



City of Sunnyvale

Agenda Item

16-0551

Agenda Date: 6/28/2016

REPORT TO REDEVELOPMENT SUCCESSOR AGENCY

SUBJECT

Discussion and Provide Direction on the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement for the Sunnyvale Town Center Project

REPORT IN BRIEF

The Sunnyvale Town Center project is regulated by an owner participation agreement under the authority granted by California redevelopment law. The current owner participation agreement for the project is the *2010 Amended Disposition and Development Agreement (2010 ADDOPA)* between the former Sunnyvale Redevelopment Agency and the former Court-Appointed Receiver representing Wells Fargo Bank. The current property owner, REDUS SVTC, LLC (Wells Fargo Bank) is proposing to transfer the property to STC Venture, LLC, a joint venture consisting of J. P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc. The transfer of the property is contingent on modifying the ADDOPA as well as amending the Special Development Permit (SDP), which is the City land use approval for the project. Amendments to the Final Conditions of Approval for the SDP were considered by the Planning Commission in two separate actions on May 23, 2016. One of the actions was appealed to the City Council by a member of the public. The Council heard the appeal on June 21, 2016, and denied the appeal and upheld the approval of the Planning Commission.

The draft *2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA)* (**Attachment 8**) would supersede and replace the 2010 ADDOPA. The draft agreement is between STC Venture, LLC, (Developer) and the Successor Agency for the former Redevelopment Agency of the City of Sunnyvale (Successor Agency).

Significant modifications to the 2010 ADDOPA include the following:

- a) Extend the time for the Developer to complete the Minimum Project to December 31, 2020;
- b) Eliminate the annual tax increment payments to the Developer from the future increase in property tax revenue;
- c) Conform the project description to the approved amended SDP, including allowing the residential units to be rental or for sale housing;
- d) Revise the Minimum Project to exclude the two-story retail buildings in Block 3 (Buildings H, I, J and L in Redwood Square), and complete the theater/retail building (Building T) as a two-story structure consistent with the approved amended SDP;
- e) Update the construction schedule and preconditions for completing the Minimum Project and public improvements; and
- f) Update the terms for liquidated damages if the Minimum Project is not completed.

Many of the terms of the 2010 ADDOPA have been carried forward into the 2016 MRADDOPA without substantive changes. The revisions to the Minimum Project also do not change the total amount of approved retail space within the project. Additionally, the Developer's responsibilities for constructing, operating and maintaining the public improvements do not change.

Successor Agency staff and the Developer have nearly reached agreement on the payment for environmental site remediation costs for the Town Center Project (Section 4.04 of the 2010 ADDOPA). Under the terms of the 2010 ADDOPA, the former Redevelopment Agency and the Developer agreed to split the Environmental Cost, as defined in the 2010 ADDOPA, equally (50/50 split). The 2010 ADDOPA represents a reduction in the former Redevelopment Agency's liability for environmental costs from the 2007 ARDDOPA which required the former Redevelopment Agency to pay 85% of the Environmental Costs. The negotiations regarding the costs of environmental site remediation on Blocks 5 and 6 have centered on the Developer increasing their obligation for the environmental site remediation costs of the parcels owned by the Successor Agency on Block 5 (Lot 2) and Block 6 (Lots 1, 3 and 4) when the parcels are conveyed to the Developer. It is anticipated that resolution on this issue will be reached prior to the Successor Agency Board meeting of June 30, 2016, when the Board will consider whether it wishes to approve the 2016 MRADDOPA.

As the Town Center Project is immensely important to the residents of the City, Successor Agency staff felt it was best to bring all the revisions to the 2010 ADDOPA to which the Developer has agreed to the Board at tonight's Study Session. This will permit the Board ample time to consider the overwhelming majority of the proposed revisions prior to it being asked to consider approval of the 2016 MRADDOPA.

As discussed above, it is anticipated that Successor Agency staff will resolve the outstanding environmental site remediation costs very shortly and will return to the Board on June 30, 2016 so the Board can consider all the proposed revision to the 2010 ADDOPA and consider whether it wishes to approve the 2016 MRADDOPA.

BACKGROUND

The Sunnyvale Town Center project is located within Block 18 of the Downtown Specific Plan (DSP) bounded by Mathilda Avenue to the west, Washington Avenue to the north, Sunnyvale Avenue to the east and Iowa Avenue to the south. While Block 18 totals approximately 36 acres, the draft 2016 MRADDOPA only pertains to approximately 29 acres owned by the Developer and includes the public parking parcels owned by the Successor Agency. The existing Macy's and Target parcels are under separate ownership and are not covered by the 2016 MRADDOPA. **Attachment 1** indicates the properties covered by the 2016 MRADDOPA, including the public parking parcels owned by the Successor Agency.

