, the banks have the option to charge the City for those increased costs, subject to sufficient documentation in support of the increase and limited to a six-month retroactive period. The concept of passing on increased costs to issuers has been the standard for several years in many banking agreements entered into by the City. Because of the pending implementation of provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the risk of increased costs being passed on to issuers is greater now than in the past. The agreements include provisions that in the event that the increased cost represents a 20 basis point increase over the current fee, the City will have 120 days to pay the increased cost. The City would then use this time to adjust the Wastewater System budget depending on the increased cost amount, including the possible need to obtain Council approval for changes to the Wastewater System budget.

The agreements also provide for the option to terminate. For the LOCs provided by Barclays and Sumitomo, the City may terminate at no cost after one year. For the direct purchase by BofA, the City may terminate at no cost after two years. In all cases, the City may terminate at no cost at any time if a bank's senior unsecured short-term ratings fall below thresholds specified in the documents or if the City elects to terminate due to the imposition of increased costs. This provides the City with additional financial flexibility to consider options, if necessary.

### **Recommended Actions**

Regarding City Standard Provisions, Sumitomo previously requested and was granted a waiver of the City's Affirmative Action policy. Sumitomo advises that it does not have a contract to supply services to the Federal Government and only those businesses with Federal Government contracts are required to file Affirmative Action Plans. Further, as a Japanese-based bank, this is not a requirement of their primary jurisdiction. The CAO recommends waiver of the City's Affirmative Action policy.

To proceed with the above-mentioned credit facilities and Direct Purchase, the Mayor and City Council will need to approve several documents.

The Eighteenth Supplemental Resolution (Attachment A) includes the adoption of various documents required to execute the credit facility extension and replacement and authorizes the CAO to take certain actions to manage the transaction and the CP Program. The following documents are included (Exhibits A to F):

- Reimbursement Agreement with Barclays (Exhibit A);
- Amended and Restated Reimbursement Agreement with Sumitomo (Exhibit B)
- Dealer Agreement with Barclays (Exhibit C);
- Dealer Agreement with Citi (Exhibit D);
- Preliminary Offering Memorandum (Exhibit E); and,
- Amended and Restated Issuing and Paying Agent Agreement (Exhibit F);

The Nineteenth Resolution (Attachment B) includes the adoption of various documents required to execute the extension of the Direct Purchase by BofA and authorizes the CAO to take certain actions to manage the transaction. The following documents are included (Exhibits A to C):

- Form of Market Agent Agreement (Exhibit A);
- Continuing Covenant Agreement (Exhibit B); and
- Amended and Restated Paying Agent Agreement (Exhibit C);

The closing of the credit facilities for Series 2012D extension and the CP program are planned for December 3, 2015 and December 8, 2015, respectively.

These recommendations are in compliance with the City's Financial Policies.

## RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. ADOPT the Eighteenth Supplemental Resolution (Attachment A), which authorizes the execution of extension and replacement credit facilities for the Wastewater Commercial Paper Program, incorporates various documents required to execute the transaction (Exhibits A to F), and authorizes the City Administrative Officer to take certain actions required to manage the transaction and the CP Program;
2. ADOPT the Nineteenth Resolution (Attachment B), which authorizes the execution of a Continuing Covenant Agreement with Banc of America Preferred Funding Corporation for the extension of the Direct Purchase of the Wastewater System Subordinate Revenue Bonds, Variable Rate Refunding, Series 2012-D bonds, and incorporates various documents required to execute the transaction (Exhibits A to C);
3. FIND that the City's Affirmative Action policy for Sumitomo Mitsui Banking Corporation is waived and is in the best interest of the City;
4. AUTHORIZE the CAO to make technical adjustments as necessary to implement the intent of the Mayor and Council actions.

## FISCAL IMPACT STATEMENT

There is no impact on the General Fund as a result of the recommended actions. The debt service and associated costs of the Wastewater System Debt Program are paid from the Sewer Construction and Maintenance Fund.

## DEBT IMPACT STATEMENT

The proposed extension and replacement of credit facilities for the Wastewater System Debt Program will cost the Sewer Maintenance and Construction Fund approximately \$1.3 million. This represents an annual cost decrease of approximately \$700,000.

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### Attachments:

1. Eighteenth Supplemental Resolution (Attachment A)
  - a. Reimbursement Agreement with Barclays (Exhibit A)
  - b. Amended and Restated Reimbursement Agreement with Sumitomo (Exhibit B)
  - c. Dealer Agreement with Barclays (Exhibit C)
  - d. Dealer Agreement with Citi (Exhibit D)
  - e. Preliminary Offering Memorandum (Exhibit E)
  - f. Amended and Restated Issuing and Paying Agent Agreement (Exhibit F)
2. Nineteenth Resolution (Attachment B)
  - a. Form of Market Agent Agreement (Exhibit A);
  - b. Continuing Covenant Agreement (Exhibit B);
  - c. Amended and Restated Paying Agent Agreement (Exhibit C);