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REPORT TO REDEVELOPMENT SUCCESSOR AGENCY

SUBJECT

Adoption of Two Resolutions Authorizing the Successor Agency Executive Director to Execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement and Related Documents Pertaining to the Sunnyvale Town Center Project

REPORT IN BRIEF

This staff report supplements the report provided for the Successor Agency study session on June 28, 2016 (RTC No. 16-0551). As mentioned at the study session, further edits and additional attachments to the draft 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (2016 MRADDOPA) were still pending when the study session staff report was issued. The most recent discussions with the Developer have resulted in several additional proposed revisions and attachments to the 2016 MRADDOPA. Additionally, this supplemental report further discusses the effects of the 2016 MRADDOPA in reducing the financial and environmental liabilities on the Successor Agency and taxing entities, and the increase in potential property tax revenues to the taxing entities.

Staff recommends that the Successor Agency take the following actions:

1. Find for the reasons set forth in **Attachment 5** of the June 28, 2016 Staff Report (RTC No. 16-0551) that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA) is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).
2. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part A and related documents. (**Attachments 12, 14 and 15**).
3. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part B (**Attachments 13 and 14**).

DISCUSSION

Additional Revisions and Attachments

Section 4.04 - Remediation of Hazardous Materials:

The 2010 ADDOPA splits the environmental remediation costs associated with hazardous waste contamination on Successor Agency owned property on Blocks 5 and 6 equally between the Successor Agency and the Developer. Currently, the primary costs for environmental remediation

are for monitoring and operating soil vapor extraction systems (wells) installed on the properties. In recent years, the total annual environmental cost has been approximately \$280,000; however, this cost could fluctuate in future years depending on the remediation work required. This cost does not include additional remedies that may be required in the future to address a long term solution to the hazardous contamination issue on the site, such as installation of soil vapor barriers for new structures.

The 2016 MRADDOPA reduces the Successor Agency's liability for environmental remediation costs. Language has been added to this section of the 2016 MRADDOPA regarding the future assumption by the Developer of 100 percent of the environmental remediation costs on Lots 1, 3 and 4 of Block 6 upon conveyance of these public parking parcels from the Successor Agency to the Developer at no cost. The Developer has agreed to assume the liability for the hazardous contamination remediation when the Successor Agency conveys these lots to the Developer, but no later than October 1, 2022. The Successor Agency may not be able to convey the Block 6 property to the Developer until October 1, 2022 because the property (along with Lot 2 of Block 5) is currently leased to the City in accordance with a Facility Lease that secures the Certificates of Participation (COPS) issued by the City. The outstanding debt service on the COPS is currently about \$8.6 million and will be fully repaid in 2022. The 2016 MRADDOPA will ensure that the Successor Agency's liability for the environmental remediation on Block 6 will be eliminated at the latest on October 1, 2022. The 2016 MRADDOPA also provides that the Developer and the Successor Agency will meet in good faith over the next 18 months to discuss the feasibility of conveying the Block 6 property earlier than October 1, 2022.

Until these lots are conveyed, the Successor Agency and Developer will continue to equally share the cost of environmental remediation pursuant to the terms of the 2016 MRADDOPA, which have been carried over from the 2010 ADDOPA. Once conveyed, the Developer's will continue to be obligated to construct and maintain a parking structure on these lots for public use. The revisions to Section 4.04 of the 2016 MRADDOPA are redlined in **Attachment 11**, and the form of an Amended and Restated Covenant to Convey pertaining to Lots 1, 3 and 4 of Block 6 is provided in **Attachment 14, Exhibit K**.

For Lot 2 of Block 5 (location of the Penney's Structure), while specific terms have not been included for conveyance of this parcel in the future, language has been added to Section 4.04 of the 2016 MRADDOPA acknowledging that the Developer has agreed to confer regularly with the Successor Agency on the ultimate disposition of Lot 2 of Block 5. Areas to be discussed by the Developer and the Successor Agency will include the earlier conveyance of Block 6 property, potential conveyance of Lot 2 of Block 5 to the Developer, the Developer assuming a greater portion of the remediation costs and the Developer naming the Successor Agency as an additional insured on any insurance obtained by a party.