Regulatory Framework

The Town Center project is currently regulated by two primary documents, which are summarized below:

- a) **2010 ADDOPA**: This agreement between the former Redevelopment Agency and former Developer obligates the Developer to construct public improvements (e.g., parking structures and street improvements) and to deliver a defined Minimum Project in accordance with a schedule set forth in the 2010 ADDOPA. Upon completion of the retail portion of the Minimum Project, the former Redevelopment Agency agreed to provide the Developer an Annual Payment from increased property tax increments generated from the project. In addition, upon completion of the Theater, the 2010 ADDOPA required the former Redevelopment Agency to pay to the Developer all of the tax increment generated within the project from 2003-04 through the date of completion of the Theater. This agreement also includes provisions for sharing the cost of environmental remediation. With the dissolution of redevelopment

agencies, the Successor Agency assumed the former Redevelopment Agency's rights and obligations under the 2010 ADDOPA.

- b) Special Development Permits (SDP): The City land use entitlements for the project were approved through a series of SDPs in compliance with the Downtown Specific Plan and the Sunnyvale Municipal Code, Article 19 (Zoning Code). The master site development plan (SDP 2007-0030) was approved by the City Council in February 2007, and subsequent SDPs with detailed site, landscaping and architectural plans, including minor modifications to allowed uses, were approved by the Planning Commission in 2007/08. These approvals (if exercised) run with the land and continue to be valid with a change of property owner or termination of the 2010 ADDOPA.

Documents are referenced in the 2010 ADDOPA that will continue to be referenced in the 2016 MRADDOPA. These documents further describe the Developer's responsibility to construct, operate and maintain the public facilities within the project. These agreements are summarized below and will be assigned to the new Developer with amendments and updates as needed:

- c) Subdivision Agreement: Concurrent with approval of the SDPs, the City also approved a Final Map (Tract No. 9925) pursuant to the City's Subdivision Ordinance to create the legal lots that correspond to the master site development plan. The Final Map delineates the private lots as well as the Successor Agency's lots reserved for public parking and public street purposes. The Subdivision Agreement for the Final Map addresses the phasing and cost of required public street and infrastructure improvements and specifies the bonds to secure construction of these improvements.
- d) Public Street and Utility Maintenance Agreement: This agreement obligates the Developer to operate, maintain and repair the public street and sidewalk improvements within the project (McKinley, Murphy and Taaffe Avenues) for 75 years and to maintain liability insurance.
- e) Public Parking Ground Lease: The ground lease (75-year term) leases to the Developer the Successor Agency's lots (Block 1, Lot 3; Block 2, Lot 4; and Block 6, Lot 1) and grants to the Developer the rights to construct public parking structures on these properties to serve the project. The lease requires the Developer to operate, maintain and repair the parking facilities and carry liability insurance.
- f) Penney's Structure Operation and Maintenance Agreement: The Penney's Parking Structure (Block 5, Lot 2) is leased to the City from the Successor Agency. This agreement between the City and the Developer obligates the Developer to operate, maintain and repair the parking structure for non-exclusive public use.

Disposition and Development and Owner Participation Agreement

The 2010 ADDOPA was approved by the former Sunnyvale Redevelopment Agency on May 11, 2010. It represents the current version of an agreement that has been amended several times over the years for the redevelopment of the Sunnyvale Town Center project. The original *Disposition and Development and Owner Participation Agreement (DDOPA)* was approved between the former Redevelopment Agency and Fourth Quarter Properties in 2004. Owner participation agreements are a legal mechanism to regulate development in redevelopment areas. The DDOPA defined the scope and mix of approved land uses, the schedule for completion of the project, the tax increment payments that would be available to the Developer upon completion of private and public improvements, and the respective operational duties and responsibilities of the Developer and the former Redevelopment Agency.

Fourth Quarter was found in default of the DDOPA in 2006, and the property was transferred in 2007

to Downtown Sunnyvale Mixed Use, LLC (DSMU), a joint venture consisting of RREEF America III and Sand Hill Property Company. The *Amended and Restated Disposition and Development and Owner Participation Agreement (ARDDOPA)* between the former Redevelopment Agency and DSMU was approved in February 2007. Along with updates to the above terms of the DDOPA, the 2007 ARDDOPA also added a liquidated damages section covering financial penalties that could be assessed by the Agency if the Developer failed to complete the defined Minimum Project.

