



File #: 18-0883, Version: 1

### **REPORT TO COUNCIL AND THE REDEVELOPMENT SUCCESSOR AGENCY**

#### **SUBJECT**

Adopt a Resolution Approving and Authorizing the Execution of Documents in Connection with the Removal of Property Under the 1998 Facility Lease between the City and the Former Redevelopment Agency of the City of Sunnyvale

#### **BACKGROUND**

In March 1998, the City issued its 1998 Parking Facility Certificates of Participation (1998 COPs) to refund the existing debt issued for the Town Center parking facility. The 1998 COPs were secured by a lease of the Town Center parking facility with the Redevelopment Agency (RDA) acting as lessor and the City acting as lessee. The City's lease payments are equal to the debt payments on the 1998 COPs. The lease under the 1998 COPs allows for the removal of the asset and/or substitution of a different asset in its place. The COP documents require that the fair rental value of the new (remaining) leased asset(s) be at least equal to the maximum annual debt service on the 1998 COPs. Generally, municipal borrowers can make this determination if the value of the leased assets is equal to or higher than the amount of debt the assets secure.

On April 6, 1999, Council authorized the removal of what are now parking garages located at 325 and 225 South Taaffe Street (garages across from Macy's and Target) as a leased asset for the 1998 COPs and the substitution of two parcels the City acquired from American Mall Properties (AMP). The two parcels that were substituted consisted of the Macy's surface lot and Penney's surface lot. Upon the substitution, the new assets under the 1998 Facility Lease were the remaining portions of the Town Center parking facility and the Macy's and Penney's parcels. In late 2002, a four-story parking garage was built on the Penney's parcel.

On August 17, 2004, the RDA approved a Disposition and Development and Owner Participation Agreement with Fourth Quarter Properties XLVIII, LLC for redevelopment of the Town Center Mall site (i.e., the Forum Development Group Project). The Project included the demolition of the Town Center parking facility, the two-story structure located near Mathilda. As a result, the City removed the remaining portions of the Town Center parking facility as the asset that secured the 1998 Facility Lease. The land and improvements on the Macy's and Penney's parcels remained as the assets under the 1998 Facility Lease

#### **EXISTING POLICY**

1998 Certificates of Participation - Article II, Section 2.06: Substitution or Removal of Leased Property, allows the lease to be amended to remove assets.

#### **ENVIRONMENTAL REVIEW**

The action being considered is exempt from the California Environmental Quality Act ("CEQA")

pursuant to CEQA Guidelines section 15061 (b) (3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

## **DISCUSSION**

On June 30, 2016, the Redevelopment Successor Agency approved a Modified and Restated Disposition and Development and Owner Participation Agreement (MRADDOPA) with Sunnyvale STC for redevelopment of the Town Center Mall site. The MRADDOPA includes terms to transfer Lots 1, 3, and 4 of Block 6 (the Macy's surface lot and two air parcels) to the developer (section 4.04(e)) as part of the agreement for the development. Lot 1, which is the Macy's surface parking lot, is currently a leased asset for the 1998 COPs. The City has received a formal request from the developer for conveyance of the Block 6 property. In order to complete the transfer in accordance with section 4.04 (e) of the MRADDOPA the Macy's surface parking lot must be removed as a leased asset for the 1998 COPs.

Based on an appraisal completed for the Penney's parcel, the value of the annual fair market rent for the land and improvements is above the maximum annual debt service on the 1998 COPs. The value of the land and improvements is approximately \$27.6 million. This value generates a fair market rent value of \$1,980,000. The maximum annual debt service is \$1.25 million.

To accomplish the removal of Macy's surface parking lot from the leased asset pledge, the 1998 COP documents require that the following items be executed by the City and the Successor Agency.

### **1. Officer's Certificate of City (See Attachment 1)**

The Director of Finance must provide a certificate containing the following:

- a. Legal Description: A description of the leased asset to be released.
- b. Annual Rental Payments: Certifying that the annual fair market rental value of the leased property after the removal is at least equal to the maximum annual rental payments on the leased asset before the removal.

### **2. Amendment of 1998 COP Documents**

Jones Hall, the Bond Counsel for the 1998 COPs, has prepared amendments to the following existing COP documents, to be executed by the City and the RDA:

- a. Third Amendment to the Facility Lease: Further amends the 1998 Facility Lease to remove the Macy's surface parking lot, known as Lot 1 of Block 6 (see Attachment 2).
- b. Assignment Agreement: Amendment of the original Assignment Agreement, whereby the Agency transfers its right to receive Base Rental Payments to the Trustee, to refer only to the remaining leased property (the Penney's parking garage) (see Attachment 3).
- c. Termination Agreement: Terminates the original 1998 COP Facility Lease and Assignment Agreement with respect to the Macy's parking lot property to be released (see Attachment 4).

### **3. Delivery of Bond Counsel Opinion**

Upon completion of the above actions the bond counsel, Jones Hall will deliver an opinion stating that the removal documents have been duly authorized and

executed and serve as valid and binding obligations of the City and the Successor Agency.

### **FISCAL IMPACT**

There is no fiscal impact from taking this action.

### **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.

### **RECOMMENDATION**

#### **City Council:**

Adopt the Resolution (Attachment 5 of the Report) authorizing and approving the removal of the Macy's Surface Parking Lot parcel (Lot 1 of Block 6, as shown on that certain Final Map (Tract No. 9925), entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Page 45 through 55 inclusive, Records of Santa Clara County, from the Facility Lease in accordance with the provisions of Section 2.06 of the Facility Lease and authorizing the Mayor, City Manager, Director of Finance, City Clerk and all other officers and representatives of the City to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the removal of properties pursuant to the Resolution.

#### **Redevelopment Successor Agency:**

Adopt the Resolution (Attachment 6 to the Report) authorizing and approving the removal of the Macy's Surface Parking Lot parcel (Lot 1 of Block 6, as shown on that certain Final Map (Tract No. 9925), entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Page 45 through 55 inclusive, Records of Santa Clara County, from the Facility Lease in accordance with the provisions of Section 2.06 of the Facility Lease and authorizing the Chair of the Agency, Executive Director, Secretary, Treasurer and all other officers and representatives of the Agency to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the removal of properties pursuant to the Resolution.

Prepared by: Timothy J. Kirby, Director of Finance

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Officer's Certificate of City
2. Third Amendment to the Facility Lease
3. Assignment Agreement
4. Termination Agreement
5. City Council Resolution
6. Successor Agency Resolution

