



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Approval of Second Amendment to the Reimbursement Agreement and Fee Letter Relating to City of Sunnyvale's 2009 Variable Rate Demand Refunding Certificates of Participation (COPs)

BACKGROUND

The Variable Rate Demand Refunding Certificates of Participation, Series 2009A (Government Center Site Acquisition Project) (the "2009 COPs") were issued in June 2009 to refund Certificates of Participation, Series 2001A (Government Center Site Acquisition Project) issued in 2001 to fund the purchase of the Sunnyvale Office Center property located at 505 West Olive Avenue. The 2009 COPs are backed by a direct draw letter of credit (the "Letter of Credit") from the Bank. The Letter of Credit was issued pursuant to a Reimbursement Agreement, dated as of June 1, 2009 between the City and Union Bank, N.A., now MUFG Union Bank, N.A. (the "Bank").

The Letter of Credit had an initial expiration date of June 1, 2012 and was issued for an annual fee of 1.00% times the outstanding Letter of Credit amount. The Letter of Credit was extended to June 1, 2015 pursuant to a First Amendment to Reimbursement Agreement and for a reduced annual fee of 0.90% times the outstanding Letter of Credit amount. The outstanding balance on the 2009 COPs is \$12,795,000.

The Letter of Credit has allowed the City to experience extraordinarily low borrowing costs. The interest rates on the 2009 COPs for each of the past five years are as follows:

Year	Average Rate
2010	0.28%
2011	0.19%
2012	0.17%
2013	0.09%
2014	0.04%
2015 (YTD)	0.03%

EXISTING POLICY

Council Fiscal Policy 7.1F.2 Debt Management Policies - Debt Issuance:

F.2.3 An internal feasibility analysis will be prepared for each long-term financing which analyzes the impact on current and future budgets.

F.2.10 Fixed or variable rate financing may be used, depending on the cost benefit to the City of each

option.

ENVIRONMENTAL REVIEW

N/A

DISCUSSION

The current Letter of Credit expires on June 1, 2015. For the City to maintain its low borrowing costs on the 2009 COPs, the Letter of Credit will need to be extended or replaced. If the Letter of Credit expires without extension or substitution, or without a refinancing of the 2009 COPs, an Event of Default will occur, the Trustee will be required to draw on the Letter of Credit to pay the 2009 COPs in full, and the City will need to repay the Bank at a higher rate of interest equal to Prime + 5%.

The Bank is willing to extend the Letter of Credit to June 1, 2018 at a further reduced fee of 0.50% times the outstanding Letter of Credit amount upon execution of the Second Amendment. The City directed its financial advisor, Ross Financial, to evaluate the cost of replacing the Bank with other letter of credit providers. Ross Financial surveyed four other banks (U.S. Bank, Bank of the West, J.P. Morgan and Mizuho) that might have interest in a small variable rate COP financing and concluded that the all-in costs of switching letter of credit banks would exceed the cost of extending the Letter of Credit with the Bank at 0.50% per year. Switching letters of credit banks would entail higher transaction costs for bank counsel, bond counsel, financial advisor and rating agencies.

In order to move forward with the Letter Credit extension, Council approval of a resolution approving and authorizing the negotiation, execution, delivery and performance of the Second Amendment is necessary. The City and the Bank are parties to the Second Amendment. The Second Amendment amends certain terms of the Reimbursement Agreement to include provisions that are contained in current day reimbursement agreements and similar agreements with banks. These provisions include:

- Setting forth letter of credit fee information in a separate Fee Letter, which also contains increased pricing due to downgrades in the ratings on City certificates of participation transactions.
- Conforming changes that stem from placing fee information in a separate Fee Letter.
- Modernizing the "Increased Cost" provisions to reflect rules, guidelines and directives required by the Dodd-Frank Wall Street Reform and Consumer Protection Act and by certain banking regulatory bodies that govern reserve, capital and liquidity requirements.
- Provisions required of banks by recent Anti-Terrorism Laws and the USA Patriot Act.
- Certain requirements relating to the Remarketing Agent for the 2009 COPs.
- Updated language relating to bankruptcy

The Second Amendment has been reviewed by the City Attorney and the City's bond counsel on the 2009 COPs, Jones Hall.

FISCAL IMPACT

The Second Amendment will enable the City to maintain the 2009 COPs in variable rate mode and to continue to borrow at extremely low rates with the flexibility to repay the 2009 COPs at any time. The Letter of Credit fee will be reduced from 0.90% to 0.50% times the outstanding Letter of Credit amount, resulting in savings of approximately \$148,000 over the next three years and approximately

\$485,000 through final maturity of the 2009 COPs (April 1, 2031) assuming future renewals of the Letter of Credit at the same fee. The City will be required to pay the fees of the Bank's counsel (estimated at approximately \$8,000). With the continued low interest rates this fiscal year, these fees can be absorbed in the amount budgeted for debt service.

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.

ALTERNATIVES

1. Adopt the resolution approving and authorizing the negotiation, execution, delivery and performance of a Second Amendment to Reimbursement Agreement and Fee Letter relating to the 2009 COPs, and authorizing other related actions.
2. Do not authorize the resolution and direct staff to return with an alternative approach to the 2009 COPs.

RECOMMENDATION

Alternative 1: Adopt the resolution approving and authorizing the negotiation, execution, delivery and performance of a Second Amendment to Reimbursement Agreement and Fee Letter relating to the 2009 COPs, and authorizing other related actions.

Prepared by: Grace K. Leung, Director of Finance
Reviewed by: Robert A. Walker, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. A Resolution Approving and Authorizing the Negotiation, Execution, Delivery and Performance of a Second Amendment to Reimbursement Agreement and Fee Letter relating to the City of Sunnyvale Variable Rate Demand Refunding Certificates of Participation, Series 2009A (Government Center Site Acquisition Project), and Authorizing Other Related Actions
2. Second Amendment to Reimbursement Agreement between the City of Sunnyvale and the Bank and Fee Letter