While substantial construction of the project proceeded under the 2007 ARDDOPA, construction of the project came to a halt with the economic downturn and the eventual foreclosure of the property by Wachovia Bank (later acquired by Wells Fargo Bank). Following the foreclosure of the property, the Court-Appointed Receiver representing Wells Fargo Bank engaged in discussions with the former Redevelopment Agency to update and amend to the ARDDOPA. The current 2010 ADDOPA is an agreement between the former Redevelopment Agency and Gerald Hunt, Court-Appointed Receiver in Wachovia Bank v. Downtown Sunnyvale Residential, et al. For background, a copy of the Redevelopment Agency staff report for approval of the 2010 ADDOPA can be viewed at: <http://archive.sunnyvale.ca.gov/Portals/0/Archive/RTC/2010/20100511/RDA%2010-001.pdf>.

This report describes the modifications that were enacted at that time as well as provides further background on the Redevelopment Agency history pertaining to the project.

Sunnyvale Redevelopment Successor Agency

The state dissolved redevelopment agencies in 2011 (effective February 1, 2012), and successor agencies were formed to assume the transitional obligations and administrative responsibilities of former redevelopment agencies, which includes overseeing existing owner participation agreements such as the 2010 ADDOPA. The City Council acts as the governing board to the Sunnyvale Successor Agency for the former Redevelopment Agency. The responsibilities of the Successor Agency include assuring that the existing debt service and other obligations of the former Redevelopment Agency are properly paid in accordance with a Recognized Obligation Payment Schedule, and that the Agency's properties and other assets are disposed of in an appropriate manner. The proposed 2016 MRADDOPA would be an agreement between STC Venture, LLC (prospective property owner) and the Successor Agency.

The state legislation dissolving redevelopment agencies also created oversight boards to supervise the respective successor agencies. The Oversight Board that oversees the Sunnyvale Successor Agency consists of seven representatives made up of members from the City of Sunnyvale, the County of Santa Clara and local education and special districts of the former Redevelopment Project Area. The Oversight Board has a fiduciary responsibility to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues. The actions of the Oversight Board are overseen by the State Department of Finance (DOF) and may be subject to disapproval or modification. Under the state dissolution law, both the Oversight Board and DOF have the authority to review and approve any terms of the 2016 MRADDOPA that could affect the financial obligations or future revenues of the taxing entities. If the Successor Agency Board approves the 2016 MRADDOPA, then review and approval by the Oversight Board and DOF will be sought.

On June 20, 2016, the Oversight Board held a study session on the 2010 ADDOPA that addressed:

- a) Dissolution Law Requirements for Approval of Amendments to the 2010 ADDOPA;
- b) Environmental Remediation; and

c) Elimination of the Tax Increment Financing (TIF) Payment to the Developer

Town Center Project Status

In 2007, the prior developer, DSMU commenced construction on the office buildings on Mathilda Avenue, the parking structures on Taaffe Street, and the mixed use residential/retail buildings on Washington and McKinley. While substantial construction occurred, none of these buildings were ready for occupancy prior to the property entering into receivership status. During the receivership period, Target chose to move forward in 2009 to construct its planned new store on Block 5. An Infrastructure Improvements Agreement (IIA) was entered into between Target, DSMU, the City and the former Redevelopment Agency. The IIA resulted in the completion of a large portion of the site and street improvements to serve the Target store and overall project, consistent with the ARDDOPA, City subdivision agreement and other agreements between the parties.

Following foreclosure of the property, Wells Fargo Bank secured tenants (Nokia and Apple) for the two Mathilda Avenue office buildings on Block 2 and completed the outstanding work to allow occupancy of these buildings. Additionally, further work was completed on the Block 1 parking structure to serve the office buildings and provide public parking for Macy's and downtown businesses. The Nokia building was occupied in 2011 and the Apple building was occupied in 2012.

Sale of the property to a new developer and further progress to complete the project was delayed by litigation between DSMU and Wells Fargo Bank. This litigation was finally resolved in August 2015. No significant construction activity has occurred since 2011, and **Attachment 2** depicts the current status of the project.

Following the conclusion of litigation, Wells Fargo Bank began actively marketing the property and provided notice to the Successor Agency on November 2015 that it had selected a prospective developer team to purchase the property. The proposed purchaser is a joint venture composed of J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc. Pursuant to Article 6 of the ADDOPA, the Successor Agency has the right to review property transfers with exceptions noted. The proposed property transfer is subject to Article 6 review. The defined criteria for review are: (i) experience in completing major mixed use projects of a similar size, scope and nature; (ii) adequate financial capacity; (iii) good business character and reputation; and (iv) prior development projects and presence in California.