Section 10.08 - Penney's Structure:

The Successor Agency owns the property upon which the Penney's Structure is located (Lot 2 of Block 5) and leases the property to the City as part of a financing arrangement that allowed the City to issue the COPS. 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 Developer has requested that the Successor Agency enter into a separate easement agreement that grants the Developer an easement over the Penney's Structure, which would continue to obligate the use of the structure for public parking to benefit the Town Center Project, including the theater/retail building, and downtown businesses. The easement will provide certainty that the parking necessary to meet the theater's needs is available. While Section 10.08 of

the 2016 MRADDOPA remains unchanged from the draft provided at the Successor Agency study session on June 28, the form of the Penney's Structure Easement Agreement has been prepared and is attached to the 2016 MRADDOPA. (**Attachment 14, Exhibit L**)

Public Parking Ground Lease Amendment:

The Former Redevelopment Agency and the Developer entered into a Public Parking Ground Lease in 2007, which was subsequently amended in 2010 in conjunction with the 2010 ADDOPA. The Public Parking Ground Lease, leases to the Developer the Successor Agency owned properties in Block 1, Block 2 and Block 6, all of which are either developed with public parking improvements (Blocks 1 and 2) or slated for development of public parking improvements (Block 6). The Public Parking Ground Lease grants the Developer a lease of the parking parcels and the right to construct the parking improvements on the parking parcels. The Public Parking Ground Lease also makes the Developer responsible for all costs of maintaining the public parking improvements. The Second Amendment to the Public Parking Ground Lease (**Attachment 15**) extends the term of the Public Parking Ground Lease from an original term of 75 years to 99 years. The Second Amendment also grants the Developer the right to charge for parking for those portions of the below grade parking that are dedicated to the exclusive use of the owners or occupants of those portions of the Sunnyvale Town Center owned or leased for office or residential purposes.

2016 MRADDOPA, Exhibits and Attachments:

All of the exhibits and attachments to the 2016 MRADDOPA were not included in the Successor Agency's June 28 agenda packet. The most recent draft 2016 MRADDOPA which incorporates the revisions to Section 4.04, and a complete set of the accompanying Exhibits have been attached to this supplemental staff report as **Attachments 14**.

Four Attachments are referenced in the 2016 MRADDOPA and will be included in the agreement for ease of reference. These Attachments are pre-existing documents that are independent of the 2016 MRADDOPA but implement its terms. Attachments 2, 3 and 4 will be assigned to the Developer upon transfer of the property. The Attachments are not included with this supplemental staff report, but can be viewed at: <http://sunnyvale.ca.gov/HotTopics/DowntownDevelopment/ADDOPA.aspx>

- Attachment 1: Public Parking Easement
- Attachment 2: Public Parking Ground Lease and First Amendment
- Attachment 3: Public Street and Utility Maintenance Agreement and First Amendment
- Attachment 4: Penney's Structure Agreement and First Amendment

Effects of 2016 MRADDOPA on Liabilities and Tax Revenues

Oversight Board Review:

Staff held two study sessions with the Oversight Board to the Successor Agency (Oversight Board) in May and June 2016 to provide background on the status of the Sunnyvale Town Center Project and terms of the 2010 ADDOPA. The comments at these study sessions have centered on the Oversight Board's requirement to find that the 2016 MRADDOPA is in the best interest of the taxing entities in order to approve the 2016 MRADDOPA. The 2016 MRADDOPA is considered in the best interest of the taxing entities if it reduced the Successor Agency's liabilities and increase the net revenues to the taxing entities.

The Successor Agency's approval of the 2016 MRADDOPA is subject to review and approval by the Oversight Board. The Oversight Board's approval of the 2016 MRADDOPA is not final until five days

after the resolution of approval is sent to the California Department of Finance (DOF). If the DOF elects to review the resolution, the DOF has 40 days to either approve the resolution or return it to the Oversight Board for reconsideration.

Under the laws governing the dissolution of the former Redevelopment Agency of the City of Sunnyvale, the Oversight Board can direct the Successor Agency to “Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those arrangements if it finds that amendments or early termination would be in the best interest of the taxing entities.” (Health and Safety Code Section 34181(e)).