Staff, with the assistance of financial and economic development experts, conducted an in-depth review of the financial capabilities and professional background of the proposed developer team. In December 2015, the Successor Agency acknowledged that the proposed team fully met the above criteria and was highly qualified to acquire and complete the Town Center project. J. P. Morgan will provide the substantial financing for the project (approximately 95 percent), while Sares Regis and Hunter Properties will bring considerable expertise in residential, retail and office development with a strong South Bay and Bay Area presence.

In December 2015, J. P. Morgan acquired sole ownership of the two parcels on Block 2 that contains the two office buildings. Sale of the remainder of the property to the joint venture, STC Venture, LLC, is contingent on approval of the proposed 2016 MRADDOPA.

Amendments to Special Development Permit

The 2016 MRADDOPA references the City's land use and design approvals for the Sunnyvale Town

Center project, which were approved through a series of Special Development Permits (SDP) in 2007/08. The initial SDP covering the master site development plan for the project was approved by the City Council in February 2007. The site development plan envisioned a vibrant mixed use pedestrian oriented project. The overall concept was to re-establish the downtown street grid by dividing Block 18 into six sub-blocks (commonly referred to as Blocks 1-6) and extending McKinley Avenue, Murphy Avenue and Taaffe Street through the project site. A central open space would be created in the center of the project called Redwood Square. Subsequent SDPs granted by the Planning Commission adjusted the allowable land uses and approved the architectural plans for the office, retail and residential buildings, parking structures, streetscape and landscaping improvements, and site plan for Redwood Square. The current approved land uses for the project consist of the following:

- a) Approximately 931,385 square feet of retail and restaurant uses, including a multiplex movie theater with up to 2,950 seats and a maximum of 90,000 square feet of restaurants (excluding outdoor seating).
- b) Approximately 315,000 square feet of office space.
- c) 292 residential units.
- d) Maximum 200-room hotel.
- e) Four multi-level parking structures to support the approved uses.

The amount of allowed retail and restaurant uses includes the existing Macy's and Target stores (on parcels under separate ownership). The approved site plans for the ground level and second floor uses are shown in **Attachments 3 and 4**.

STC Venture, LLC, filed an application in March 2016 to amend the Final Conditions of Approval for the SDPs. No changes to the amount, type, intensity or location of allowable land uses were proposed. Because these amendments do not involve changes to the master site development plan, the Planning Commission is the approval authority. The Planning Commission considered the application in two separate actions on May 23, 2016, which include the following proposed amendments to the Final Conditions of Approval:

PART A:

- a) Remove the restriction that the residential units can be offered for-sale only and allow the units to be rental or ownership units;
- b) Allow for ground floor commercial/retail space incidental to and in combination with residential uses (e.g. as a residential leasing office), subject to approval of a Miscellaneous Plan Permit; and
- c) Enter into a below market rate/affordable housing developer agreement to provide 12.5 percent affordable housing units.

PART B:

- d) Clarify the conditions concerning the expiration and extension of the SDP design approvals;
- e) Allow temporary Redwood Square landscaping and parking lot improvements in Block 3 of the project (existing two-story steel framing proposed to be demolished);
- f) Allow for ground floor recreational facilities that are open to the public, subject to approval of a Miscellaneous Plan Permit;
- g) Exclude accessory restaurant uses located within a grocery store/supermarket from the maximum 90,000 square feet of restaurants;
- h) Comply with the City's Green Building Program to the extent feasible;

- i) Incorporate smart city technology or infrastructure into the project; and
- j) Comply with Climate Action Plan measures for air quality.

Part A was approved by the Planning Commission on a vote of 4:1 with 2 recusals (Klein and Rheume). The Commissioner voting No on Part A expressed concerns with the allowance for rental Housing. Part B was approved on a vote of 7:0.

Part A was appealed by a member of the public who expressed concern over the allowance for rental housing within the project. The City Council heard the appeal of the Planning Commission's approval of Part A on June 21, 2016. The City Council denied the appeal and affirmed the decision of the Planning Commission on a vote of 3:1 with 2 recusals (Davis and Larsson).

EXISTING POLICY

The following City goals and policies are relevant to the proposed application:

General Plan Land Use and Transportation Chapter:

Policy LT-3.2 Encourage the development of ownership housing to maintain a majority of housing in the City for ownership choice.

Policy LT-4.12 Permit more intensive commercial and office development in the downtown, given its central location and accessibility to transit.

Policy LT-7.4 Create a strong, identifiable central business district that provides regional and citywide shopping opportunities.

General Plan Housing Element:

Policy A.1 Encourage diversity in the type, size, price and tenure of residential development in Sunnyvale, including single-family homes, townhomes, apartments, mixed-use housing, transit-oriented development, and live-work housing.

Policy A.3 Utilize the Below Market Rate (BMR) Housing requirement as a tool to integrate affordable housing units within market rate developments, and increase the availability of affordable housing throughout the community.

Downtown Specific Plan:

Goal B Establish the Downtown as the cultural, retail, financial and entertainment center of the community, complemented by employment, housing and transit opportunities.

Policy B.1 Encourage mixed uses throughout the downtown when consistent with the district character.

Policy B.2 Encourage below-market-rate housing in all residential neighborhoods.

ENVIRONMENTAL REVIEW

The Successor Agency Board is not taking any action at tonight's study session; therefore no environmental review is required at this time.

Approval of the 2016 MRADDOPA is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15304 and 15305, and in addition that no additional environmental review is necessary as the approval of the 2016 MRADDOPA is within the scope of previous environmental analysis for the Downtown Program Improvement Update pursuant to CEQA Guidelines Section 15162. Therefore, no additional analysis will be required to comply with CEQA when the Successor Agency Board takes action regarding the proposed 2016 MRADDOPA.

Attachment 5 provides the findings and the analysis to support this conclusion.

DISCUSSION

An overview of the proposed changes to the 2010 ADDOPA is provided in **Attachment 6**. A redlined version and a clean version of the draft 2016 MRADDOPA is provided in **Attachments 7 and 8**, respectively. The 2016 MRADDOPA sets a new date of December 31, 2020 for substantial completion of the Minimum Project. Remedies for default of the Developer's obligations are included in the 2016 MRADDOPA and the agreement may be terminated if the Minimum Project is not completed by this date. The primary modifications to the 2010 ADDOPA as reflected in the 2016 MRADDOPA are discussed below.

Section 3.01 - Description of Proposed Project

The total development project has not changed except to allow the 292 residential units within the project to be either rental or for-sale units consistent with the amended SDP.

Section 3.10 - Assumption of Obligations by Residential Developer

Section 3.10 of the existing ADDOPA allows the Developer to assign the residential portions of the project to an entity controlled by the Developer without obtaining the Successor Agency's approval and grants authority to the Executive Director to approve the substitution or assignment of any uncompleted residential portion of the project to another Residential Developer. The changes to this section clarify that the Successor Agency's transfer of the property to STC Ventures, LLC, as approved in December complies with the requirements of Section 3.10.

Section 3.12 - Leasing Plan

The requirement for the Developer to submit a Leasing Plan for the retail spaces is carried forward into the 2016 MRADDOPA, but the timing and objectives of the Leasing Plan have been updated. Staff is requiring the Leasing Plan to be submitted at an early stage (anticipated by January 2017). Release of a revised residential building permit would be contingent on the Developer submitting this plan. The Successor Agency Executive Director has the ability to review and comment on the plan, but does not have approval authority. The goal is to work with the Developer to offer a synergistic blend of high quality retail, restaurant and entertainment establishments that would complement existing downtown businesses, align with community expectations, and create a distinctive identity for downtown Sunnyvale. While the Leasing Plan will not name specific tenants, the desire is to understand early on the Developer's retail strategy for assembling an optimum mix of tenants for the project.

Section 4.04 - Condition of Property, Investigation and Remediation of Hazardous Material.

The 2010 ADDOPA split the costs of environmental remediation equally between the Developer and the Successor Agency. Environmental remediation is currently occurring on both Blocks 5 and 6. The Successor Agency and the Developer continue to discuss the allocation of environmental remediation costs related to Blocks 5 and 6. Until agreement is reached regarding the Developer increasing their obligation for the environmental remediation costs on Blocks 5 and 6, the environmental remediation cost sharing provisions of the 2010 ADDOPA remain unchanged in the 2016 MRADDOPA.