The proposed revisions to Section 4.04 of the 2016 MRADDOPA as discussed above respond to the concerns of the Oversight Board by reducing the cost and liability of environmental remediation on the Successor Agency and taxing entities. Additionally, the 2016 MRADDOPA will significantly reduce the financial liability of the Successor Agency and taxing entities by eliminating the payments to the Developer from property tax increments. Coupled with the significant increase in projected property tax revenue from the approval of the 2016 MRADDOPA, which would allow the transfer of the property and completion of the Sunnyvale Town Center project, the financial benefits to the taxing entities will be substantial. These financial benefits are discussed below.

Elimination of Developer Payment:

The proposed amendments to the 2010 ADDOPA included in the 2016 MRADDOPA reduce the liabilities of the Successor Agency, will result in an increase in net revenues to the taxing entities and are in the best interest of the taxing entities.

The 2016 MRADDOPA includes several significant changes that will reduce the liability of the Successor Agency to the Developer. Of greatest significance is the elimination of the Successor Agency’s contingent liability to pay the tax increment generated from the project to the Developer if certain milestones are achieved.

The 2010 ADDOPA requires that the Successor Agency pay to the Developer the tax increment generated from the Sunnyvale Town Center Project from fiscal year 2003/04 through fiscal year 2025/26. The tax increment payment obligation does not commence until the occurrence of the “Minimum Project TIF Date.” The Minimum Project TIF Date is defined as the date on which completion of no less than 150,000 square feet of the retail portion of the project is complete including evidence of leases with retail tenants for the 150,000 square feet and completion of the improvements to Redwood Square. Section 8.02(a) of the 2010 ADDOPA requires that the first Annual Payment of the Project Tax Increment also include the “Interim Project Tax Increment”. The Interim Project Tax Increment is defined as the project tax increment generated between fiscal year 2003/04 and the first Annual Payment. Thus, in addition to all tax increment generated from the Minimum Project TIF Date through fiscal year 2025/26, the 2010 ADDOPA requires that all of the tax increment previously generated since fiscal year 2003/04 be paid to the Developer.

The 2010 ADDOPA also requires payment to the Developer of the Interim Project Tax Increment prior to the occurrence of the Minimum Project TIF Date upon the occurrence of the “Interim TIF Payment Date”. The Interim TIF Payment Date is defined as the date upon which the constructions of Building D exterior walls are completed and the theater in Building T is completed. The Interim Project Tax

Increment is estimated to be \$21 million currently. If the Minimum Project TIF Date occurs, the expected tax increment owed to the Developer could be in the range of \$50 to \$65 million (**Attachment 16**).

The 2010 ADDOPA included a schedule for the Developer to achieve the Minimum Project TIF Date as well as the Interim TIF Payment Date which time period have passed. However, the 2010 ADDOPA also included several provisions allowing for extension of deadlines if events outside the control of the parties occurred that prevented performance. Whether the Developer's performance under the 2010 ADDOPA is excused as result of the delay and time extension provisions of the agreement is not clear due to ambiguity in the 2010 ADDOPA. The ambiguity in the agreement is itself a liability to the Successor Agency since it is possible that the Developer could make a claim for the TIF as a result of that ambiguity. The Successor Agency would need to defend such a claim which would require the Successor Agency to incur legal costs. The removal of the TIF obligation in the 2016 MRADDOPA results in the Successor Agency being relieved of the potential liability for the TIF payments as well as any liability for legal fees associated with whether the TIF payment is owed to the Developer.

Increase in Net Revenues to the Taxing Entities:

The 2016 MRADDOPA will result in a significant increase in net revenues to the taxing entities. The elimination of the TIF obligation and the reduction in environmental remediation costs both eliminate the potential for reduction in residual distributions to the taxing entities of property tax that was formerly tax increment that would occur in order to make the payments required under the 2010 ADDOPA. Additionally, the 2016 MRADDOPA will allow the completion of the Minimum Project of the Sunnyvale Town Center Developer without further delay. Under the 2016 MRADDOPA, the Minimum Project is expected to be substantially completed no later than December 31, 2020. The Minimum Project includes the completion of 198 residential units, approximately 116,000 square feet of additional retail space, the theater/retail building, temporary improvements to Redwood Square, and public parking to serve the project and downtown businesses.