If the Developer agrees to increase their obligation for the environmental remediation costs on Blocks 5 and 6, the 2016 MRADDOPA would be revised to include new language. The expected changes may include the Developer assuming liability for the remediation costs for some of the Successor Agency property in exchange for the conveyance of the property to the Developer. The changes

would occur in Section 4.04 and will be linked to an Amended and Restated Covenant to Reconvey (Exhibit K) that is expected to require the Successor Agency to transfer all of its ownership interest in Block 6 at such time as the Developer assumes all environmental remediation costs associated with Block 6. The Amended and Restated Covenant to Reconvey would replace an existing Covenant to Reconvey that allows the Successor Agency to reconvey to the Developer a portion of Block 6 (the land parcel under lot 4) if Lot 4 has not been developed within 10 years of the recordation of the subdivision map for the Project, which was recorded in 2007. The Amended and Restated Covenant to Reconvey would, in exchange for transfer of the property owned by the Successor Agency in Block 6, relieve the Successor Agency of some or all of its responsibility for remediation costs for these blocks. It is envisioned that the terms of the Amended and Restated Covenant to Reconvey will grant the Developer the option of assuming the environmental remediation costs at which time the Successor Agency would transfer the property. The Successor Agency's property on Block 6 is not expected to have any value since it is restricted to use as public parking and additionally will require significant environmental remediation before development.

The Successor Agency and Developer are discussing language for the 2016 MRADDOPA related to Block 5 requiring the parties to meet regularly to attempt to reach a final solution on the environmental remediation costs that reduce the Successor Agency's liabilities related to its Block 5 property.

Because the Successor Agency's Block 5 and 6 property is leased to the City pursuant to a facility lease securing the repayment of Certificates of Participation (COP), the property may not be available for transfer to the Developer until the repayment of the COPs in 2022. However it may be possible to obtain release of some of the lots from the facility lease earlier than 2022 if the bond trustee determines that the remaining property subject to the facility lease is adequate to secure the COP repayment. For example, the Block 6 property may be released earlier if the bond trustee determines that the Block 5 property is adequate to secure the COP repayment.

Section 5.02 - Minimum Project Commencement and Completion

The 2016 MRADDOPA includes modifications to the scope of the Minimum Project which are summarized in **Attachment 9**. The amount of Minimum Project retail space (including multiplex movie theater) has been revised from approximately 329,700 square feet to approximately 261,900 square feet (based on the 2007 approved SDP site and architectural plans.) The primary change pertains to deleting the two-story Redwood Square retail buildings (Building H, I, J and L on Block 3) from the Minimum project, which represent approximately 127,800 square feet. The market feasibility of these two-story buildings has been questioned, and the Developer is proposing to study alternative development options for Block 3, including redesigning Redwood Square.

Meanwhile, the Developer is proposing to demolish the steel structures to eliminate an eyesore and install temporary parking lot and landscaping improvements to open up the block for public use. The Planning Commission conditionally approved the concept plan for the temporary improvements on May 23, 2016 as part of its review of the SDP amendments. These temporary Redwood Square improvements are included in the Minimum Project. While the Redwood Square buildings have been removed from the Minimum Project, the 2016 MRADDOPA does not reduce the total amount of planned retail space (remains at 931,385 square feet, including the Macy's and Target stores.)

Offsetting the elimination of the Redwood Square buildings from the Minimum Project will be the addition of approximately 60,000 square feet of ground floor retail space in the theater/retail building

(Building T on Block 5). This building is currently approved in the SDP plans as a two-story building with retail uses on the ground floor and a movie theater on the second level. However, the Minimum Project as defined in the 2010 ADDOPA included only a one-story theater building. The 2016 MRADDOPA does not preclude this option, but a SDP amendment is required to change the approved plans for Block 5. Meanwhile, the revised Minimum Project includes the square footage of the two-story building which is the preferred option, and the Developer is actively seeking tenants for the ground floor retail space with a theater tenant on the second level.

The anticipated Construction Schedule for the revised Minimum Project is outlined in Exhibit B of the 2016 MRADDOPA, which assumes transfer of the property this summer. The schedule indicates completing the three partially completed the residential units (Buildings D, E and F), the theater/retail building (Building T) and the Penney's Parking Structure by the end of 2018. The schedule also anticipates completing the remaining public improvement (listed in Exhibit B-1) by the end of 2018. Completion of the theater/retail building is dependent on securing lease commitments before construction commences. The Minimum Project retail space in Building D, E, F and N is expected to be phased and completed by December 31, 2020. The 2016 MRADDOPA does not include a schedule for the completion of the remainder of the project.

Section 5.03 - Liquidated Damages

The 2016 MRADDOPA continues to include a provision requiring the Developer to pay the City liquidated damages if the Developer commences construction on any retail space that is part of the Minimum Project and fails to complete the construction within the time required in Exhibit H to the 2016 MRADDOPA. The parties recognize that the delay in completing the retail portion of the Project would result in loss sales tax revenue to the City and liquidated damages would offset this loss of revenue. While the calculation of the amount of loss revenue is difficult to forecast, the agreement continues to set liquidated damages at five million dollars (\$5,000,000). (Public street improvements are not covered as these are already bonded through the City's Subdivision Agreement for the project.)

The timeframe for completing the retail portions of the Minimum Project once construction has commenced to avoid liquidated damages is described in Exhibit H. This exhibit has been updated from the version in the 2010 ADDOPA to reflect the new Construction Schedule in Exhibit B, with additional time allowance for unexpected delays. Intermediate dates have been set for completion of project elements, with an anticipated end date of December 31, 2020 for substantial completion of the Minimum Project. Exhibit H outlines preconditions for commencing and completing construction such as securing tenant lease commitments and obtaining required City approvals and building permits. All dates for commencement and completion of construction of the Minimum Project may be extended if unforeseen events occurs that are beyond the control of the Developer as set forth in Section 12.04 of the 2016 MRADDOPA.

Article 6 - Changes in Developer

Article 6 of the 2010 ADDOPA requires the Successor Agency to approve certain types of transfers of the Developer's interest in the Project but also permits other transfers to occur without Successor Agency approval. The 2016 MRADDOPA revised Article 6 to reflect the changed composition of the Developer with the transfer of the project to STC Ventures, LLC. Section 6.01(d) of the 2016 MRADDOPA allows as a permitted transfer that does not require approval of the Successor Agency the removal of either Sares Regis or Hunter Properties from the Developer, But if the Developer wants to substitute or add new members to the Developer entity prior to completing the Minimum

Project, the Successor Agency Executive Director must approve the new member. The Executive Director cannot withhold approval of the new member if the reconstituted Developer has the financial capacity and development experience to complete the remainder of the Minimum Project. If J. P. Morgan maintains its current equity stake in the Developer, financial capacity is not expected to be an issue.

Article 6 of the 2016 MRADDOPA also allows the Developer to transfer the project to a Developer's Affiliate. The 2016 MRADDOPA introduces the concept of Developer's Affiliate. A Developer's Affiliate is an entity controlled by or under common control with the Developer. Control means that the Developer owns 50% or more of the affiliate and has the power to direct the affairs of the affiliate. The Developer can transfer the project to a Developer Affiliate without the consent of the Successor Agency. However, if the Developer's Affiliate contains members that are not currently members of the Developer, the Executive Director would have to approve the new members as described above.

Article 6 of the 2016 MRADDOPA prohibits the Developer from transferring its interest in the Public Parking Ground Lease separately from transfer of the property interest except to a property owners association. If the Developer wants to transfer the Public Parking Ground Lease to a property owners association, the Successor Agency has to approve the association formation documents and conditions, covenants and restrictions (CC&Rs) and any amendments to those documents. The Successor Agency, or the City, if the Successor Agency has dissolved, needs to ensure that if the Public Parking Ground Lease is transferred, the entity holding the lease is capable of undertaking the obligations to maintain the public parking structures.

Section 7.04 - Hazardous Material Indemnity and Release

This section is being deleted from the 2016 MRADDOPA as the 2010 ADDOPA states that its hazardous material indemnity and release provisions survive the termination of the 2010 ADDOPA and there is no need to carry this provision forward to the 2016 MRADDOPA. The survival of the Developer's obligation, as well as the mutual Successor Agency's obligation, is memorialized in Section 12.17 of the 2016 MRADDOPA.

Article 8, Sections 8.01-8.09 - Agency Consideration and Parking Structure Financing

The 2016 MRADDOPA deletes the Successor Agency's obligation to pay the future Annual Payment to the Developer from tax increment funds (TIF) generated by the project. Under Article 8 of the 2010 ADDOPA, the Redevelopment Agency agreed to provide the Annual Payment in consideration for the Developer constructing, operating and maintaining the required public improvements, such as the parking structures and street improvements. Annual Payments were to begin with completion of the defined "Minimum TIF Project" (150,000 square feet of retail space) and would continue to fiscal year 2025/26. The source of the payments was to be the tax increment from the increase in assessed property value of the Town Center property. In addition, the first Annual Payment was to include all of the TIF generated by the Project since 2003-04 until the date of the first Annual Payment.

In negotiations with the Developer, they have agreed to forego the receipt of the Annual Payment with the understanding that it would be difficult to gain approval of the 2016 MRADDOPA from the Oversight Board and DOF if this liability to the Successor Agency and taxing entities remain in the agreement. Another source of funds is also not available or feasible. Therefore, Article 8 has been deleted entirely from the 2016 MRADDOPA. The deletion of the Annual Payment to the Developer will eliminate a potential cumulative Successor Agency obligation of approximately \$65 million. This estimate is conservative and depends on the actual increase in assessed value of the property and

assumes completion of the Minimum TIF Project only.