The completion of the Minimum Project is expected to result in a significant increase in property taxes which will benefit the taxing entities. Using conservative assumption for the value of the improvements to be constructed by the Developer, the completion of the Minimum Project is expected to result in an increase in property tax revenues over the next ten years of approximately \$32 million. Taxing entities are expected to see an immediate increase in property tax revenue as transfer of the remaining portions of the project (the office buildings were already transferred in December 2015) is expected to increase the assessed valuation of the project by approximately \$100 million resulting in an increase in property taxes of \$1 million annually. This is in addition to the \$1.2 million increase in property tax revenue expected in the current year as a result of the transfer of the office buildings. The projected increase in property tax revenues to each of the taxing entities is set forth in detail in **Attachment 16**.

CORRESPONDENCE FROM PUBLIC

The Successor Agency received correspondence related to the 2016 MRADDOPA from 200 Washington, LLC (the owner of the Macy's parcel), which is included as **Attachment 17**. The letter raises concerns that the 2016 MRADDOPA is inconsistent with the Operations and Reciprocal Easement Agreement (OREA). The OREA is an agreement among the former Redevelopment Agency, the Developer, and the owners of the Macy's and Target parcels governing the parties

obligations with respect to the uses of the Town Center common areas. 200 Washington, LLC alleges in their letter that the Developer is in default under the OREA and asserts that 200 Washington, LLC objects to any amendment to the 2010 ADDOPA that would conflict with the OREA. The Successor Agency staff and the Developer have carefully considered the OREA in negotiating the 2016 MRADDOPA. There are no conflicts between the OREA and the 2016 MRADDOPA.

ALTERNATIVES

1. Find for the reasons set forth in **Attachment 5** of the June 28, 2016 Staff Report (RTC No. 16-0551) that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).
2. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part A and related documents. (**Attachments 12, 14 and 15**)
3. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part B. (**Attachments 13 and 14**)
4. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part A and related documents with modifications. (**Attachments 12, 14 and 15**)
5. Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part B with modifications. (**Attachments 13 and 14**)
6. Do not approve the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement and provide direction to staff.

STAFF RECOMMENDATION

Part A Recommendation: Alternative 1 and 2:

- Find for the reasons set forth in **Attachment 5** of the June 28, 2016 Staff Report (RTC No. 16-0551) that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).
- Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part A and related documents. (**Attachments 12, 14 and 15**)

Part B Recommendation: Alternative 1 and 3:

- Find for the reasons set forth in **Attachment 5** of the June 28, 2016 Staff Report (RTC No. 16-0551) that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is

necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).

- Adopt the Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part B. (**Attachments 13 and 14**)

Prepared by: Hanson Hom, Assistant City Manager/Chief of Downtown Planning

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

Attachments to Successor Agency Staff Report (June 28, 2016):

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 [**updated version**]
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 [**not included; updated per Attachment 14**]
9. Summary of Minimum Project Changes

Additional Attachments:

10. Successor Agency Staff Report (June 28, 2016)
11. Draft 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (indicating additional revisions from Attachment 7)
12. Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part A and any related documents.
13. Resolution authorizing the Successor Agency Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, Part B
14. Final Draft 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement with Exhibits:
 - Exhibit A: Map Showing Town Center Property
 - Exhibit B: Minimum Project Construction Schedule
 - Exhibit B-1: Minimum Project Public Improvements
 - Exhibit B-2: Map of Minimum Project Area
 - Exhibit E: Memorandum of Agreement
 - Exhibit H: Minimum Project Milestone Dates for Damages
 - Exhibit K: Amended and Restated Covenant to Convey
 - Exhibit L: Penney's Structure Easement Agreement
15. Second Amendment to the Public Parking Ground Lease
16. Projections of Developer TIF Payment and Property Tax Revenue
17. Letter from Rossi, Hamerslough, Reischl & Chuck, June 28, 2016