The 2016 MRADDOPA will continue, however, to obligate the Developer to complete and maintain the public facilities and improvements within the project through other existing agreements that are referenced in the 2016 MRADDOPA (see Attachments 1-4 of the 2016 MRADDOPA). Many of these facilities were substantially completed prior to 2010. These completed facilities and the yet-to-be-completed facilities directly benefit the Developer by providing necessary public infrastructure, parking and other improvements to serve the project. The completed facilities also facilitate the completion of the Project by providing the parking and other public amenities necessary to attract the quality of retailers contemplated.

Article 8 of the 2010 ADDOPA also allowed the Developer to request that the City issue Mello-Roos Bonds to provide sufficient revenue for the City/Redevelopment Agency to purchase the Public Parking Structures from the Developer upon completion of these facilities. With the dissolution of redevelopment agencies, the ability of the City or Successor Agency to purchase the Public Parking Structures with Mello-Roos Bonds is not feasible. These provisions have therefore been deleted from the 2016 MRADDOPA.

Section 10.08 - Penney's Structure

The Successor Agency owns the property upon which the Penney's Structure is located and leases the property to the City as part of a financing arrangement that allowed the City to issue Certificates of Participation. The City and the Developer are party to an Operations and Maintenance Agreement that requires the Developer to operate and maintain the Penney's Structure as a public parking facility. The Successor Agency, the Developer, the owner of the Macy's property and Target are also parties to an Operation and Reciprocal Easement Agreement ("OREA") that governs the ongoing use and operation of the Town Center Project amongst the various owners. The former Redevelopment Agency granted the other property owners in the Town Center Project easement rights over the parking properties, including the Penney's Parking Structure in the OREA. The Developer has requested that the Successor Agency enter into a separate easement agreement with the Developer granting the Developer an easement over the Penney's structure to use the structure for public parking to benefit the Town Center, including the theater building in order to clarify and reaffirm the easements provided in the OREA. The Easement, which is described in Section 10.08 of the 2016 MRADDOPA, is also included as part of the documents to be approved by the Successor Agency. The Easement will provide certainty that the parking necessary to meet the theater's needs is available.

Section 12.05 - Hold Harmless

Section 12.05 has been amended to require the Developer to indemnify the Successor Agency and the Oversight Board in the event that the approval of the agreement or any implementing actions of the agreement are challenged in court. The Successor Agency is required to cooperate with the Developer in the defense of any such action and if the Successor Agency wants to use separate counsel to defend the Successor Agency, the Successor Agency may be responsible for those costs under the terms of the indemnification.

FISCAL IMPACT

The sale of the property will result in a significant increase in property tax revenue for the City. Staff estimated the City's share of projected property tax revenue based on the sale price of the two office building parcels (sold in December 2015), the projected sale of the remainder of the property in fiscal

year 2016/17, and completion of the Minimum Project by the end of 2020. Cumulative property tax revenue from fiscal years 2016/17 to 2028/29 is estimated to be about \$89 million. Of this amount, approximately \$11 million would be accrued to the City's General Fund, approximately \$36 million would benefit the school districts (Sunnyvale Elementary and Fremont Union High), and the County of Santa Clara would receive approximately \$14 million. It should be noted that this amount is conservative and does not include the additional increase in assessed valuation related to completion of the development beyond the Minimum project, such as on Blocks 1, 3 and 6.

As noted in the staff report, the Annual Payment to the Developer as specified in the current 2010 ADDOPA represents a total cumulative obligation about \$65 million through fiscal year 2025/26. The elimination of this TIF payment removes a significant financial obligation of the Successor Agency.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

STAFF RECOMMENDATION

Successor Agency staff recommends that the Board review, comment and provide direction on the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement.

Prepared by: Hanson Hom, Assistant City Manager/Chief of Downtown Planning
Reviewed by: Tim Kirby, Director of Finance
Reviewed by: Kent Steffens, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Property Boundary Map for 2016 MRADDOPA
2. Current Project Status
3. Approved Site Development Plan, Ground Floor
4. Approved Site Development Plan, Second Floor
5. CEQA Guidelines Findings and Analysis for MRADDOPA
6. Overview of Proposed Changes
7. Draft 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (redlined version)
8. Draft 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (clean version)
9. Summary of Minimum Project Changes